

ECRI REPORT ON ALBANIA

(fifth monitoring cycle)

Adopted on 19 March 2015

Published on 9 June 2015

COUNCIL OF EUROPE



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TABLE OF CONTENTS

FOREWORD	7
SUMMARY	9
FINDINGS AND RECOMMENDATIONS	11
I. COMMON TOPICS	11
1. LEGISLATION AGAINST RACISM AND RACIAL DISCRIMINATION	11
- CRIMINAL LAW	11
- CIVIL AND ADMINISTRATIVE LAW	12
- INDEPENDENT SPECIALISED AUTHORITIES (GPRs Nos. 2 AND 7).....	15
2. HATE SPEECH	16
- DATA	16
- PUBLIC DISCOURSE	16
- THE INTERNET AND TRADITIONAL MEDIA.....	17
- CRIMINAL LAW RESPONSE TO HATE SPEECH	18
- NON-CRIMINAL LAW RESPONSES TO HATE SPEECH	18
3. RACIST AND HOMO/TRANSPHOBIC VIOLENCE	20
4. INTEGRATION POLICIES	21
- ROMA INTEGRATION POLICIES	21
- ROMA INTEGRATION POLICIES' RESULTS	23
- REFUGEE INTEGRATION	30
- OTHER NON-NATIONALS' INTEGRATION	30
II. TOPICS SPECIFIC TO ALBANIA	31
1. INTERIM FOLLOW-UP RECOMMENDATIONS OF THE FOURTH CYCLE	31
- INTRODUCING COMPREHENSIVE LEGISLATION TO COMBAT DISCRIMINATION ...	31
- ENSURING THAT EACH ROMA FAMILY HAS ACCESS TO DECENT ACCOMMODATION.....	31
- STEPPING UP THE CREATION OF NEW NURSERY SCHOOLS.....	31
2. POLICIES TO COMBAT DISCRIMINATION AND INTOLERANCE AGAINST LGBT PERSONS	32
- DATA	32
- LEGISLATIVE ISSUES.....	32
- ASYLUM.....	33
- INDEPENDENT AUTHORITIES	34
- ACCESS TO EMPLOYMENT AND HEALTH	34
- EDUCATION AND AWARENESS-RAISING	34
INTERIM FOLLOW-UP RECOMMENDATIONS	37
LIST OF RECOMMENDATIONS	39
BIBLIOGRAPHY	43
APPENDIX: GOVERNMENT'S VIEWPOINT	49

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, anti-Semitism and intolerance.

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

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

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

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

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

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

The following report was drawn up by ECRI under its own responsibility. It covers the situation up to 10 December 2014; 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 Albania on 15 December 2009, progress has been made in a number of fields.

In 2010 the Law on Protection from Discrimination (LPD) was enacted and the first Commissioner for Protection against Discrimination (CPD) was elected. One of the powers given to her by law is to represent victims of discrimination before the courts. The law now provides that judges can exempt plaintiffs from court fees and grant free legal aid in urgent cases. In 2013 the Criminal Code was amended to give LGBT persons enhanced protection.

There is no problem of real understanding between the different groups of the Albanian population. The People's Advocate and increasingly the CPD counter public hate speech. In October 2014, the police made available a tool for reporting online hate speech. The Government has adopted a Code of Ethics and the new Audiovisual Media Authority is tasked with drafting ethical guidelines.

In 2010 the National Action Plan for Roma Inclusion was adopted which also benefits the Albanian Egyptians (Egyptians). Substantive progress has been made in the field of civil registration of Roma. Since 2012, all children are entitled to one year's free pre-school education. Due to positive action in the field of education, the school drop-out rate of Roma pupils has decreased. Also, a points system gives Roma, under certain circumstances, priority access to social housing.

In 2012 an action plan addressing discrimination of LGBT persons was launched. The People's Advocate and the CPD presented a set of recommendations for legislative change; these include providing for registered partnership between persons of the same sex. The cooperation between the authorities and the LGBT community has intensified.

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

There are some gaps in the criminal law protection against racism and homo-/transphobia. The LPD seems to address only discrimination in the enjoyment of fundamental rights and its rule on the burden of proof is not properly applied. In practice, victims of discrimination lack access to free legal aid.

In recent years, there have been several incidents of hate speech by high-level politicians which have had a negative impact on public discourse in general. Internet is increasingly used for spreading racism, intolerance and bullying. However, no reliable data on hate crime is available with many cases going unreported. There is no information about self-regulation and systematic monitoring of the Internet. The implementation of the legal duty to prevent and combat discrimination at school, which was introduced in 2010, needs to be improved. In 2011, a major racist criminal offence was committed: an arson attack on Roma dwellings. LGBT persons fall regularly victims of violence.

There is no comprehensive and coherent data to evaluate the outcome of the strategy and the action plan for Roma inclusion. No proper budget has been allocated to their implementation; as many programmes rely on donors' funds, their long term sustainability is uncertain. Only one out of four Roma children has access to pre-school education. The education outcomes of many Roma and Egyptians remain poor and obstruct their access to the regular labour market. In practice, most Roma and Egyptians cannot benefit from social housing. 60 % of Roma housing premises do not have running water. Many Roma and Egyptians cannot regularise their homes. A

considerable number are threatened by forced evictions without alternative housing. Only one in five Roma have health insurance cards.

The majority of Albanians disapprove of LGBT persons' lifestyle. Despite a number of legislative proposals, there is no legal regulation for important aspects of LGBT person's private life, such as registered partnership; change of sex and name; or access to gender reassignment treatment. The general population and even health professionals are not sufficiently aware of LGBT issues. No specific budget is allocated to the Action Plan for non-discrimination because of sexual orientation and gender identity.

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

The authorities should bring their criminal, civil and administrative law into line with ECRI's General Policy Recommendation No. 7 on national legislation to combat racism. The authorities should ensure effective access to justice for victims of discrimination through a functioning and properly funded legal aid system.* The CPD should be entitled to request the release or production of documents within an appropriate period of time. The People's Advocate should continue countering public hate speech and address issues of structural discrimination by public authorities.

The police should establish regular dialogue, mutual trust and co-operation with vulnerable groups and NGOs and investigate thoroughly racist and homo/transphobic offences. The authorities should support elected bodies' and media's self-regulation initiatives and swiftly implement measures to fulfil the legal duty to raise awareness of the right to equal treatment and to combat discrimination at school.

The authorities should collect comprehensive equality data and use it for systematic evaluation of all integration projects. They should step up the creation of nursery schools and evaluate the enrolment of Roma and Egyptians in pre-school. Employment promotion programmes should specifically address the situation of Roma. The efforts to regularise Roma and Egyptian dwellings should be intensified; special priority should be given to finding solutions for those living in non-permanent structures. The access to social housing for these communities should be improved and a Roma housing fund should be set up. The authorities should ensure that persons who may be evicted from their homes enjoy all the guarantees that international texts provide for in this connection; they should be notified well in advance and not be evicted without the possibility of being rehoused in decent accommodation.*

The authorities should conduct systematic research and data collection concerning attitudes towards and discrimination against LGBT persons. Gender reassignment should be given full legal recognition. An inter-ministerial working group should be set up to ensure speedy implementation of the Action Plan projects addressing discrimination of LGBT persons.

* 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 racism¹ and racial discrimination²

- Criminal law

1. ECRI has already examined in previous reports whether Albanian legislation is in line with its General Policy Recommendation (GPR) No. 7 on national legislation to combat racism and racial discrimination. Therefore, in this fifth report, it will only address persistent shortcomings. In 2013 several provisions of the Albanian Criminal Code (CC) on hate crime were amended.³ Its Article 265 now criminalises incitement to hatred and disputes on the grounds of race, national origin, religion or sexual orientation. Incitement to violence and discrimination are not mentioned in this article. The grounds of colour, language and citizenship are missing (§ 18a of GPR No. 7); so is gender identity.⁴
2. Article 266 CC makes it a criminal offence to endanger social peace by inciting to violence “against other parts of the population” (as well as by inciting to national hatred or “arbitrary actions” against them). This provision seems to criminalise incitement to violence as recommended in § 18a of GPR No.7; however, it only covers the ground of ethnic origin⁵, and contains a restriction, as public peace needs to be at risk. This restriction too is not in line with § 18a of its GPR No. 7, according to which public incitement to hatred against any individual or group of individuals should be punishable, even in the absence of any consequences⁶.
3. Insults, defamation and threats with death or serious bodily injury are punishable under Articles 119, 120 and 84 CC. Articles 119b and 84a cover insults and threats with death or serious injury on the grounds of “ethnicity, national origin, race or religion”. However, they are restricted to offences committed through computer systems and do not cover all relevant grounds (cf. § 18b and c of GPR No. 7). Moreover, there is no article that criminalises expressly the expression of ideologies described in § 18d of GPR No. 7.⁷
4. Article 74a CC establishes as a criminal offence offering in public or deliberately disseminating to the public, through a computer system, material that denies, minimises significantly, approves of or justifies acts that are genocide or crimes against humanity. This is not totally in line with § 18e of GPR No. 7, as it only covers acts committed through a computer system and the denial of war crimes is missing (cf. § 18e of GPR No. 7).

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. “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 Albania has ratified Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms. With respect to Albania it entered into force on 1 April 2005.

³ By Law No. 144/2013 the ground of sexual orientation was inserted into Article 265 CC. In Article 50 CC on aggravating circumstances the grounds of sexual orientation and gender identity were introduced. This is relevant for §§ 98 et seq. of the report.

⁴ The authorities consider that race and ethnicity would cover colour, language and citizenship.

⁵ But not the other grounds enumerated in § 18a of GPR No. 7.

⁶ Cf. also Article 1.1 of the Additional Protocol to the Convention on Cybercrime and §§ 13 to 14 of the Explanatory Report to this Protocol.

⁷ Such expression might be covered by Articles 265, 119a and 119b CC.

5. Article 265 CC covers part of § 18f of GPR No. 7, as it criminalises the production, dissemination and storage aimed at dissemination of “writings” which incite to hatred. Civil society has informed ECRI that courts do not always apply this provision to the distribution of other than written material.⁸ ECRI therefore considers that Article 265 CC should be amended so as to mention expressly “pictorial and other material”. Article 119a CC complements Article 265 CC and prohibits the dissemination of racist and xenophobic “material” (in general), but only when using a computer system.
6. Articles 333 and 333a CC criminalise the setting up and participation in organisations and groups having the purpose of committing criminal acts. Both provisions contain the restriction that the organisation must aim at gaining material or non-material benefit (Article 28.1 and 4 CC). This is not in line with § 18g of GPR No. 7, according to which the law should criminalise the creation, leadership and participation in the activities of all groups which promote racism – independently of whether they have the purpose to commit criminal acts or the objective to profit therefrom.⁹
7. In line with § 18h of GPR No. 7, Article 253 CC criminalises racial discrimination by civil servants and persons carrying out public duties. However, racial discrimination in the private sector – racial discrimination “in the exercise of one’s occupation” – is not covered.
8. In line with § 21 of GPR No. 7, motives related to gender, race, [skin] colour, ethnicity, language, gender identity, sexual orientation, political, religious, or philosophical convictions are aggravating circumstances according to Article 50 CC. Only the ground of citizenship is missing.
9. ECRI recommends that the authorities bring their criminal law, in general, into line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should include the grounds of colour, language, citizenship and gender identity in the relevant provisions and criminalise (i) incitement to violence and discrimination on all grounds, (ii) public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes; (iii) the public dissemination, production or storage of pictorial or other material containing racist manifestations (iv) the creation and leadership of as well as support for and the participation in the activities of a group which promotes racism and (v) racial discrimination in the exercise of one’s occupation in the private sector.

