

# ECRI REPORT ON ALBANIA

(sixth monitoring cycle)



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against Racism and Intolerance

**ECRI**  
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contre le racisme et l'intolérance

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## FOREWORD

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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 the fight against racism, discrimination (on grounds of “race”, ethnic/national origin, colour, citizenship, religion, language, sexual orientation and gender identity), xenophobia, antisemitism and intolerance. It is composed of independent and impartial members appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

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

ECRI’s country monitoring deals with all member States on an equal footing. The work takes place in 5-year cycles. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, those of the third round at the end of 2007, those of the fourth round in the beginning of 2014, and those of the fifth round at the end of 2019. Work on the sixth round reports started at the end of 2018.

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 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 sixth round country reports focus on three topics common to all member States: (1) Effective equality and access to rights, (2) Hate speech and hate-motivated violence, and (3) Integration and inclusion, as well as a number of topics specific to each one of them.

In the framework of the sixth 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 11 December 2019; as a rule, 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 fifth report on Albania on 19 March 2015, progress has been made in a number of areas.**

The People's Advocate (Ombudsman) and the Commissioner for the Protection from Discrimination (CPD) have established a very effective and collegial relationship in which both institutions have built on each other's mandate, capacities and expertise. Staffing levels at the CPD have been increased, including for monitoring, reporting and the regional offices.

In the field of inclusive education, the project "*Fighting Bullying and Extremism in the Education System*" 2016-2019 supported the authorities in their efforts to develop strategies and responses to these phenomena in schools.

In 2015, the Albanian Parliament adopted a resolution on the "protection of rights and freedoms of persons belonging to the LGBT community in Albania". Subsequently, the government adopted the LGBTI Action Plan 2016-2020, the design and implementation of which also included LGBTI community organisations.

The People's Advocate and the CPD have made racist and homo-/transphobic hate speech a prominent topic in their work, acknowledging that this problem must be tackled effectively.

In December 2015, the authorities adopted a new National Action Plan for the integration of Roma and Egyptians 2016-2020. This plan focuses particularly on objectives and activities in education, employment and vocational training, healthcare and social protection, housing and integration, as well as civil registration and access to justice. The Action Plan includes a set of indicators for measuring progress and takes into account the gender dimension for social inclusion, for example by providing gender-disaggregated data. The authorities also included comprehensive measures in the education sector striving to enrol more Roma and Egyptian children in pre-school and compulsory education. Against the 2015 baseline of 4 437 children, the figure in 2018 was already 13 310. Furthermore, it is noteworthy that these efforts have not only been confined to a small number of selected cities but cover a very broad geographical area.

In follow-up to a recommendation made in ECRI's previous report, namely to ensure effective access to justice for victims of discrimination

through the development of a functioning and properly funded legal aid system, the Albanian authorities initiated legislation on the provision of legal aid which was adopted in 2017.

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

In 2014, the mandate of the People's Advocate was extended, inter alia to include promotion and outreach activities for which, however, no budget increase was granted. Also, a large number of recommendations made by the equality bodies are not followed up with relevant actions by the authorities.

In the field of education, the measures taken against bullying and extremism in schools have so far consisted only of general anti-bullying awareness-raising measures, which did not contain modules covering particularly vulnerable groups, such as Roma and LGBTI children.

While the LGBTI Action Plan is a useful foundation for achieving positive change, it is far from being fully implemented and various obstacles and problems remain. Steps are particularly necessary with regard to preventing discrimination and promoting equality for LGBTI persons in the health and education sectors and for building capacity at municipal level outside the capital.

Public condemnation and active counter speech from high-ranking political or other public figures in response to hate speech is extremely rare. Hate speech, especially against members of the Roma and LGBTI communities, is still far too often considered to be an acceptable feature of public debates.

De facto structural segregation of Roma and Egyptian pupils in schools still occurs in some locations. Furthermore, many Roma and Egyptians remain outside of the reach of vocational training and active employment programmes provided to registered unemployed jobseekers, as they are often not registered and the minimum educational requirements for such activities might be too high, given the low educational results of many persons concerned.