- **Civil and administrative law**

10. In its fourth report ECRI recommended to Albania to introduce comprehensive legislation aimed at combating discrimination. In the conclusions on the implementation of this recommendation ECRI welcomed the adoption of Law No. 10 221 on Protection from Discrimination (LPD) in 2010 and noted that most of the relevant parts of its GPR No. 7 had been incorporated into it.¹⁰ ECRI again focuses on remaining shortcomings.
11. In accordance with § 4 of GPR No. 7, LPD clearly defines the terms of direct and indirect discrimination (Article 3.1 to 3.3). However, both concepts, as defined in the LPD, relate to the exercise of fundamental rights and freedoms, whereas, according to § 1b and c of GPR No. 7, discrimination is a much broader notion.

⁸ The authorities are of the opinion that the term “writing” in Article 265 CC also covers pictorial and other material. However, ECRI notes that an argument a contrario can be drawn from Article 225.2 CC on the distribution of unconstitutional writings, which expressly mentions “materials” and “symbols”.

⁹ Cf. the recommendation made in CERD 2011: § 10.

¹⁰ ECRI 2013: 5.

Furthermore, Albania has ratified Protocol No. 12 to the European Convention on Human Rights and its Article 1 provides that the enjoyment of any right set forth by law shall be secured without discrimination. The authorities consider that the Commissioner for Protection from Discrimination (CPD) and the courts should deduce therefrom that the LPD also prohibits discrimination in respect of rights guaranteed by ordinary laws. However, ECRI is of the opinion that, in order to make the law understandable for persons without legal expertise and avoid any misinterpretation¹¹, the authorities should consider excluding the restriction to fundamental rights and freedoms.

12. Citizenship is missing in the open-ended list of discrimination grounds in Article 1 LPD (§ 1a of GPR No. 7). The authorities consider that citizenship can be covered by the ground of ethnicity; however, there is no case law on this issue.
13. As ECRI noted in its interim follow-up conclusions, the LPD does not expressly provide that the following are considered forms of discrimination: proclaimed intention to discriminate; and incitement to or aiding another to discriminate (§ 6 of GPR No. 7).¹² The first two could be covered by the term “harassment” in Article 3.5 LPD. Aiding another to discriminate might be covered by Article 5.1 LPD, which prohibits “any other form of behaviour that hinders the implementation of the principle of equal treatment”. ECRI, therefore, considers that the authorities should monitor whether the judiciary applies Articles 3.5 and 5.1 LPD to these forms of discrimination; if necessary, the law should be clarified.
14. Article 18 of the Constitution and the Code of Administrative Procedure guarantee the rights to equality and not to be discriminated against.¹³ However neither the LPD nor any other legal text contains a general duty for public authorities to promote equality through the implementation of equality programmes (§ 8 of GPR No. 7). The LPD only obliges employers and the directors of educational establishments (Article 13.1.a and 19.1 LPD) to apply the law and raise awareness of it. The same is true of ministries and other public authorities dealing with employment and education (Articles 14 and 18 LPD). ECRI considers that a general duty for all public authorities to promote equality and to prevent discrimination should be inserted into the law.¹⁴
15. Article 1d of Law No. 9643 of 20 November 2006 on Public Procurement provides for equal treatment of all economic operators participating in public procurement procedures. However, there is no information that public authorities would be under a duty also to ensure that these participants respect and promote a policy of non-discrimination vis-à-vis their staff (§ 9 of GPR No. 7; § 1 f of GPR No. 14). In fact, the open-ended list of criteria to be used when awarding contracts (Article 55) does not include criteria linked to such social considerations. ECRI therefore encourages the Albanian authorities to use the public procurement legislation as an additional tool to combat racism and discrimination.
16. ECRI has been informed by the CPD and civil society that the courts do not apply Article 36.6 LPD on sharing the burden of proof in discrimination cases. Courts would, referring to two decisions of the Constitutional Court from 2007 and 2010, rather apply the general rule according to which it is up to the plaintiff to prove that discrimination has taken place.¹⁵ ECRI considers that in the Codes of Civil

¹¹ See in this context § 16 below.

¹² ECRI 2013: 5.

¹³ A new code of Administrative procedure is under consideration.

¹⁴ § 27 of the explanatory memorandum to GPR No. 7.

¹⁵ For the case law of the Constitutional Court cf. Hoxhaj and Baraku 2014: 429 et seq.

and Administrative Procedure, the authorities should include the special rule on the burden of proof in discrimination cases.¹⁶

17. The Parliament has informed ECRI that, in line with § 14 of GPR No. 7, discriminatory provisions in legal transactions are null and void.¹⁷
18. According to Article 9.2 of the Constitution, political parties and other organisations which incite and support racial, religious, regional or ethnic hatred are prohibited. Article 7d of Law No. 8580 of 17 February 2000 forbids the registration of such political parties; registered parties engaging in such activities can be dissolved by court decision; only such a decision can put an end to their public funding. According to Article 44 of Law No. 8788 of 7 May 2001, the court shall decide on the dissolution of other non-profit organisations conducting illegal activities. Again, only the dissolution will put an end to public financing which is regulated by Article 39 of the same law. ECRI recalls that, according to §§ 16 and 17 of GPR No. 7, suppressing the public financing of and disbanding organisations that promote racism are two separate responses to racism.
19. ECRI recommends that the authorities bring their anti-discrimination legislation, in general, into line with its General Policy Recommendation No. 7 as indicated in the preceding analysis; in particular they should (i) abolish the restriction of the prohibition against discrimination to fundamental rights and freedoms; (ii) include citizenship in the list of grounds of prohibited discrimination; (iii) spell out in the law the general duty for public authorities to promote equality; (iv) enact clear legislation about the shared burden of proof in discrimination cases; and (v) enact provisions allowing for the discontinuation of public funding to political parties and other organisations that promote racism.
20. In its fourth report on Albania, ECRI recommended ensuring that victims of discrimination have effective access to free legal aid. The State Commission on Legal Aid (SCLA), which is charged with the implementation of Law No. 10 039 of 22 December 2008 on Legal Aid (LLA)¹⁸, was set up in 2010. It established six local offices, only in 2014. The law provides that all persons benefitting from social aid or eligible for social aid are entitled to legal aid.¹⁹
21. However, several international experts have recently expressed their concerns about the enduring ineffectiveness of the free legal aid system.²⁰ Civil society informed ECRI that persons in need of legal aid are not able to present the required detailed application documents to the SCLA; the SCLA only deals with a small number of cases per year²¹; and its budget would be too low to hire lawyers for all persons in need. Furthermore, according to Article 15.1 LLA, the SCLA shall evaluate several rather open criteria before awarding free legal aid such as the value of the claim, the merits of the legal arguments, the probability of success and the complexity of the case.²² As a result, legal aid is mostly provided

¹⁶ The CPD has made similar recommendations.

¹⁷ Articles 14 and 18 of the Constitution, Article 14 ECHR, Articles 92 and 660 of the Civil Code and Article 11.3 of the Labour Code. Cf. also Article 41.2 of the Civil Code concerning the statutes of associations.

¹⁸ Law No. 10 039, dated 22.12.2008 on Legal Aid. Amendments to the law were made by laws No. 143/2013, dated 2.5.2013 and No. 77/2014 dated 10.7.2014. The amendment from 2014 regulates the access of foreign nationals and stateless persons to legal aid.

¹⁹ Ministry of Social Welfare and Youth 2014:13.

²⁰ CoE Commissioner for Human Rights 2014: §§ 77 et seq.; UN Human Rights Committee 2013: § 17; UN Rights Council, Working Group on the UPR 2014: §§ 92 et seq.

²¹ Civil society reported that the SCLA would deal with two to three cases per year.

²² Cf. § 3 d of Council of Europe Committee of Ministers' Resolution (93) 1 on effective access to the law and to justice for the very poor.

by NGOs²³ and few discrimination cases have been brought before the courts.²⁴ The CPD confirmed that victims of discrimination do not obtain legal aid and that only some NGOs provide legal aid. The People's Advocate has also been redirecting complainants to NGOs in recent times.²⁵

22. In addition, the court fees in compensation cases are still too high.²⁶ The Constitutional Court ruled in February 2013 that judges can decide to exempt plaintiffs from paying court fees.²⁷ According to civil society representatives judges were however reluctant to make use of this power²⁸. ECRI welcomes that in 2014 the judge's power to exempt plaintiffs from court fees and to grant free legal aid in urgent cases was enshrined in law. ECRI expects that the judges will make use of this power.
23. As six years after the adoption of the LLA the SCLA is still not functioning, ECRI is of the opinion that the Albanian authorities should make sure that a lawyer is also appointed to plaintiffs through the legal aid system in discrimination cases which are considered being urgent.
24. ECRI again recommends that the authorities ensure effective access to justice for victims of discrimination through a functioning and properly funded legal aid system.

- **Independent specialised authorities (GPRs Nos. 2 and 7)**

25. ECRI welcomes that Albania has established, as recommended in § 35 of its fourth report, a body specialised in combating racism and discrimination, the CPD. The necessary safeguards for its independence are provided by Articles 21 to 31 LPD (see Principles 1 and 5 of ECRI's GPR No. 2 on specialised bodies to combat racism). Article 32 LPD entrusts the CPD with all the functions and responsibilities that a specialised body should have (Principle 3 of GPR No. 2).²⁹ ECRI also highlights the CPD's power to represent victims of discrimination before the courts (Article 34.3 LPD) as a good practice.
26. The CPD has informed ECRI about three proposals for amendments to the LPD: to clarify the duty of other institutions to provide information to the CPD within a specified period (Article 33.7 LPD); to clarify whether a court procedure and a procedure before the CPD can be conducted at the same time (34 LPD); and to abolish the costly requirement for organisations with a legitimate interest in combating racism to submit a special power of attorney when representing victims before the CPD (Article 33.2 LPD). In this connection ECRI wishes to refer to § 52 of the Explanatory Memorandum to its GPR No. 7, according to which specialised bodies should have the power to request the release or production of documents for inspection and examination.³⁰ Furthermore, the victim's consent should be sufficient to allow organisations with a legitimate interest to intervene in the procedure before the CPD (§ 25 of GPR No. 7). ECRI is also of the opinion that the authorities should regulate the issue of

²³ CoE Commissioner for Human Rights 2014: §§ 77 et seq.

²⁴ The authorities did not provide any statistics.

²⁵ People's Advocate 2013: 142 et seq. In 2013, he presented 39 requests to the SCLA, but there is no information about their outcome, People's Advocate 2014: 91.

²⁶ CoE Commissioner for Human Rights 2014: §§ 77 et seq. According to information from civil society the court fees have been reduced to 1 % of the amount of the claim brought to court as from November 2013.

²⁷ Constitutional Court, no. V-7/13, 27 February 2013.

²⁸ BalkanInsight 2014.

²⁹ From 2012 to 2013 the number of complaints registered by the CPD rose from 90 to 166, CPD 2014: 23.

³⁰ To the People's Advocate this power is granted by Article 63.4 of the Constitution and Article 19.b of Law No. 8454 from 04.02.1999.

simultaneous procedures before the CPD and the courts. As the CPD has the power to intervene in court cases, priority should be given to judicial procedures.

27. ECRI recommends that the authorities (i) give the Commissioner for the Protection against Discrimination the power to request the release or production of documents and information within an appropriate period of time, (ii) abolish the requirement for organisations that have a legitimate interest in combating racial discrimination to present a special power of attorney and (iii) regulate the issue of simultaneous procedures before the Commissioner for Protection from Discrimination and the courts.

28. The Peoples' Advocate has expressed concern that Parliament is inclined to transfer an increasing part of his competence to new independent authorities.³¹ ECRI considers that the setting up, in addition to the People's Advocate, of a specialised body for combating racism and intolerance, is in line with Principle 2.2 of its GPR No. 2. At the same time ECRI notes that, henceforth, two institutions are competent for combating discrimination in the public sector. In practice, the People's Advocate transmits complaints for discrimination to the CPD.

29. ECRI considers that it is of the utmost importance that the People's Advocate continues to make use of his prominent position and special powers³² to advocate for the right to equal treatment of vulnerable groups. ECRI encourages him to focus on countering hate speech in the public debate, to promote and monitor the implementation of the recommendations made in this report and to address issues of structural discrimination by public authorities, for example in the areas of education, social services and policing. At the same time it welcomes the fact that he has established seven regional offices (cf. Principle 6.2 of GPR No. 2).

2. Hate speech³³

- Data

30. ECRI regrets that there is no reliable data on hate speech in Albania. The police and prosecution service have registered some cases but consider that they lack accurate information.³⁴ The People's Advocate stopped working on hate speech in 2013; the CPD's latest annual report does not contain any such statistics.

- Public discourse

31. It has been traditionally considered that there is no problem of real understanding between the different groups of the Albanian population. Quite unusually for the region, hate speech – at least in its most serious form - used to be an uncommon occurrence. However, in recent years there have been several incidents of hate speech by high-level politicians which have had a negative impact on public discourse in general. Civil society representatives met by ECRI's delegation consider that the rude tone in Parliament³⁵ contributes to increasing offensive

³¹ Amendments to the law on the People's Advocate were made by Law No. 155/2014 of 27.11.2014. His powers in the fields of child protection and protection from torture were strengthened by Article 10 of this law.

³² E.g. his power to submit to the Constitutional Court a request to invalidate legal provisions (Article 24.c of Law No. 8454 of 4.2.1999).

³³ This section covers racist and homo/transphobic speech. For a definition of "hate speech" see Recommendation No. R (97) 20 of the Committee of Ministers to the member States on "hate speech", adopted on 30 October 1997.

³⁴ Since 2008 the police registered four cases under Article 265 CC and two cases under Article 266 CC. The police registered one case involving hate speech in 2013 and two cases in 2014.

³⁵ For example, calling members of other parties "enemies".

public discourse. In December 2010, the Vice Chairman of the Parliamentary Commission for Social Issues and Health advocated the use of hormonal and psychological treatment to cure homosexuality.³⁶ In March 2012, Ekrem Spahija, at that time Vice Minister of Defence, called for the use of violence against homosexuals.³⁷ Some weeks later, during a televised debate, another politician, Murat Basha, publicly threatened an LGBT activist and made offensive statements towards this community.³⁸ On 27 November 2012 the Red and Black Alliance, later registered as a political party, initiated a campaign against the use of the Macedonian language in information boards and on street signs in Pusteci³⁹, which is largely inhabited by the Macedonian minority.⁴⁰ On 21 March 2013, Ekrem Spahija again made offensive statements against homosexuals.⁴¹ During the same month the head of the Agency for the Legalisation, Urbanisation and Integration of Informal Areas/Buildings (ALUIZNI), Artan Lame, described homosexuality as a deviation.⁴² On 11 April 2013, the media published a text message allegedly sent by former justice minister Eduard Halimi to Democratic Party MP Fatos Hoxha during the People's Advocate's appearance in Parliament meeting, warning him "not to mess with the Advocate because he supports faggots."⁴³ In another public statement Artan Lame vowed to continue using the term "gypsies". Following the CPD's intervention, he apologised but was then reported to have re-used offensive language towards Roma to NGO representatives. Another elected local representative used a pejorative term for Roma in front of ECRI's delegation.

32. LGBT persons, Roma and Albanian Egyptians⁴⁴ (Egyptians) as well as other minorities are the main targets of hate speech. Research from 2013 concerning 28 European countries pointed out to a particular Albanian problem with homophobia.⁴⁵ Another recent study shows that young Roma, Egyptians and LGBT are targets of bullying in schools.⁴⁶ Civil society representatives have expressed fear that hate speech contributes to school segregation and the early dropping out of school of considerable numbers of pupils from these groups; they subsequently face problems in accessing the labour market.

- **The Internet and traditional media**

33. The authorities and civil society have informed ECRI that the Internet is increasingly used for spreading hate speech and bullying⁴⁷. There were, for example, waves of online hate speech in 2013 on the occasion of Gay Pride and

³⁶ US Department of State 2012: 19; Pink Embassy 2011: 2. Following an appeal by LGBT groups, the CPD asked the vice chairman to avoid discriminatory comments and clarify that homosexuality was not a disease.

³⁷ Civil Rights Defenders 2012; ILGA 2013a. E. Spahija stated to the daily Gazeta shqiptare: "What remains to be done is to beat them up with a stick. If you don't understand this, I can explain it: to beat them with a rubber stick". At the time, he was leader of one of the governing-coalition parties (the Legality Movement Party).

³⁸ He threatened "I will cut your throat" and stated "If my son becomes like you, I'll shoot a bullet on his forehead and go quietly to prison", Mapoonline 2012.

³⁹ CPD, decisions Nos. 28 and 75 of 4.4.2013 and 1.7.2013; SETimes.com 2013; balkanweb 2013. The party performed poorly in the 2013 general election and is not represented in Parliament.

⁴⁰ See footnote 68.

⁴¹ CPD, decisions Nos. 57 and 73 of 8.5.2013.

⁴² Historia lme 2013. A. Lame is member of the Socialist Party.

⁴³ US Department of State 2014: 23.

⁴⁴ See §52.

⁴⁵ Cf. Open Society Foundation (OSF) 2013: 23.

⁴⁶ ALO 116 2013; cf. also CPD 2014: 16.

⁴⁷ Concerning cyberbullying cf. ALO 116 2013: 10 et seq.

the eviction of Roma in Tirana. The CPD pointed out that several traditional media publish, in relation to criminal offences, information about suspects' sexual orientation and ethnic origin.⁴⁸

- **Criminal law response to hate speech**

34. According to the authorities, a police unit and a task force in the prosecution service are responsible for investigating cybercrime. In October 2014, the Section for Cyber Crime of the State Police made available, on their official website, a tool for reporting online hate speech.⁴⁹ Despite several training seminars for police officers and prosecutors on hate speech, there have been only a handful of criminal investigations. One of them concerned E. Spahija's 2012 statements (see § 31). However, the prosecution service dropped the case as they considered that the statements did not affect any of the groups protected by the former text of Article 266 CC.
35. Civil society representatives have informed ECRI that many cases of hate speech are not reported to the police because the latter do not take such complaints seriously, considering that there was no harm to an individual or a group. The police fail to take action even when it comes to complaints for hate motivated threats. Despite the amendments to the CC, made in connection with the ratification of the Additional Protocol to the Convention on Cybercrime, neither the police nor the media monitor Internet to counter online hate speech.
36. ECRI considers that the police need to improve their awareness of the dangers posed by hate speech; in addition to affecting the person(s) to whom it is addressed, it creates a widespread feeling of hostility and insecurity among entire vulnerable groups. In ECRI's view, the most effective way of achieving this would be organising regular information meetings and consultations between police officers, representatives of vulnerable groups and NGOs on police activities in the field of hate speech and hate crime; these could include the presentation of the new tool for reporting online hate speech and other cybercrime. This should be the starting point for establishing regular dialogue and co-operation between the police and members of vulnerable groups (§§ 18 and 82 and seq. of GPR No. 11 on combating racism in policing).
37. ECRI recommends that the police organise consultation meetings between police officers, representatives of vulnerable groups and NGOs in order to establish regular dialogue, mutual trust and co-operation.

- **Non-criminal law responses to hate speech**

38. Civil society has highlighted the positive impact that the People's Advocate's actions have had on media's attitudes to hate speech, for example in connection with the Gay Pride in 2012⁵⁰ and the eviction of Roma in 2013. At the same time, the CPD was initially criticised for not adopting a decision against E. Spahija for his 2012 hate-motivated comments. Since then, the CPD has strengthened her response to hate speech. In 2013, she issued decisions concerning E. Spahija's, M. Basha's and A. Lame's hate-motivated statements and ordered them to apologise publicly. As only M. Basha complied, the CPD issued fines of 20 000 and 10 000 LEK (about 150 and 75 Euros) to the others and initiated execution proceedings.

⁴⁸ CPD 2014: 31.

⁴⁹ http://www.asp.gov.al/denonco_kk/; the relevant prosecution service is the Task Force Unit for the Investigation of Cyber Crime at the Office of the General Prosecutor.

⁵⁰ Civil society reports that his dialogue with the media has contributed to improving media coverage of LGBT issues in the long term; cf. People's Advocate 2013: 306 and 314 et seq.

39. However, there is still criticism over the CPD's alleged inactivity vis-à-vis A. Lame's reiterated offensive comments towards Roma to NGO representatives (see § 31). As offensive public discourse from politicians needs to be firmly countered, ECRI considers that the CPD should take up such cases ex officio and investigate it thoroughly. ECRI recalls in this connection that A. Lame heads the ALUIZNI and that the legalisation of illegally built houses is an important matter for the Roma community (§§ 71 et seq.); everything needs to be done to restore the latter's trust in the responsible agency.
40. The CPD also issued a fine of 60 000 LEK (about 430 Euros) against the Red and Black Alliance and decided that the latter had to apologise publicly for having resorted to nationalistic rhetoric and aggressive acts against an ethnic minority.⁵¹ At the time of ECRI's country visit this decision had been appealed against before the courts.
41. ECRI welcomes the fact that the Government now has its own Code of Ethics.⁵² According to its Article 3.3 the members of the Council of Ministers shall not favour or discriminate against any person on the grounds of race, ethnicity, language, gender identity, sexual orientation, religious or philosophical beliefs [...] or similar grounds. Article 41 provides for the establishment of a Commission of Ethics which can, when it finds a breach of the Code of Ethics, propose disciplinary measures to the Prime Minister; these may include the removal from the government of one of its members.
42. ECRI considers that Law No. 9131 on ethical rules for public administration should be applied to other high profile public representatives, such as the head of the ALUIZNI, and that the authorities should impose disciplinary measures if such persons resort to hate speech.
43. The Parliament has also developed, in collaboration with the OSCE, a draft Code of Conduct. Its Article 9 prohibits offensive statements, threats and calls for the use of violence in the Assembly.⁵³ ECRI considers that the draft should contain an express reference to racism, discrimination and hate speech.
44. A self-regulatory body, called Council of Media Ethics, which had been set up by several major newspapers, has been abolished due to the economic crisis. On 4 March 2013, Parliament enacted Law No. 97/2013 on Audiovisual Media in the Republic of Albania. This establishes a new regulatory authority, the Audiovisual Media Authority (AMA), tasked with drafting the code for the audiovisual media services, which will contain ethical guidelines for broadcast content.⁵⁴ Articles 32.4 and 42.3b of the law prohibit broadcasting content and advertisements which promote hatred on the grounds of race, religion, ethnic origin, citizenship and other grounds of discrimination. Article 42.3 expressly mentions the ground of sexual orientation. However, ECRI has been informed that not all AMA-members have been elected yet. Also, ECRI has not received any information about self-regulation or systematic monitoring of the Internet. The only way of obliging an Internet provider to block access to sites or content is by obtaining a court order.⁵⁵
45. ECRI recommends the Albanian authorities to reinforce their non-criminal responses against hate speech; they should support elected bodies' and media's

⁵¹ Balkanweb 2013.

⁵² <http://www.panorama.com.al/2013/09/19/qeveria-rama-zbardh-kodin-e-etikes/>. ECRI also welcomes that Albania joined the Council of Europe's "No hate speech campaign" in March 2014.

⁵³ Albanian Parliament 2014. See also Article 62 of the current regulation.

⁵⁴ European Audiovisual Observatory 2013.

⁵⁵ <http://www.iclg.co.uk/practice-areas/telecoms-media-and-internet-laws/telecoms.-media-and-internet-laws-and-regulations/albania>.

self-regulation initiatives; they should also proceed quickly to the election of all members of the Audiovisual Media Authority.