Many Roma and Egyptians also suffer from living in inadequate housing conditions and from evictions carried out without the necessary safeguards. The authorities still have not found a solution to the long-running housing crises

affecting the Roma and Egyptian communities in the Kabash and Guri i Kuq areas of the Pogradec municipality.

The relevant bylaws for the new Law on Legal Aid and for the Law on Social Housing have not yet been issued, although the statutory timeline of six months has passed.

**In this report ECRI calls on the Albanian authorities to take additional measures in a number of areas and makes a series of recommendations, including the following:**

The authorities should ensure that the Office of the People's Advocate receives the necessary financial and staffing resources to fully and sustainably cover all aspects of its mandate; and strengthen the follow-up given to the recommendations of the equality bodies.

The authorities should ensure that the National Action Plan on LGBTI persons 2016-2020 is fully funded and implemented.

The authorities should take inspiration from ECRI's General Policy Recommendation No. 15 on combating hate speech and strongly and publicly condemn incidents of hate speech, especially against LGBTI persons and Roma.

The authorities should closely monitor the situation regarding de facto structural segregation of Roma and Egyptian pupils in school; as well as expand vocational training activities and active employment programmes for Roma and Egyptians.

The authorities should find a speedy solution to the long-running housing crises affecting the Roma and Egyptian communities in the Kabash and Guri i Kuq areas of the Pogradec municipality.\*

The authorities should finalise the necessary bylaws for the Law on Legal Aid and the Law on Social Housing.\*

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\* 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

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### I. EFFECTIVE EQUALITY AND ACCESS TO RIGHTS

#### A. Equality Bodies

1. There are two equality bodies in Albania relevant to the work of ECRI, namely the People's Advocate (Ombudsman) and the Commissioner for the Protection from Discrimination (CPD).<sup>1</sup> In its previous report, ECRI mentioned concerns that the newly-created CPD could overlap in its work with the mandate of the People's Advocate, potentially resulting in problems to delineate a functional and efficient division of labour between these two independent authorities.<sup>2</sup> ECRI is pleased to note that such problems have not emerged. On the contrary, a very effective and collegial relationship between the two institutions has been established in which both build on each other's mandate, capacities and expertise. This positive trend was formalised in a Memorandum of Cooperation signed by the heads of both independent institutions on 28 May 2018. It is also symbolised by the fact that 10 local/regional offices have been opened (seven by the People's Advocate and three by the CPD), which can all be used to lodge complaints with either institution so as to promote better access to both independent authorities.<sup>3</sup> Plaintiffs' cases are also mutually referred, depending on which institution is better suited to deal with them. While such a **good practice** is mainly the result of efforts by the two Equality Bodies themselves, ECRI encourages the authorities to support this synergetic relationship, without infringing on the independence of these institutions in any way, and to refrain from any measures that might jeopardise their cooperation in the future.
2. With regard to the mandate and powers of the People's Advocate and the CPD, ECRI notes that they are generally in line with ECRI's revised General Policy Recommendation (GPR) No. 2 on Equality Bodies. However, certain gaps remain. In 2015, ECRI recommended that the authorities grant the CPD the power to request the release or production of official documents and information within an appropriate period of time (see also GPR No. 2, § 21).<sup>4</sup> While no changes have been made in this respect specifically to the powers of the CPD, the 2014 Law on the Right to Information now provides for general access to information within 10 days, and in more complicated cases within 15 days. However, in practice the relevant authorities do not always respect these deadlines. Also, the requirement for the CPD (or any other organisation that has a legitimate interest in combating racial discrimination) to obtain power of attorney from a plaintiff in order to register a case with the courts remains (contrary to GPR No. 2, § 14d).<sup>5</sup> On the positive side, subsequent to an amendment made to the country's Constitution in 2016, the CPD can now also bring cases before the Constitutional Court.
3. Concerning the resource situation, ECRI notes that the staffing of the CPD office has improved (in addition to the establishment of a new directorate for monitoring and reporting, staff in its regional offices, who were in the past paid by Council of Europe/European Union projects are now paid by the CPD's own budget, ensuring more sustainability). The budget of the People's Advocate increased slightly, but does still not adequately reflect the extension of its mandate in 2014, inter alia to include promotion and outreach activities for which, however, in spite of several

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<sup>1</sup> See also ECRI 2015: §§ 25 - 29.