46. Civil society reports that most incidents of bullying at school are related to victims' sexual orientation and ethnic origin, as well as their social and economic situation.⁵⁶ Teachers are not adequately prepared to deal with bullying and harassment; some even make homophobic statements themselves. In this connection, ECRI wishes to recall the legal duty of the Minister of Education and the directors of educational institutions to take action to fight discrimination (Articles 18 and 19 LPD). This would include raising awareness about the LPD in school⁵⁷, making it part of the curriculum to teach about non-discrimination, dealing with discrimination complaints within 30 days and imposing disciplinary measures. However, there is no information that the inter-ministerial working group that was established in 2012 to draft bylaws on this matter has completed its task.⁵⁸ ECRI notes that instruction No. 30, dated 8.2.2013, introduced the obligation for schools to cooperate with all stakeholders when drafting school regulations. In addition, Law No. 155/2014 gives the People's Advocate the task to promote the inclusion of human rights issues into the school curricula. ECRI concludes that, even though the legal framework has been improved, more needs to be done to fulfil the legal duty to fight discrimination at schools.⁵⁹
47. ECRI recommends that the authorities swiftly implement measures to fulfil the legal duty to combat discrimination in schools and to raise awareness of the right to equal treatment, diversity, discrimination and bullying at school. Special attention should be given to teacher training (General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education).

3. Racist and homo/transphobic violence

48. In February 2011, Albania recorded its first major racist hate crime in the form of an arson attack against dwellings inhabited by some 40 Roma families in the centre of Tirana. Over several days and nights neighbours of the settlement, using weapons, threatened, intimidated and injured the Roma families; they also burned down at least two dwellings. While the authorities state that the police were only informed of the incidents after the attacks, the Advisory Committee on the Framework Convention for the Protection of National Minorities criticised them for not having taken the necessary steps to protect the victims. The Roma families state that they were obliged to abandon their barracks due to this lack of protection.⁶⁰ After a joint statement by several intergovernmental organisations (IGOs) and an intervention of the CPD, the case was finally prosecuted as an arson attack and incitement to hatred (Article 265 CC).⁶¹ The two persons responsible for the arson attack were sentenced to one and one and a half year of prison respectively. The police have not recorded any other hate crime incidents and the courts have never made use of Article 50 CC to increase a penalty for racist motivation, not even in the arson case described above. Civil society representatives interviewed by ECRI consider that the use of violence by the police against Roma in Fier on 13 December 2013 was racially motivated.

⁵⁶ ALO 116 2013:4.

⁵⁷ According to Article 19a LPD, the text of the law should be posted "in a visible place".

⁵⁸ CPD 2014: 8.

⁵⁹ The need to address issues of sexual orientation and gender identity in school is discussed in §§ 110 et seq.

⁶⁰ CoE, Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) 2011: §§ 86 et seq. and 203; Delegation of the EU to Albania 2011; BalcanInsight 2011.

⁶¹ TemAonline 2011. According to civil society, the former President of Albania acknowledged that the attack was a hate crime.

49. There is no data from the authorities on hate crime towards LGBT persons.⁶² However, reports from the CPD, the EU and civil society show that there are regular incidents of homo/transphobic violence. For 2011, the NGO Pink Embassy reported to the OSCE one arson attack against a house inhabited by five transgender people and an assault against a transgender person resulting in serious injury.⁶³ For 2012, the OSCE received reports of a group attack on 14 May with explosives used against participants in the first ever Pride event in Tirana. Fortunately it did not result in serious harm and the subsequent public debate led to amendments in the CC.⁶⁴ Concerning the same year the NGO Pink Embassy reported three cases of physical assault, including one by a group. Civil society and the CPD also refer to several cases of violence against young LGBT people by members of their family.⁶⁵ In addition, ECRI was informed of an attack on 25 February 2013 on two transgender persons with a glass bottle and other sharp objects. Moreover, the police refused to consider an attack with tear gas on LGBT activists on 17 May 2013 as a hate crime, on the ground that no participant had been physically injured.⁶⁶ At the same time, the CPD reports that some LGBT persons have faced harassment by the police when asking for protection or help.⁶⁷ According to civil society, such hate crime and the resulting feeling of insecurity are an important reason for the reluctance of LGBT persons in Albania to reveal their sexual orientation and gender identity.
50. ECRI considers that it is of the utmost importance that the police actively build sustainable relations with vulnerable groups, including representative NGOs, to be able to protect them better against hate crime. ECRI welcomes that some cooperation agreements have been concluded with NGOs. It draws again the authorities' attention to its GPR No. 11 on combating racism and racial discrimination in policing; it refers to § 37 of this report on regular dialogue and co-operation with vulnerable groups (§ 18 of GPR No. 11).
51. ECRI recommends the police to investigate thoroughly racist and homo/transphobic offences; inter alia, they should take the racist and/or homo/transphobic motivation of ordinary offences fully into account (§ 11 of General Policy Recommendation No. 11 on combating racism in policing).

4. Integration policies

- Roma integration policies

52. The main beneficiaries of integration policies in Albania are persons belonging to the Roma community, which is recognised as an ethno-linguistic minority.⁶⁸ The Albanian Egyptians (Egyptians) do not enjoy any minority status but experience similar integration challenges. They benefit from Roma-related projects.^{69 70}

⁶² CPD 2014: 15.

⁶³ OSCE/ODIHR 2012: 81; cf. also EU 2012:

⁶⁴ Cf. People's Advocate 2013: 38 and 306 et seq.; and § 1 and footnote 3 of the present report.

⁶⁵ CPD 2014: 15; OSCE/ODIHR 2013: 80.

⁶⁶ US Department of State 2014: 23.

⁶⁷ CPD 2014: 15.

⁶⁸ The Greek, Macedonian and "Serbo-Montenegrin" communities are recognised as national minorities; the Roma and Vlach/Aromanian as ethno-linguistic. For the protection of the identity of national minorities in Albania, see ACFC 2011 and Resolution CM/ResCMN(2014)1.

⁶⁹ The National Action Plan for the Decade of Roma Inclusion mentions only Roma and not Egyptians, though some of its projects also concern the latter. Donors have funded integration programmes for both Roma and Egyptians. See below for the new plan of action for Roma and Egyptian communities.

⁷⁰ While ethnic data is not officially collected, the 2011 census recorded 8 301 persons voluntarily declaring themselves to be Roma, representing only 0.30% of the population. Estimates of the Roma

53. There have been a number of integration projects in the areas of education, employment, health and housing as part of the National Strategy for Improving the Living Conditions of the Roma Minority (Strategy) adopted in 2003, followed by the National Action Plan for the Decade of Roma Inclusion 2010-2015 (Action Plan). ECRI notes that official progress-reports⁷¹ on the Action Plan mostly consist in a description of the activities implemented or planned without any measurement of their impact. The Action Plan has also been evaluated by NGOs⁷². In the absence of a comprehensive evaluation and good disaggregated equality data, the authorities often refer to these “shadow reports” to assess the progress made.⁷³ Project evaluation is one of the many areas where the authorities rely almost exclusively on the technical support of NGOs and IGOs.
54. The implementation of the various Action Plan programmes is under the responsibility of the competent ministries. Although the Directorate of Social Inclusion of the Ministry of Social Welfare and Youth (MSWY)⁷⁴ co-ordinates the implementation of the Action Plan⁷⁵, this is not enough to ensure a comprehensive approach to Roma integration. Moreover, the Ministry of Finance, which allocates to each other ministry its share of the budget, has no earmarked funds for the Action Plan; this makes it hard to calculate or even to estimate the monies available for Roma integration measures. In addition, there are doubts about the long term sustainability of these projects, since they rely almost exclusively on EU and other donors’ funds. Lastly, the multiplicity of IGOs participating in assistance programmes and the variety of their mandates contribute to the fragmentation of integration programmes.⁷⁶
55. The authorities have informed ECRI that a new Plan of Action for Roma and Egyptian communities 2015-2020 will replace the current Action Plan as an integral part of the new Social Inclusion Policy Paper 2015-2020, to be adopted in February 2015. Some of ECRI’s interlocutors fear that the new strategy risks spreading the limited resources available thinly over a large number of beneficiaries and activities. For this reason, the authorities in co-operation with IGOs and donors are consulting Roma and Egyptians and collecting comprehensive statistical data on these groups, including on their living conditions; this should make it possible to prioritise the strategy’s beneficiaries.⁷⁷
56. ECRI urges the authorities to take full ownership of the new strategy on social inclusion in order not to rely exclusively on NGOs’ and IGOs’ initiatives for its planning, funding and implementation. There is a need to specify clearly the division of responsibilities between central authorities, local authorities, NGOs and IGOs, in order to increase accountability, avoid overlap and ensure the use of donors’ funding for policy reform (instead of supply-driven programmes).

⁷⁸

population range from a minimum of 15 000 to a maximum of 120 000 persons, as per some Roma NGOs. The biggest Roma communities live in and around the cities of Tirana, Fier, Gjiroakaster, Berat, and Korçe.

⁷¹ Government of Albania 2013.

⁷² See for example Decade of Roma Inclusion Secretariat Foundation 2013.

⁷³ A national data collection system is established but does not work properly due to scarce resources and inadequate follow up by relevant decentralised entities.

⁷⁴ Formerly Minister of Labour, Social Affairs and Equal Opportunities.

⁷⁵ The Technical Secretariat for Roma, an MSWY structure previously in charge of the coordination of Roma policies, was closed down in 2013.

⁷⁶ According to the UNICEF 2013, there were 20 UN agencies managing 40 UN joint programmes.

⁷⁷ Office of the UN Resident Coordinator 2014 and UNICEF 2014.

⁷⁸ The then Minister of Labour, Social Affairs and Equal Opportunities has been the largest recipient of technical assistance by UN agencies for 2012-2013, Office of the UN Resident Coordinator 2014: 28.

57. ECRI recommends that the authorities ensure that the new Plan of Action for Roma and Albanian Egyptian communities 2015-2020 is accompanied by an evaluation of all integration projects implemented over recent years, on the basis of comprehensive equality data. The plan's budget should clearly identify financial needs not covered by the state budget in order to benefit from EU and other donors' funds.⁷⁹ In addition to timely consultation with the Roma and Egyptian communities, there should be also a clear division of responsibility between central and local authorities and civil society organisations.

- **Roma integration policies' results**

58. ECRI finds it difficult to assess the result of Roma integration policies, in the absence of comprehensive and coherent data. However, statistics collected from different sources indicate some progress. In particular, as regards civil registration, the legislative changes and practical measures introduced since 2008⁸⁰ have contributed to the reduction of the number of unregistered Roma. Between 2010 and 2013 more than 1 700 civil registration cases were completed, thus improving the Roma community's access to social services.⁸¹ According to the authorities, in September 2014 there were only around 150 remaining cases of unregistered children. An NGO⁸² provides free legal aid in complex registration cases requiring court proceedings to have a birth certificate issued.⁸³
59. Even if a number of technical barriers seem to have disappeared,⁸⁴ slow changes in the behaviour of civil servants and lack of knowledge of the registration system by Roma, coupled with their internal and external migration, remain the main obstacles to their civil registration. The use of Roma and Egyptian mediators has contributed to bringing registration service providers closer to these communities, while creating a better understanding of the importance of civil registration.⁸⁵ It is hoped that the new Strategy on Social Inclusion and Social Protection will still provide for the active involvement of mediators in the civil registration process.
60. ECRI notes that the authorities also report that today 87% of Roma complete the nine years of compulsory education.⁸⁶ This is attributed, inter alia, to a number of targeted measures intended to facilitate the integration of Roma children in the national school system: Roma children continue to be allowed to enrol in school without birth and vaccination certificates;⁸⁷ free textbooks were distributed to 3 200 Roma pupils at the beginning of the 2014-15 academic year as well as free meals under the project "meal-providing schools"; Roma parents are now exempted from paying costs associated with their children's school attendance; extra lessons for under-achieving pupils have been organised as well as

⁷⁹ Such as the new Instrument for Pre-accession Assistance (IPA II 2014-2020).

⁸⁰ ECRI's fourth report on Albania p. 28.

⁸¹ Metaj 2013: 26.

⁸² Tirana Legal Aid Society.

⁸³ Child registration by court order is needed when parents lack documentation. These are cases of children not born in hospital or of children whose parents were themselves never registered. There are also cases of children who have returned from abroad and who are not yet registered in Albania.

⁸⁴ For example, an agreement between the Ministry of Foreign Affairs and NGOs providing legal assistance to facilitate registration of births occurring abroad with the support of consular services; a new format of a module of certificates delivery in maternity wards adopted by Ministry of Health; a new format of civil registration module adopted by Ministry of Interior for the Police Directorate to facilitate the registration of children abandoned by their mothers.

⁸⁵ Office of the UN Resident Coordinator 2014.

⁸⁶ Government of Albania 2014. However, according to OSF 2014b: 49 around 44% of children from 6-10 years are illiterate.

⁸⁷ Government of Albania 2014.

awareness-raising meetings with Roma/Egyptian parents.⁸⁸ Finally, the “second chance classes” programme, with support teachers in charge of specific courses in order to address poor school performance, has been running since 2004.⁸⁹

61. According to UNICEF Albania, in 2012 the nationwide school drop-out rate was less than 1%, while for Roma children it was nearly 4% and for Egyptian children 3.4%. However ECRI has been informed that drop-out statistics are not accurate since school directors often report fewer cases to avoid a reduction in teaching staff. In any case, ECRI considers that there is still a gap in the school attendance between the children of these two communities and the rest of the population.
62. ECRI has been informed that there are several factors that have a negative impact on Roma pupils' - in particular Roma girls' - regular school attendance, including the already mentioned phenomenon of internal migration⁹⁰ and cultural barriers: Roma parents, who work in the informal economy and are often illiterate,⁹¹ believe that education will not increase their children's employment opportunities.⁹² To counter this situation, in 2009 the Ministry of Education and Sports (MoES)⁹³ adopted the Zero Drop-out Action Plan to improve the system of data collection in order to detect and help reduce drop-out and increase cooperation between the MoES and educational institutions at local level. Moreover, in order to address mistrust in education, a number of IGOs⁹⁴ and the People's Advocate⁹⁵ have suggested that examples of success stories of Roma who have achieved better professional opportunities through education could help motivate Roma pupils and their parents. Furthermore, adult education programmes for Roma would help to bridge the gap between the Roma children and their parents by changing the latter's unfavourable perception of the benefit of education.
63. Roma NGOs have also pointed out that despite the completion of compulsory education many Roma pupils fail to master basic reading and writing skills.⁹⁶ According to some NGOs⁹⁷ the “second chance classes” is a successful programme, which should be further extended. However, there is the risk of high concentration of Roma pupils therein,⁹⁸ leading to de facto segregation.⁹⁹ The problem of the poor quality of teaching in these classes has been also raised.
64. Finally, with regard to higher education, ECRI has been informed that an increasing number of Roma students have been applying (often successfully) for

⁸⁸ Ibid.

⁸⁹ ECRI's fourth report on Albania p.22.

⁹⁰ For example, Roma families based in central Albania migrate to the sea coast during April-September to make parasols and collect recyclable garbage. Children of these families leave the school before the end of the academic year, often for good; see UNDP 2012a: 54.

⁹¹ According to a 2012 UNICEF study, in 2011 56.5 % of Roma and 24.5 % of Egyptians were illiterate.

⁹² According to the authorities a number of activities have been organised in recent years to raise Roma parents' awareness of the importance of educating their children.

⁹³ Formerly Minister of Education and Science.

⁹⁴ A Needs Assessment Study on Roma and Egyptian Communities in Albania, UNDP, 2012

⁹⁵ People Advocates 2013b.

⁹⁶ According to OSF 2014b around 44% of children from 6-10 years were illiterate. See also Decade of Roma Inclusion Secretariat 2013: 41.

⁹⁷ Ibid, p. 4.

⁹⁸ According the OSF Albania, around 60% of the pupils attending these classes are Roma children.

⁹⁹ A study has been carried out, in co-operation with UNICEF, for the revision of the “second chance classes” programme.

scholarships through the Roma Education Fund, set up in 2008, reserving special quotas in public universities for Roma and Egyptian students.^{100 101}

65. ECRI takes note of these initiatives and further suggestions aimed at reducing the education gap between the Roma and non-Roma population. However, ECRI also notes that, according to the latest available statistics, in 2011 total public expenditure on education amounted to 3.4% of the Albanian GDP,¹⁰² the lowest in South Eastern Europe (4.4% on average; 5.4% in EU countries). Because of these limited resources, only pilot projects or donor-driven assistance programmes have been implemented so far. In this context, there may be doubts concerning the sustainability of effective long-term educational policies to counter the above-mentioned shortcomings.
66. In line with the recommendation in § 54, ECRI considers that the authorities should have a clear understanding of the financial implications of increased assistance programmes. For example, having sufficient funds to support and train qualified teachers requires proper budgeting and active fund-raising. Funds are also needed for scholarships for talented Roma attending secondary and higher education establishments; and their use should be properly monitored.
67. ECRI also notes that poor education outcomes often result in limited access to employment for the Roma.¹⁰³ Their perspectives in this connection are made worse by the fact that the majority of unemployed Roma are not registered in local employment offices; as a result, they cannot benefit from employment promotion policies.¹⁰⁴ Vocational training programmes are also ill-matched with their skills, potential and needs. Finally, the majority of money-earning Roma are self-employed and do not pay social security contributions; this affects their eligibility for various social welfare schemes. In conclusion, ECRI regrets to note that access to employment remains very problematic for many Roma.
68. In an attempt to address this and other problems, the National Employment Service was restructured in 2013 and a National Strategy for Employment and Skills 2014-2020 was presented in February 2014.¹⁰⁵ Its approach is novel in that it brings together - in a single plan - vocational education and training, social inclusion and active labour-market policies. In particular, the strategy aims to increase employment by adjusting vocational education and training to labour market needs; it also aims at bringing down long-term unemployment, which mostly affects Roma (while the long-term unemployed represent 75% of the total unemployment figure today, the strategy aims to bring this down to 60%).^{106 107} As the available resources can only cover 25-30% of the 69 million Euros needed for this strategy, ECRI is pleased to note that it provides for a costing exercise to facilitate the raising of additional funds from international donors. However, ECRI considers that it is still not clear how this strategy, the new Plan of Action for

¹⁰⁰ In the academic year 2008-2009 only four applications were submitted, and approved. In 2012-2013 there were 62 applications, of which 37 were approved.

¹⁰¹ Measures to facilitate pre-school education for all Roma children will be examined in another section.

¹⁰² INSTAT 2013.

¹⁰³ Currently it is estimated that 70% of Roma adults are unemployed.

¹⁰⁴ Such as "Support to the unemployed job seekers with difficulties", "On the job training for unemployed job seekers" and "Support to unemployed women". The percentage of unemployed Roma enrolled in local employment offices in 2010 was 4.8% of total unemployed workers registered, in 2011 5.4%, while in 2012 and 2013 was 6.5%.

¹⁰⁵ Ministry of Social Welfare and Youth 2014b.

¹⁰⁶ Ibid, p.64.

¹⁰⁷ So far most of the funds allocated to the National Employment Service have been spent on unemployment benefits (65.3% of the total expenditure in 2012); a much smaller share is invested in active labour-market programmes (13% in the same year).

Roma and Egyptian communities 2014-2020 and the new Strategy on Social Inclusion and Social Protection¹⁰⁸ will interact and how they will take into account the specific problems related to access to employment for Roma.

69. For example, there are a number of occupational activities that are specific to the Roma, such as the collection of recyclable waste and the reselling of second-hand clothes. Although these activities are on the rise, they are confined to the black market economy, with all risks that this may involve, not the least health hazard and child labour. ECRI notes with interest proposals to formalise such activities by setting up social businesses in co-operation with local authorities.¹⁰⁹ The Roma community would benefit in terms of employment opportunities, better working and health conditions, as well as increased participation in social security and housing schemes. The local community would also benefit in terms of improved services and less social assistance. ECRI believes that the possibility of formalising these activities - in a way that would not be burdensome for the Roma but, instead, would enhance their self-employment perspectives - should be further explored under the part of the Strategy for Employment and Skills that concerns the simplification of the regulatory framework of the private sector.
70. ECRI recommends that the authorities ensure that the employment promotion programmes specifically address the situation of Roma and in particular the question of their informal employment, exploring the possibility of formalising Roma black economy jobs through the creation of social businesses schemes and the promotion of public-private partnerships at local level.
71. The issue of legalisation also affects Roma access to housing,¹¹⁰ with many Roma lacking the opportunity to legalise their houses as they cannot provide the required property documentation. Their housing settlements are often situated on publicly owned land or they live in non-permanent structures, which are not covered by Law 9482/2006 on the Legalisation, Urbanisation and Integration of Informal Areas/Buildings. The authorities have informed ECRI of the existence of a legalisation team within the Ministry of Urban Development and Territory in charge of helping Roma with the administrative procedures required to legalise their properties and/or in finding alternative housing solutions.
72. Despite these efforts, around 30% of Roma houses are not legalised.¹¹¹ During the field visit to Elbasan, the ECRI delegation could witness the grim reality of some Roma families who had been already evicted from their dwellings or were at risk of eviction due to public works, without any possibility of being rehoused and/or compensated.¹¹²
73. The MSWY has commissioned a study to identify ways of improving the legislation so that permanent solutions for families at risk of forced eviction can

¹⁰⁸ The strategy only mentions that “Minority groups (including Roma) require specific policies tailored towards their characteristics and needs in terms of educational needs, vocational qualifications, and employment”, p 42.

¹⁰⁹ UNDP 2012a: 42.

¹¹⁰ According to UNDP 2012a, the housing condition of the Egyptian community appears to be significantly better.

¹¹¹ According to OSF 2014b, 30% of the Roma population lives in this precarious situation.

¹¹² At the time of the visit to Elbasan approximately 10 Roma families had been evicted or were at risk of eviction. Their eviction was considered necessary in order to renovate the area around the main stadium of the city as well as to widen one of the city’s main roads. In July and August 2014, the NGO Res Publica filed two communications to the UN Human Rights Committee over the pending evictions (Communications Nos. 2438/2014 Adriatik Kosturi et al v. Albania and 2444/14 Agim Shabani et al. v. Albania). The Human Rights Committee granted the applicants interim protection requesting the authorities to suspend the evictions until the merits of the cases are examined.

be found.¹¹³ The study found that the law¹¹⁴ does not provide for the suspension of a decision to demolish a building serving housing purposes that is qualified as an “emergency measure”.¹¹⁵ For the rest, even if there are legal remedies against other types of decisions to demolish a house, these are not practical and effective since the courts very rarely grant applications for suspension of eviction orders. According to the interpretation given by the authorities, there is a legal requirement to make provision for alternative housing prior to proceeding to the forced eviction¹¹⁶; however this is not respected in practice. The families who are evicted are not consulted before the eviction; nor are they provided with effective and targeted free legal assistance or with alternative sites (in the case of nomadic Roma) or accommodation.¹¹⁷

74. ECRI reiterates its recommendation that the authorities step up their efforts to regularise illegal housing, ensuring that any initiatives taken in this direction also concern the Roma and Egyptian communities. In this connection, special priority should be given to finding solutions for those living in non-permanent houses not covered by Law 9482/2006 on the Legalisation, Urbanisation and Integration of Informal Areas/Buildings.

75. ECRI also recommends that the authorities ensure that all Roma, as well as other persons, who may be evicted from their homes enjoy all the guarantees that international texts 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.

76. Beyond the difficulties in obtaining the legalisation of their dwellings and the lack of proper eviction procedures described above, the Roma housing situation is characterised by very poor conditions: 15% of the members of this community live in shacks, tents or other non-brick housing units; 60% do not have running water within their house premises; and 12% lack toilet facilities.¹¹⁸ As concerns infrastructure, the majority of Roma report living in areas that have unpaved roads (52.2%) or have roads which are in a very bad condition (22.5%).¹¹⁹

77. Law No. 54/2012 amending Law No. 9232/2004 on social housing programmes allows Roma families’ priority access to rent subsidies or housing allowances - through a points system. The Government’s programme for 2013-2017 emphasises that social housing will be a priority.¹²⁰ However, the funds allocated do not seem sufficient to satisfy the need for social housing in general.¹²¹ Regarding Roma, the medium-term budget is almost exclusively dedicated to the improvement of houses with legal titles and not to rental subsidies¹²², which

¹¹³ OSF 2014a.