<sup>2</sup> See also ECRI's GPR No. 2: § 9.

<sup>3</sup> See also: GPR No. 2: § 40 a-b.

<sup>4</sup> ECRI 2015: § 27 (i).

<sup>5</sup> ECRI 2015: § 27 (ii).

requests, no budget increase was granted.<sup>6</sup> In some areas of work, activities and staff have been or are still financed by external donors or international organisations, such as UN agencies present in the country, or through EU pre-accession funds implemented by the Council of Europe.

4. In 2019, the UN Committee on the Elimination of Racial Discrimination (CERD) expressed its concern about the limited follow-up of recommendations and decisions taken by the equality bodies.<sup>7</sup> ECRI notes that the Albanian parliament adopted an Action Plan “on the implementation of the recommendations of the European Commission report for Albania” (2018) that contains a series of measures aimed at strengthening the parliamentary monitoring system for the implementation of the recommendations made by the equality bodies. Such a step is welcome and seems necessary, given that still a large number of recommendations made by the equality bodies are not followed up with relevant actions.<sup>8</sup> As a result of expanding the areas of responsibility of local authorities, while at the same time not having equally increased their capacities to deliver, a growing number of complaints against municipal authorities have been lodged.
5. In the case of the CPD, which can also deal with alleged discrimination in the private sector, a large number (up to 90%) of its decisions are challenged in the courts. While in the past, the CPD’s decisions were often overturned by the judiciary, this trend seems to have been halted and reversed. It appears that a much better understanding of the principles of equality and non-discrimination, as well as related case law of the European Court of Human Rights, is increasingly permeating the judicial system. ECRI has been informed that this is the case for first and second instance courts in as well as outside Tirana. In addition to the CPD’s efforts in this respect, this positive development can also be attributed to ongoing training for judges on this topic.
6. ECRI recommends that the authorities bring the legislation concerning the People’s Advocate and the Commissioner for Protection from Discrimination fully in line with its revised General Policy Recommendation No. 2 on Equality Bodies, in particular by (i) implementing the recommendation contained in § 27(ii) of ECRI’s previous report on Albania; (ii) ensuring that the Office of the People’s Advocate receives the necessary financial and staffing resources to fully and sustainably cover all aspects of its mandate; and (iii) strengthening the follow-up given to the recommendations of the People’s Advocate and the Commissioner for Protection from Discrimination with a view to enhancing their effectiveness.

## **B. Inclusive education**

7. This section deals with education policies that address exclusion and marginalisation through inclusive education for all children and aim at creating an inclusive and tolerant society (Sections II and III of ECRI’s GPR No. 10).
8. Albanian society is generally characterised by high levels of tolerance. This is, in particular, the case with regard to the different religious affiliations. Nevertheless, resentments against some national minorities, especially Roma, and LGBTI persons exist (see also section II). Given the low numbers of foreigners migrating to Albania, the authorities consider that the development of an inclusive education approach is for the time being not needed to facilitate the integration of refugees, beneficiaries of subsidiary protection or migrant workers and their children as is the case in many other European countries. However, the problem of bullying in schools is also present in Albania. Some of the grounds on which pupils are being

<sup>6</sup> See also GPR No. 2: § 28.

<sup>7</sup> UN CERD 2019: § 13-14. – See also: Council of Europe, Committee of Ministers, Recommendation CM/REC (2019)6 on the development of the Ombudsman institution; and GPR No. 2: § 36.

<sup>8</sup> Including those related to ECRI’s mandate as well as others.

bullied or harassed are also relevant to ECRI, for example ethnic/national origin (belonging to a national minority) or sexual orientation.

9. From 2016 to 2019, the Council of Europe and the European Union supported the implementation of the project “*Fighting Bullying and Extremism in the Education System*” in Albania. Its aim was to assist the national authorities in developing strategies and responses to bullying and extremism in schools while raising the awareness of pupils, parents and school staff about the harmfulness of bullying and how pupils can be protected. The new Law on the Rights and Protection of the Child, adopted in February 2017, also recognises the phenomenon of bullying in schools and includes provisions for its prevention and reporting. The Ministry of Education, Sport and Youth and the Ministry of Economy and Finance issued a joint decision instructing the pilot schools that took part in the project to implement anti-bullying action plans during the 2018/2019 school year; to coordinate awareness-raising activities and knowledge sharing between schools; to ensure the organisation of the national anti-bullying day on 21 November and to monitor and improve the referral systems regarding cases of bullying in schools. Based on the experiences of the pilot schools, a national roadmap to guide policy-makers in preventing or reducing bullying and creating a safe and inclusive school environment was proposed, in partnership with the Ministry of Education, Sport and Youth, to be integrated into the new National Strategy for Pre-University Education. Furthermore, a Teacher Training and School Support Programme, conceived as a step-by-step intervention with a view to preventing or reducing bullying and building an inclusive environment was accredited by the Commission for the Accreditation of Training Modules and Programmes. So far, 210 teachers from 21 pilot schools have been trained.<sup>9</sup>
10. While the above can be seen as **promising practices**, until now the activities consisted only of general anti-bullying awareness-raising measures, which did not contain modules covering particularly vulnerable groups, such as Roma and LGBTI children. These group-specific elements should be the next step to ensure that general principles of inclusiveness are effectively applied to protect members of these minorities. Moreover, the limited number of schools in which the anti-bullying activities have been implemented so far remains insufficient to ensure a nationwide coverage. These activities need to be rolled-out on a larger scale, including in rural areas.
11. ECRI recommends that the authorities build on the achievements already made with regard to preventing and combating racism and intolerance in schools. They should, in particular, move on from general anti-bullying activities to developing and implementing group-specific modules against bullying of members of vulnerable communities, such as Roma and/or LGBTI children and young people; as well as expanding these activities across the country, including into rural areas. In this context, the authorities should take inspiration from ECRI’s General Policy Recommendation No. 10 on inclusive education and link activities to existing and future national action plans for Roma and LGBTI persons.

### C. Irregularly present migrants

12. Albania is a country of outward migration and there are no substantial numbers of migrants coming to Albania in order to take up long-term residence. With the closure of other parts of the so-called Balkan route, however, Albania has increasingly become a transit country for many migrants entering from Greece and trying to reach western and northern Europe. Generally, most migrants only spend a very brief period in Albania, often not more than a few days. According to the authorities, in 2018 out of 4,386 asylum applications lodged by migrants who were

<sup>9</sup> In addition, the CPD also carried out awareness-raising and training activities for teachers, psychologists, school directors and students.

intercepted by Albanian border guards, only 1% subsequently appeared for their hearings with the Albanian asylum authorities.

13. Due to the transient nature of migration in the country, there are no specific policies or measures in place with regard to irregular migrants;<sup>10</sup> and neither civil society organisations nor other interlocutors indicated a specific need in this area at the moment. The authorities informed ECRI, however, that undocumented migrants who are in urgent need of medical assistance can access the necessary care; and that this included in at least one case admission to hospital and surgery.<sup>11</sup> ECRI encourages the authorities to assess the situation with regard to irregular migrants on an ongoing basis and, if and when necessary, to refer to ECRI's General Policy Recommendation No. 16 on safeguarding irregularly present migrants from discrimination for guidance.