¹¹⁴ Law No. 9780/2007 on Construction Inspection.

¹¹⁵ Article 43(2/e) of the Law 10433/2011

¹¹⁶ Law 9482/2006 on the Legalisation, Urbanisation and Integration of Informal Areas/Buildings, Article 35 § 4.

¹¹⁷ European Committee on Social Rights, collective complaint no. 49/2008, INTERRIGHTS v. Greece, 11 December 2009, §§ 69 and 73. See also UN Committee on Economic, Social and Cultural Rights 1998 and the UN Basic Principles and Guidelines on Development-based Evictions and Displacement, which were formally acknowledged by the UN Human Rights Council in 2007, UN 2007.

¹¹⁸ OSF 2014b.

¹¹⁹ CAHROM 2013.

¹²⁰ <http://kryeministria.al/al/programi/sherbimet-publike/strehimi>.

¹²¹ According to the Director of the National Housing Entity, by 2009 a total of 17 000 homeless families had been registered; see Duka 2014: 6.

¹²² Ibid, p.8.

seems to be the most suitable solution for this community. Moreover, the Government has not yet approved the Housing Strategy for the period 2015-2020, which should prioritise budget allocation according to the social housing needs of different groups. Lastly, it seems that local authorities have never used a specific budget put at their disposal by the central authorities to pay rental subsidies to vulnerable groups like the Roma. In this context, ECRI notes that it has been proposed to create a Roma Housing Fund to help provide sufficient funds and guarantee adequate co-ordination between central and local authorities to implement social housing projects for Roma communities.¹²³

78. Budgetary shortcomings aside, ECRI notes that the main constraints preventing the poorest members of the population from accessing social housing are, firstly, lack of regular income and, secondly, the very onerous bureaucratic requirements (for example, about 17 conditions need to be fulfilled to become eligible for social housing).¹²⁴ Proving a regular income is particularly difficult for the Roma, most whom have informal jobs. Moreover, many are not registered as residents. In addition, the documents required to be able to benefit from the above-mentioned special points system are not specified by law; as a result, the authorities have considerable discretion as to what kind of documents to accept; this has resulted in great discrepancies in the way that social housing programmes are applied at local level.^{125 126}
79. According to the authorities, despite the help offered in order to present applications and the support provided by the law, the majority of Roma do not want to apply for social housing. They prefer instead to have their informal settlements legalised so they can build their own houses, which, as mentioned above, in many cases is not possible.¹²⁷
80. ECRI reiterates its previous findings¹²⁸ that, with the exception of few positive examples,¹²⁹ the present social housing policy, despite its ambitious goals,¹³⁰ cannot solve the poor and legally precarious housing situation of the Roma and Egyptian communities. As a consequence, the current state of affairs isolates these communities from the rest of the population further, making their integration more difficult. To change matters, the eligibility criteria for social housing should be simplified and reduced; they should also become better adapted to the real situation faced by many Roma families.
81. ECRI recommends that the authorities approve the Housing Strategy for the period 2015-2020, which should prioritise budget allocation according to the social housing needs of the different groups. In particular, as regards the Roma and Albanian Egyptians, the strategy should be backed up by an evaluation of their housing conditions and the setting up of a Roma housing fund to help provide sufficient monies and adequate co-ordination between central and local authorities, to implement housing projects for these communities.

¹²³ Decade of Roma Inclusion Secretariat Foundation 2013: 16.

¹²⁴ See, for example CAHROM 2013.

¹²⁵ It is hoped that these shortcomings can be solved by the ongoing territorial and administrative reform which reduces the number of Local Government Units from 373 to 61 larger ones. This should increase their ability to manage and finance, inter alia, social housing programmes.

¹²⁶ Due to all these constraints, there have been very few successful applications by Roma for social housing. For example in 2013 the municipality of Tirana received over 1 000 applications for social housing; only 37 of these came from Roma families (they were filed with the assistance of the UNDP).

¹²⁷ See also CAHROM 2013: 29.

¹²⁸ See ECRI 2013: 6.

¹²⁹ Including the project Rental Social Housing, financed by Council of Europe Bank, which is implemented in seven different municipalities.

¹³⁰ See ECRI 2013: 5.

82. ECRI also recommends that the authorities clarify the type of documentation to be submitted by Roma applicants, as well as by other groups, under the points system for priority access to social housing; they should introduce some flexibility in the system as well as new eligibility criteria, such as the demolition of dwellings excluded from the legalisation process; families that are confronted with these problems will thus gain additional points to become eligible for social housing.
83. The above-mentioned employment issues, associated with poor housing conditions, have had a domino effect on the health of the Roma population. Health is one of the priority fields of the Action Plan, which includes a number of initiatives in this connection, such as awareness-raising activities, free health services and improved sanitary conditions in the Roma settlements. For example, the Ministry of Health allocated the equivalent of 36 000 Euros to, firstly, legal reform so that free health services and medicine can be offered to poor Roma families and, secondly, setting up a system for counting those who benefit from the scheme. Other initiatives included a UNICEF campaign to vaccinate all Roma children and a code of conduct for healthcare personnel.
84. ECRI, however, notes that the information that exists (there is no official data on the Roma health situation) does not indicate a great improvement in Roma access to health care. According to the Civil Society Monitoring Report of the implementation of the Action Plan, only one in five Roma have health insurance cards. The majority have not, because (as already mentioned) they do not register as job-seekers.¹³¹ It is reported that some Roma do not even know how to obtain a health insurance card. It is also reported that a number of Roma are not interested in having such a card – being convinced that they would still have to pay. However, without a health insurance card, they can only consult - free of charge - a hospital ward doctor. They have to pay for all other medical services and for medicine; this often includes making “informal” payments. In 2010, only 25 % of Roma earned enough money to buy medicine;¹³² it can be assumed that the situation has not improved since. In general, NGOs and IGOs report widespread mistrust in the health care system on the part of the Roma; this could be related to that fact that they might sometimes ignore how it functions; it is also definitely related to the discriminatory behaviour to which they are reportedly exposed when they enter into contact with the system. ECRI notes with concern several studies¹³³ that indicate that Roma only seek health care when their health situation has become very serious; and in the case of serious illness, health care support by local and international NGOs is their only hope. The health of pregnant women and young mothers continues to be worrisome.
85. In addition to the measures proposed in the Action Plan, a number of IGOs have suggested appointing health mediators in poor Roma communities to build trust in health professionals and personnel. It has been also proposed that the authorities provide Roma with free electronic health insurance cards to be used everywhere (irrespective of residential status), along with information sessions on health care.¹³⁴ ECRI strongly encourages the Albanian authorities to consider these additional measures in order to improve the health situation of Roma and reduce inequalities in the access to health care. ECRI also recalls the need for an evaluation of the impact of the measures taken, over recent years, in the health field in favour of Roma, on the basis of comprehensive equality data, as recommended in general terms in § 54.

¹³¹ Children, however, are entitled to health care services and health insurance cards free of charge, whatever the employment status of their parents.

¹³² National Action Plan 2010-2015, p. 22.

¹³³ See for example UNDP 2012a and 2012c.

¹³⁴ See UNDP 2012a: 34 and European Roma and Travellers Forum 2014: 24.

- **Refugee integration**

86. According to data provided by the Ministry of Interior, as of September 2014 there were 101 persons with refugee or subsidiary protection status in Albania and 255 asylum seekers from 15 different countries of origin.¹³⁵ This data seems to indicate that Albania is not a major country of destination for asylum seekers. However, ECRI has been informed that the border police do not always identify persons in need of protection (asylum seekers, victims of trafficking, etc.) promptly; nor do they refer them systematically to the appropriate authorities.
87. On 18 September 2014, Parliament approved Law No. 121/2014 on Asylum in the Republic of Albania which provides for the conditions and procedures for granting asylum, subsidiary protection and temporary protection, the rights and obligations of those who have been granted protection, as well as measures for their integration. ECRI welcomes this legislative initiative, which has consolidated in one act the hitherto scattered provisions on asylum.¹³⁶
88. Law No. 121/2014 grants persons with recognised refugee status a number of rights in accordance with the 1951 Geneva Convention, not least the right to education, the right to work, rights to social protection and housing and the right to family reunification (as did the previous legal enactments).¹³⁷ Albanian language as well as civil education and professional training courses are also provided for by the law. However, ECRI has been informed that the application of the previous legal enactments (in particular in so far as access to employment and documents were concerned) was hampered by the absence of the necessary by-laws. ECRI therefore encourages the authorities to adopt the by-laws under Article 86 of Law No. 121/2014 so that refugees' access to education, employment, housing and health is guaranteed in practice.

- **Other non-nationals' integration**

89. As of September 2014, there were 9 788 foreigners lawfully residing in Albania, mainly from Turkey, Italy and Kosovo¹³⁸, representing around 0,3% of the total population. Estimates on irregular migrants do not exist. However, a growing presence has been reported of irregular migrants of Asian origin working as domestic helpers for wealthy families in Tirana. In March 2013, a new law on foreigners was enacted by Parliament, regulating the entry, stay and employment of foreigners in the national territory in accordance with EU legislation and criteria. Article 143 explicitly prohibits "direct and indirect discrimination by legal persons, public and private, during the entire process of immigration for employment". Chapter X of the law contains two articles on the integration of aliens in the economic, cultural and social life. However, ECRI is not aware of any specific integration programmes for foreigners.
90. ECRI encourages the authorities to apply in practice the provisions contained in Chapter X by adopting measures on the integration of foreigners, within the new Strategy on Social Inclusion and Social Protection. These measures could

¹³⁵ Iraq, Iran, Bangladesh, Jordan, Kosovo, Pakistan, Somalia, Afghanistan, Congo, Serbia, Turkey, Bosnia-Herzegovina, Croatia, Montenegro and Syria.

¹³⁶ Law No. 8432 of 14.12.1998 on asylum in the Republic of Albania, Law No. 9098/2003 on the integration and family reunification of persons who have been granted asylum in the Republic of Albania, and Law No. 108/2013 on foreigners.

¹³⁷ Similar rights are also provided for persons granted subsidiary protection status.

¹³⁸ All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

be similar to the initiatives already taken in the context of the Strategy on the reintegration of returned Albanian citizens.¹³⁹

II. Topics specific to Albania

1. Interim follow-up recommendations of the fourth cycle

- **Introducing comprehensive legislation to combat discrimination**
- 91. ECRI has reviewed in §§ 10 and seq. the follow-up to the recommendation it had addressed to the authorities in its fourth report on comprehensive legislation to combat discrimination.
- **Ensuring that each Roma family has access to decent accommodation**
- 92. ECRI has reviewed in §§ 74 and seq. the follow-up to the recommendation it had addressed to the authorities in its fourth report on Roma access to decent accommodation.
- **Stepping up the creation of new nursery schools**
- 93. In its fourth report, ECRI had recommended (i) stepping up the creation of new nursery schools so that Roma children can improve their knowledge of the Albanian language before starting primary school and (ii) supporting the functioning of such schools. It had also recommended (iii) supporting the non-governmental initiatives which had produced useful results in this field. ECRI's conclusions on the follow-up of these recommendations in 2012 noted a positive development on the legislative front with the adoption of the Law No. 69/2012 on pre-university education, providing that all children are entitled to one year's free (non-compulsory) pre-school education. However, ECRI stressed the need for the creation of an adequate number of nursery schools and the recruitment of sufficient numbers of teachers.
- 94. General data on pre-school attendance from UNICEF indicates that so far around 400 pre-school classes have opened all over Albania, attended by around 9 000 children overall.¹⁴⁰ While access to these preparatory classes has been satisfactory in general, with data of the MOES showing a 30% increase in enrolment in the pre-primary year in 2013, access for Roma children remains unsatisfactory.¹⁴¹ The quality of the pre-primary programme has been only partially evaluated so far; in addition there has not been an assessment of Roma inclusiveness (which could be supported by Roma-speaking teachers) and equitable access. ECRI stresses the need for such an evaluation/assessment, especially since the authorities are considering making pre-school education (which is not compulsory so far) universal.
- 95. As already mentioned, the authorities have tried to support Roma children's access to pre-school and compulsory education (allowing them to enrol without birth certificates; and organising vaccination at school). However, recent information provided to ECRI indicates that it is still difficult for Roma children to

¹³⁹ In 2009, the authorities adopted a Strategy on the reintegration of returned Albanian citizens, so as to support the reintegration of returnees back home. The strategy provides for the creation of Migration Counters to attend to the needs of the returnees and assist them with access to employment, education and professional services, including healthcare and social security.