#### **D. LGBTI equality**

14. There is still no official data on the LGBTI population in Albania.<sup>12</sup> 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 against LGBTI persons. Since widespread stigmatisation still often prevents individuals from living their sexual orientation and/or gender identity publicly, ECRI strongly encourages the authorities to combine their various ongoing LGBTI-related activities (described below) with strong data collection efforts, thereby building positive synergies between reducing prejudice against, and increasing confidence among, LGBTI persons.
15. LGBTI persons continue to face a number of problems in Albania and frequently encounter obstacles to effective equality. Nevertheless, in recent years, the overall situation has slightly improved and existing problems for members of the community have increasingly been placed on the political agenda. This indicates a positive paradigm shift in Albania's political discourse. Following the 2015 adoption of a resolution on "protection of rights and freedoms of persons belonging to the LGBT community in Albania" by the Albanian Parliament (approved with a large majority);<sup>13</sup> the government adopted in 2016 an LGBTI Action Plan 2016-2020, the design and implementation of which also included LGBTI-community organisations. The Ministry of Health and Social Protection has the lead role in coordinating and monitoring the implementation of the Action Plan, in close cooperation with the newly-established National Implementation and Coordination Group (NICG).<sup>14</sup> The very existence of the NICG – also recommended in ECRI's previous report<sup>15</sup> – is already seen by many as an achievement,<sup>16</sup> especially given the fact that it was set up by an order of the Prime Minister.<sup>17</sup> This is indicative of

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<sup>10</sup> Although this category of persons is also referred to in the National Strategy on Migration Governance and Action Plan 2019-2022 (see section III.B below).

<sup>11</sup> Access to emergency healthcare is also enshrined in the Law on Aliens (No.108/2013), Article 136.2.

<sup>12</sup> See also ECRI 2015: §§ 98-99.

<sup>13</sup> ECRI also takes positive note of the fact that subsequently the Albanian Parliament, together with civil society organisations, organised the first political LGBTI Forum on 6 April 2018.

<sup>14</sup> Supported by the joint Council of Europe/European Union assistance programme "Preventing and Combating Discrimination on grounds of Sexual Orientation and Gender Identity in Albania".

<sup>15</sup> ECRI 2015: § 112.

<sup>16</sup> UNDP 2017: 43.

<sup>17</sup> Order No. 147 of 28 September 2016.

a strong commitment from the highest political level. The strategic goals of the Action Plan are: (i) to improve the legal and institutional framework (including through increased awareness-raising) for protection of LGBTI people; (ii) to eliminate discrimination against the LGBTI community through capacity building of law enforcement authorities; and (iii) to provide equal opportunities by improving access to employment, education, housing and other services for LGBTI persons.

16. It is generally acknowledged, including by civil society groups and international organisations present in the country, that the Action Plan can serve as a useful foundation to achieve positive change. It includes, for example, a mapping exercise of legislation gaps, activities to promote tolerance towards LGBTI persons and support for advocacy and service-providing organisations. Particular achievements have been the amendment of the Labour Code to include sexual orientation and gender identity in the list of grounds on which discrimination is prohibited<sup>18</sup> and the inclusion of LGBTI persons as a vulnerable group – and therefore potential beneficiaries – in the new Laws on Social Housing and on Legal Assistance guaranteed by the State. The first residential centre in Albania, Shelter LGBTI, was also supported in order to provide transitional services to young people facing threats, domestic violence or homelessness due to their sexual orientation or gender identity. Furthermore, training activities including for law enforcement personnel and staff working for local authorities have been conducted, drawing on the expertise of the CPD, in order to raise awareness about discrimination and intolerance against LGBTI persons (see also section II on hate speech and violence).<sup>19</sup>
17. However, the Action Plan is far from being fully implemented and various obstacles and problems remain.<sup>20</sup> Despite the fact that some serious steps forward had been taken, there are still areas in which the government and other public institutions need to strengthen their work, especially with regard to preventing discrimination and promoting equality for LGBTI persons in the health and education sectors, completing the legislative gap analysis and raising awareness as well as building capacity at municipal level outside Tirana.<sup>21</sup> Also, the relevant unit in the Ministry of Health and Social Protection has reportedly only a very limited number of staff members dealing with this topic. Relevant civil society organisations met by ECRI have also voiced concerns that many of the planned activities have not yet been implemented in a meaningful and sustainable way.
18. ECRI recommends that the authorities ensure that the National Action Plan on LGBTI persons 2016-2020 is fully funded and implemented, in partnership with relevant community organisations; and that the shortcomings identified within the framework of the National Action Plan's implementation and monitoring are adequately addressed, in particular at municipal level.
19. Albanian legislation does not recognise same-sex partnerships. ECRI believes that the absence of recognition of same-sex partnerships can lead to various forms of discrimination in the field of social rights.<sup>22</sup> In this regard, it draws the attention of the authorities to the above-mentioned Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity.<sup>23</sup>