¹⁴⁰ The pre-primary classes have opened with the financial contribution of the World Bank Education Excellence and Equity program. UNICEF has assisted with teacher training, curricula development etc.

¹⁴¹ Recently, the European Roma and Travellers Forum informed ECRI that they estimate that only 13.5% of Roma children aged 3-5 attended preschool. The Government cites studies concluding that about 25 % of Roma children are registered in pre-school institutions. Both figures suggest that considerable additional efforts are needed.

have access to kindergartens; as a result of the lack of sufficient pre-school facilities, only one out of four Roma children has access to this level of education in Albania.¹⁴² Attendance rates vary greatly at local level; in some districts pre-school education is almost non-existent, in particular near Roma settlements. ECRI's delegation visited a recently opened well-equipped pre-school facility in Elbasan, attended by some 30 Roma children. However, this facility relies exclusively on civil society and IGO support. Therefore, ECRI questions the long-term sustainability of such initiatives.

96. ECRI reiterates its recommendation that the authorities (i) step up the creation of new nursery schools so that Roma children can improve their knowledge of the Albanian language before starting primary school and (ii) support the long term functioning of such schools.
97. ECRI also recommends that the authorities evaluate the Roma inclusiveness of the pre-school programmes so far in place; they should also evaluate whether they provide equitable access and quality teaching.

2. Policies to combat discrimination and intolerance against LGBT persons

- Data

98. There is no official data on the LGBT population in Albania. Recommendation CM/Rec(2010)5 of the Council of Europe's Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity indicates that personal data referring to a person's sexual orientation or gender identity can be collected when this is necessary for the performance of a specific, lawful and legitimate purpose. It is clear that without such information there can be no solid basis for developing and implementing policies to address intolerance and discrimination of LGBT persons. For example, according to the People's Advocate, in Albania intersex persons¹⁴³ are numerous but are kept hidden by their families.¹⁴⁴ A number of NGO surveys reveal that the vast majority of Albanians, including youth, disapprove of the LGBT persons' presumed lifestyle.¹⁴⁵ Moreover, as also reported in § 32, this hostility is reflected in several traditional media, the Internet and public discourse.

99. ECRI recommends that the authorities conduct systematic research and data collection concerning intolerance and discrimination on grounds of sexual orientation and gender identity, including a general attitude survey on LGBT related questions.

- Legislative issues

100. As already mentioned, the LPD prohibits discrimination on the basis, among other grounds, of gender identity and sexual orientation. In 2013 two amendments to the CC were approved, as a result of which the homo/transphobic motivation is now considered as an aggravating circumstance. Moreover, the CC now punishes the deliberate "distribution of racist, homophobic or xenophobic materials through systems of communication and information technology".

¹⁴² UNICEF 2014.

¹⁴³ See on intersex persons Council of Europe Commissioner for Human Rights 2014c.

¹⁴⁴ People's Advocate 2012b: 5; Shekulli newspaper 2012.

¹⁴⁵ According to OSF, 53% of Albanians believe that "gays and lesbians should not be free to live life as they wish". The study Cela 2013 revealed that Albanian youth is strongly prejudiced against LGBT people. 50% of respondents would not welcome being neighbours with a homosexual couple and would feel bad or very bad about it.

101. Article 9 of Law No. 7961/1995, entitled Labour Code of the Republic of Albania, which covers employment in both the public and private sector, does not contain any provision specifically prohibiting discrimination on the grounds of sexual orientation and gender identity. For this reason, both the CPD and the People's Advocate have addressed a recommendation to the MSWY, proposing, inter alia, the addition of sexual orientation and gender identity to the grounds of discrimination in the second paragraph of Article 9. Moreover, the People's Advocate has proposed adding a new paragraph according to which parties share the burden of proof in cases of alleged discrimination in accordance with the EU Employment Framework Directive (Directive 2000/78/EC). The MSWY has prepared a draft law, including these changes as well as other amendments, such as special rules on the burden of proof. As already mentioned in § 16, ECRI considers that the Albanian authorities should also include in the Codes of Civil and Administrative Procedure the special rule on the burden of proof in discrimination cases.
102. The Family Code of Albania does not provide for same-sex marriage.¹⁴⁶ There is no legal provision guaranteeing either the right of same-sex couples to have children through assisted reproductive means. Same-sex partners cannot jointly adopt a child, as Article 242 of the Family Code provides that a minor cannot be adopted by more than one person, unless they are spouses, meaning husband and wife. LGBT persons can, therefore, adopt children only as individuals.¹⁴⁷
103. The People's Advocate, the CPD and NGOs presented to the MSWY in December 2013 a set of recommendations for legislative amendments, including amendments to the Family Code, providing for registered partnerships between persons of the same sex.¹⁴⁸ ECRI would like to recall that this proposal is in line with § 25 of the above-mentioned Recommendation CM/Rec(2010)5, according to which States should consider the possibility of providing same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.
104. As regards the change of sex and name, Law No. 10129/2009 on Civil Status does not provide anything in connection with sex change; name changes are allowed only if a person's name is "inappropriate". The General Directorate of Civil Status has lists of inappropriate names. It appears, therefore, that transgender persons are not allowed to change names; this is an obstacle to the acquisition of identity documents that reflect their new identity.
105. ECRI recommends that the authorities take appropriate measures to guarantee the full legal recognition of a person's gender reassignment, in particular by making possible his/her change of name and gender in official documents in a quick, transparent and accessible way.

- **Asylum**

106. Sexual orientation and gender identity do not figure among the persecution grounds of the new asylum law. ECRI notes that the set of recommendations for legislative amendments mentioned in § 101 included a proposal concerning Article 1/1 point 6 of the previous asylum law to make it refer expressly to cases of persecution for reasons of sexual orientation and gender identity. The authorities recall that the new law refers in its refugee definition to "a member of a

¹⁴⁶ Article 7 states that "marriage is contracted between a man and a woman who have reached the age of 18 years".

¹⁴⁷ For more information, see Loloçi 2011:9.

¹⁴⁸ Contribution by the People's Advocate to ECRI's monitoring activities. Other recommendations concern the law on asylum and the CC.

particular social group”; they consider this to be the basis for granting refugee status to those who are persecuted because they are LGBT. ECRI notes that no public official data is available on the number of persons who have been able to rely on the membership-of-a-particular-social-group ground to get asylum or subsidiary protection because of their sexual orientation or gender identity.

- **Independent authorities**

107. According to Law No. 10 221, the CPD is competent to deal with discrimination on the grounds of sexual orientation and gender identity. As a matter of fact, she has examined a number of allegations of discrimination based on sexual orientation or gender identity; she has also initiated two ex officio investigations in this field (see the section on hate speech). The People’s Advocate’s mandate (Article 60 of the Constitution and Law no. 8454/1999) covers the protection and guaranteeing of the human rights and fundamental freedoms of all individuals. The CPD and the People’s Advocate have signed co-operation agreements with LGBT organisations in the following areas: (i) exchange of information; (ii) preparation of studies and special reports on the relevant legislation and its application; (iii) analysis of draft legislation prepared by Parliament; (iv) undertaking common initiatives for improving human rights; (v) dealing with specific cases of discrimination by the civil service; and (vi) raising of awareness of LGBT rights among the general public.

- **Access to employment and health**

108. An Action Plan for non-discrimination because of sexual orientation and gender identity 2012-2014 (Action Plan) was launched in February 2012 by the then Minister of Labour, Social Affairs and Equal Opportunities as part of a Council of Europe project to combat discrimination on grounds of sexual orientation and gender identity (September 2011-December 2013). It includes initiatives aimed at (i) improving legislation concerning LGBT persons, (ii) training of central and local authorities and (iii) drawing guidelines for private businesses and public institutions on non-discrimination in the work environment. The People’s Advocate and the NGO Aleanca LGBT have conducted inspections in health care services; these have revealed a problem of access to health care for LGBT persons which is related to the lack of awareness of LGBT issues by health professionals. ECRI notes in this connection that the Ministry of Health will organise training for medical personnel in dealing with the LGBT community.¹⁴⁹

109. There are no laws or regulations governing trans/intersex persons’ access to health care. They can benefit, as all other individuals, from general health care services, but no assistance is specifically provided for gender reassignment or other treatment related to transgender persons’ special needs. Moreover, Albanian hospitals do not perform the relevant medical operations.¹⁵⁰

- **Education and awareness-raising**

110. The above-mentioned Action Plan includes - in addition to legislative proposals - awareness-raising measures. Since its launching in December 2012, some activities have been organised by LGBT NGOs to raise awareness in schools.¹⁵¹ NGOs have also created a shelter for LGBT persons facing problems with their safety or with their families, especially during their coming out phase. The international day against homo/transphobia (IDAHO) is celebrated in Albania; at

¹⁴⁹ Response to the questionnaire on the implementation of the above-mentioned CM/Rec(2010)5.

¹⁵⁰ According to Loloçi 2011: 14 there have been neither cases of transsexuals requesting medical operations in Albania, nor cases of recognition of gender reassignment performed abroad.

¹⁵¹ Concerning bullying at school and the need to implement policies and programmes to combat it see §§ 46 and 47.

the 2014 IDAHO international forum an MSWY official signed, together with representatives of authorities from 16 other European states, a declaration of intent to ensure that appropriate legislative and/or other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation and gender identity. Moreover, since the swearing in of the new government in September 2013, cooperation between the MSWY and LGBT activists has intensified.¹⁵² In addition, the Parliament organised for the first time in 2014 a hearing on LGBT issues with the participation of the government, civil society, the CPD and the People's Advocate.

111. ECRI takes note of these positive developments. However, they seem ad hoc initiatives relying mostly on NGO, IGO and foreign-country support. In the meantime, the public's awareness of LGBT rights remains very low and its opinion is hostile. ECRI considers that special attention should be given to teacher training.¹⁵³ It also notes that the Action Plan, which was financed by the Council of Europe's LGBT Project until 2013, now relies solely on funds from international donors with no specific national budget line assigned to it.¹⁵⁴

112. ECRI recommends that an inter-ministerial working group is set up on LGBT issues, without delay, to ensure co-ordination among competent authorities, regular contacts with LGBT NGOs and a speedy implementation of all the projects of the Action Plan for non-discrimination because of sexual orientation and gender identity 2012-2014, which should be properly funded.

¹⁵² See § 41 for the code of ethics adopted by the new government.

¹⁵³ Cf. the related recommendation of the People's Advocate 2013: 38.

¹⁵⁴ The authorities have informed ECRI that the Social Inclusion Policy Paper 2015-2020 provides for concrete actions in favour of LGBT persons as well. See § 55 concerning the limited resources available for the implementation of this policy.

INTERIM FOLLOW-UP RECOMMENDATIONS

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

- ECRI again recommends that the authorities ensure effective access to justice for victims of discrimination through a functioning and properly funded legal aid system.
- ECRI recommends that the authorities ensure that all Roma, as well as other persons, who may be evicted from their homes enjoy all the guarantees that international texts 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.

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. (§ 9) ECRI recommends that the authorities bring their criminal law, in general, into line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should include the grounds of colour, language, citizenship and gender identity in the relevant provisions and criminalise (i) incitement to violence and discrimination on all grounds, (ii) public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes; (iii) the public dissemination, production or storage of pictorial or other material containing racist manifestations (iv) the creation and leadership of as well as support for and the participation in the activities of a group which promotes racism and (v) racial discrimination in the exercise of one's occupation in the private sector.
2. (§ 19) ECRI recommends that the authorities bring their anti-discrimination legislation, in general, into line with its General Policy Recommendation No. 7 as indicated in the preceding analysis; in particular they should (i) abolish the restriction of the prohibition against discrimination to fundamental rights and freedoms; (ii) include citizenship in the list of grounds of prohibited discrimination; (iii) spell out in the law the general duty for public authorities to promote equality; (iv) enact clear legislation about the shared burden of proof in discrimination cases; and (v) enact provisions allowing for the discontinuation of public funding to political parties and other organisations that promote racism.
3. (§ 24) ECRI again recommends that the authorities ensure effective access to justice for victims of discrimination through a functioning and properly funded legal aid system.
4. (§27) ECRI recommends that the authorities (i) give the Commissioner for the Protection against Discrimination the power to request the release or production of documents and information within an appropriate period of time, (ii) abolish the requirement for organisations that have a legitimate interest in combating racial discrimination to present a special power of attorney and (iii) regulate the issue of simultaneous procedures before the Commissioner for Protection from Discrimination and the courts.
5. (§37) ECRI recommends that the police organise consultation meetings between police officers, representatives of vulnerable groups and NGOs in order to establish regular dialogue, mutual trust and co-operation.
6. (§45) ECRI recommends the Albanian authorities to reinforce their non-criminal responses against hate speech; they should support elected bodies' and media's self-regulation initiatives; they should also proceed quickly to the election of all members of the Audiovisual Media Authority.
7. (§ 47) ECRI recommends that the authorities swiftly implement measures to fulfil the legal duty to combat discrimination in schools and to raise awareness of the right to equal treatment, diversity, discrimination and bullying at school. Special attention should be given to teacher training (General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education).
8. (§ 51) ECRI recommends the police to investigate thoroughly racist and homo/transphobic offences; inter alia, they should take the racist and/or

homo/transphobic motivation of ordinary offences fully into account (§ 11 of General Policy Recommendation No. 11 on combating racism in policing).

9. (§ 57) ECRI recommends that the authorities ensure that the new Plan of Action for Roma and Albanian Egyptian communities 2015-2020 is accompanied by an evaluation of all integration projects implemented over recent years, on the basis of comprehensive equality data. The plan's budget should clearly identify financial needs not covered by the state budget in order to benefit from EU and other donors' funds.¹⁵⁵ In addition to timely consultation with the Roma and Egyptian communities, there should be also a clear division of responsibility between central and local authorities and civil society organisations.
10. (§ 70) ECRI recommends that the authorities ensure that the employment promotion programmes specifically address the situation of Roma and in particular the question of their informal employment, exploring the possibility of formalising Roma black economy jobs through the creation of social businesses schemes and the promotion of public-private partnerships at local level.
11. (§ 74) ECRI reiterates its recommendation that the authorities step up their efforts to regularise illegal housing, ensuring that any initiatives taken in this direction also concern the Roma and Egyptian communities. In this connection, special priority should be given to finding solutions for those living in non-permanent houses not covered by Law 9482/2006 on the Legalisation, Urbanisation and Integration of Informal Areas/Buildings.
12. (§ 75) ECRI also recommends that the authorities ensure that all Roma, as well as other persons, who may be evicted from their homes enjoy all the guarantees that international texts 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.
13. (§ 81) ECRI recommends that the authorities approve the Housing Strategy for the period 2015-2020, which should prioritise budget allocation according to the social housing needs of the different groups. In particular, as regards the Roma and Albanian Egyptians, the strategy should be backed up by an evaluation of their housing conditions and the setting up of a Roma housing fund to help provide sufficient monies and adequate co-ordination between central and local authorities, to implement housing projects for these communities.
14. (§ 82) ECRI also recommends that the authorities clarify the type of documentation to be submitted by Roma applicants, as well as by other groups, under the points system for priority access to social housing; they should introduce some flexibility in the system as well as new eligibility criteria, such as the demolition of dwellings excluded from the legalisation process; families that are confronted with these problems will thus gain additional points to become eligible for social housing.
15. (§ 96) ECRI reiterates its recommendation that the authorities (i) step up the creation of new nursery schools so that Roma children can improve their knowledge of the Albanian language before starting primary school and (ii) support the long term functioning of such schools.
16. (§ 97) ECRI also recommends that the authorities evaluate the Roma inclusiveness of the pre-school programmes so far in place; they should also evaluate whether they provide equitable access and quality teaching.

¹⁵⁵ Such as the new Instrument for Pre-accession Assistance (IPA II 2014-2020).

17. (§ 99) ECRI recommends that the authorities conduct systematic research and data collection concerning intolerance and discrimination on grounds of sexual orientation and gender identity, including a general attitude survey on LGBT related questions.
18. (§ 105) ECRI recommends that the authorities take appropriate measures to guarantee the full legal recognition of a person's gender reassignment, in particular by making possible his/her change of name and gender in official documents in a quick, transparent and accessible way.
19. (§ 112) ECRI recommends that an inter-ministerial working group is set up on LGBT issues, without delay, to ensure co-ordination among competent authorities, regular contacts with LGBT NGOs and a speedy implementation of all the projects of the Action Plan for non-discrimination because of sexual orientation and gender identity 2012-2014, which should be properly funded.

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APPENDIX: GOVERNMENT'S VIEWPOINT

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

ECRI, in accordance with its country-by-country procedure, engaged in confidential dialogue with the authorities of Albania on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which only takes into account developments up until 10 December 2014, date of the examination of the first draft).

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

Viewpoints of the Albanian Authorities, as Appendix to ECRI`s Fifth Report on Albania

Albanian authorities welcome the dialogue with the European Commission against Racism and Intolerance (ECRI), in the framework of the 5th cycle of monitoring, both during the contact visit in the month of September 2014 and in the following confidential dialogue on the Draft Report.

The constructive dialogue with the delegation of ECRI is seen as an opportunity to present the measures taken by the Albanian institutions, in relation to issues of discrimination, hate speech, violence and integration policies, and its specific related issues.

Albanian authorities welcome the reflection on comments on factual errors of the revised draft report.

Upon completion of the fourth cycle of monitoring (in 2009) and presentation of the interim conclusions on the recommendations of ECRI, the Albanian institutions have taken a number of measures to improve the legal framework on discrimination, hate speech, violence and hate crimes (anti-discrimination Legislation, hate speech, hate crimes) and devised integration policies for vulnerable groups and Roma, regarding the problems in the area of discrimination, education, employment, service delivery, housing etc.

Albanian authorities welcome the progress recorded by ECRI, after the adoption of the 4th Report on Albania. Albania does not have co-existence problems between different population groups. On the other hand, Albanian authorities are aware of the existence of some issues of concern: such as the implementation of the legal framework against discrimination; the small number of reported cases in connection with hate speech; problems of the Roma minority, mainly in the field of employment and housing, etc.

Given that the protection of human rights constitutes one of the objectives of the Albanian government to fulfil its international obligations and integration process in the European Union, the authorities express their commitment and willingness to implement the recommendations of ECRI, as identified in the 5th report of Albania.

In addition, the authorities present some observations and relevant information in relation to certain paragraphs of the report.

Regarding the 11th paragraph of the Report, we point out that the law "On protection from discrimination" (LPD) describes that "discrimination" means any distinction, exclusion, restriction or preference based on any cause mentioned in Article 1 of this law, has the purpose or effect of hindering or making impossible the exercise in the same way as others, of the rights and fundamental freedoms recognized by the Constitution of the Republic of Albania, with international conventions ratified by Albania, as well as with laws in force.

Besides for direct and indirect discrimination, this law also provides for several other forms of discrimination: "Discrimination because of association" (Article 3, paragraph 4), "concern" (Article 3, paragraph 5), "victimization" (Article 3, item 8), "Instruction to discriminate" (Article 3, paragraph 6), Denial of a reasonable adjustment (Article 3, paragraph 7)". LPD provides protection from discrimination on the rights and freedoms recognized in the Constitution, international acts and domestic legislation.

With regard to paragraph 16, we emphasize that the Law "On protection from discrimination" emphasizes the burden of proof in its Article 33.6. The Commissioner for Protection from Discrimination notices an increase in the number of complaints by written opinion to this institution. The courts distribute the burden of proof in cases of alleged discrimination by public administration. In cases where it is an alleged discrimination by private entities, the same is not observed, in terms of the obligation of the burden of proof.

Concerning paragraph 30 of the Report on the lack of reliable data on hate speech by the State Police, we report that in the period 2011-2014, for the criminal offence "incitement of hatred or conflict" (article 265 of the Criminal Code, as amended), the State Police recorded one case each for 2011, 2013 and 2014 and two cases in 2012.

Regarding paragraph 30, according to the data of the Prosecution Office, during the period 2008 - June 2014, the Prosecution Office registered 5 criminal proceedings under article 265 of the Criminal Code and 3 criminal proceedings under article 266 of the Criminal Code.

The Prosecution Office has filed charges in court for one criminal proceeding against two accused persons for the criminal offences provided by the article 151 (destruction of property by fire) and article 265 (incitement of hatred and conflict) of the Criminal Code. At the end of the trial, the Court of Appeal declared the two accused persons guilty and sentenced them to prison. It also decided for the termination for two criminal proceedings under the article 265 of CC; the suspension of the investigations for one proceeding under article 265; and two proceeding under article 266 for not finding the authors. Two proceeding are in the preliminary investigation phase (1 proceeding under article 265 and 1 proceeding under article 266).

Regarding paragraph 35 of the Report, "on not reporting many cases of hate speech in the Police", we point out that the State Police analyze and pursue with responsibly every reported criminal offenses case, including crimes based on incitement through the use of hate speech.

Regarding paragraph 49 "on the CPD reports that some LGBT persons have faced harassment by the police when asking for protection or help", the State Police clarify that has not registered any case reported by any citizen whose rights have been violated or has been mistreated in police premises, due to ethnicity, gender, religion and sexual orientation. Police also treats equally, without discrimination all citizens, as defined in Article 18 of the Constitution of the Republic of Albania.

Regarding paragraph 37 of the Report, the State Police clarify that, in order to prevent hate crimes, particularly those against vulnerable groups, the local police structures have established links and cooperation with groups such as the Roma, Egyptians and representatives of LGBT organizations by conducting the following activities:

- The identification of Roma and Egyptian communities, their locations or settlements, associations/organizations representing the community.
- Organize joint meetings between the police and the Roma and Egyptian communities to exchange information regarding problems with the rule of law and crime, as well as their concerns regarding human rights violations and discrimination on the bases of ethnicity, etc.
- Identification and treatment of problems to resolve conflicts in these communities or with other residents, to address and resolve them according to the law.
- Identification and legal treatment of cases of rights violations, mistreatments or abuses committed by the police personnel against the citizens of these communities.
- The State Police have supported the initiative/proposal made by the organization "Pro LGBT" to draft and sign a joint act (cooperation agreement), so that the police structures increase the degree of responsibility for the protection and respect of the rights of the LGBT community.
- The police have taken all measures to ensure the full exercise of the right to freedom of assembly, whenever associations that represent and protect the rights of the LGBT community, such as "Pro-LGBT", Pink Embassy, etc., have submitted requests for holding peaceful assemblies in public places.

Regarding paragraph 48, the Prosecution Office underlines that the case was immediately prosecuted after the denunciation by the State Police.

Regarding paragraphs 44 and 45 of the Report, the Audiovisual Media Authority (AMA) informs that, in October 2014, two members of AMA's were elected by the Parliament (by decisions no. 74 and no. 75 dated 09.10.2014). In November 2014, the Parliament elected the President of AMA (by decision no. 94/2014, dated 06.11.2014). Currently, only one of seven AMA members has not been chosen yet.