<sup>18</sup> For more details on this issue see ECRI 2015: § 101.

<sup>19</sup> Ministry of Health and Social Protection 2019: 4, 6-7, 8, 16-18, 21-23.

<sup>20</sup> European Commission 2019: 30.

<sup>21</sup> Ministry of Health and Social Protection 2019: 24.

<sup>22</sup> See also ECRI 2015: §§ 102-103.

<sup>23</sup> Council of Europe, Committee of Ministers, Recommendation CM/Rec (2010)5: especially §§ 23-25. See also: ECtHR (2015), Oliari and others v Italy.

20. ECRI recommends that the Albanian authorities provide a legal framework that affords same-sex couples, without discrimination of any kind, the possibility to have their relationship recognised and protected in order to address the practical problems related to the social reality in which they live.
21. As already pointed out by ECRI in its previous report,<sup>24</sup> there are no provisions to regulate gender reassignment procedures and to provide predictable and accessible mechanisms to have a change of gender administratively recognised, including changes to relevant identity documents. ECRI again recalls Recommendation CM/Rec(2010)5 in this respect, as well as other existing Council of Europe guidance and relevant ECtHR case law.<sup>25</sup>
22. ECRI reiterates its recommendation that the authorities take the necessary steps to regulate gender reassignment procedures and the administrative recognition of a change of name and gender (including changes to relevant identity documents in a speedy, transparent and accessible way) in line with existing Council of Europe guidance and case law of the European Court of Human Rights.
23. In this monitoring cycle, ECRI also covers the situation of intersex persons.<sup>26</sup> ECRI was informed by the authorities that it is not mandatory in Albania to carry out so-called “sex-normalising” surgery<sup>27</sup> on newly-born intersex babies. According to the information available, such operations are, in fact, not carried out currently in Albania at all. ECRI was informed by the authorities about their intention to look more closely into the needs of intersex persons in the country; and ECRI encourages the authorities to do so.

## II. HATE SPEECH AND HATE-MOTIVATED VIOLENCE

### A. Hate speech<sup>28</sup>

24. ECRI was provided, upon request, with a statistical overview from the General Prosecutor’s Office which is tasked with the overall collection of hate crime data.<sup>29</sup> According to this information, in 2015 one case was brought to trial for violation of Article 84a of the Criminal Code (CC) (intimidation on racist grounds through computer systems) and one person convicted for violation of Article 265 CC (inciting hatred). In 2016, two criminal proceedings based on Article 265 CC were initiated; in 2017 nine proceedings based on Article 265 CC were initiated and one proceeded to trial stage. In 2018, two proceedings based on Article 265 CC were initiated and two cases went to trial. During the first three months of 2019, two proceedings were initiated: one based on Article 84a and one on Article 265 CC.
25. While the above information is useful, ECRI notes that an overall comprehensive data collection system for racist and homo-/transphobic hate speech incidents is lacking. According to the OSCE Office for Democratic Institutions and Human

<sup>24</sup> ECRI 2015: §§ 104-105.

<sup>25</sup> Council of Europe, Committee of Ministers 2010: §§ 20-22.; Council of Europe, Sexual Orientation and Gender Identity unit 2015; Council of Europe, Commissioner for Human Rights 2009; as well as relevant judgements of the ECtHR, such as: *Y.Y. v. Turkey* (2015) and *Goodwin v. UK* (2002).

<sup>26</sup> Persons born with chromosomal, hormonal or anatomical characteristics which do not match strict medical definitions of male or female. (EU FRA 2015: 2.)

<sup>27</sup> These interventions are generally irreversible and can cause severe long-term physical and psychological suffering. – See for example: Parliamentary Assembly of the Council of Europe, Resolution 2191 (2017): Promoting the human rights of and eliminating discrimination against intersex people.

<sup>28</sup> For a definition see ECRI’s General Policy Recommendation No. 15 on combating hate speech.

<sup>29</sup> In the present report, hate crime should be understood as any criminal offence motivated by hate or prejudice on grounds such as “race”, colour, language, religion, citizenship, national or ethnic origin, sexual orientation or gender identity, whether real or presumed. For further information about the notion of hate crime, see <http://hatecrime.osce.org/what-hate-crime>.

Rights (ODIHR) Albania has also not systematically reported the numbers of hate crimes registered by the police.<sup>30</sup>

26. ECRI recommends that the authorities establish a comprehensive monitoring system for hate speech incidents. In this respect, they should build on the experiences and expertise of, and work closely with, the People's Advocate, the Commissioner for Protection from Discrimination, the prosecution service, the police and relevant civil society organisations, especially those from communities that are particularly affected by hate speech such as Roma, Egyptians and LGBTI persons.
27. In this respect, it is encouraging to see that the People's Advocate has made hate speech a prominent topic in her recent annual report. The CPD has dealt with several complaints concerning hate speech in recent years: out of the 12 cases reviewed during the period 2015-2018, eight cases were related to LGBTI and three to Roma and Egyptians. In four cases, the CPD concluded that the language used was in excess of what could be considered as being protected by freedom of speech and found that hate speech had been used.
28. In general, ECRI has not received any information that could indicate a general improvement in the situation concerning racist and homo-/transphobic hate speech since its last report in 2015,<sup>31</sup> with various observers even pointing to a deterioration in some respects. A rude, divisive and antagonistic tone can still be observed in public and political discourse.<sup>32</sup> With regard to groups of concern to ECRI, it is noted that while there is generally still a high degree of tolerance, LGBTI persons<sup>33</sup> and Roma are often victims of hate speech, including on the Internet.<sup>34</sup> This is also evident from the CPD cases discussed in the preceding paragraph, which are most probably only the tip of the iceberg given the widespread problem of underreporting that, according to civil society groups, persists.<sup>35</sup> Despite measures to increase police capacity, members of vulnerable groups often do not sufficiently trust the police to take their complaints seriously and to investigate. As already recommended by ECRI in its previous report,<sup>36</sup> confidence-building measures are urgently required in this context, in particular for members of the LGBTI and Roma communities. Furthermore, it is worrying to see that those who defend these groups, for example civil society organisations, some members of Parliament and the equality bodies, have also increasingly become targets of hate speech themselves. On the positive side, hate speech against migrants (see also section I.C above) appears to be extremely rare.
29. ECRI recommends that the authorities continue to organise consultation meetings between police officers, representatives of vulnerable groups and NGOs in order to establish regular dialogue, mutual trust and co-operation.

<sup>30</sup> OSCE/ODIHR website: Hate Crime Reporting. - While for 2015, two prosecutions have been indicated, no further information on any new reported hate crime incidents is provided. For 2016, there is no data at all available. For 2017, one hate crime case and one prosecution are reported, without providing any details. In addition, the authorities informed ODIHR about 13 incidents of hate speech that have been registered by the police in 2017 as having potentially violated the Albanian Criminal Code (for example Article 265), but which did not fall within the scope of the OSCE hate crime definition, which includes threats but not hate speech in general.

<sup>31</sup> ECRI 2015: §§ 30-32.

<sup>32</sup> CERD 2019: § 15; see also ECRI 2015: § 31.

<sup>33</sup> In March 2018, for example, a hate-speech campaign against the LGBTI community developed on social media and even involved a former minister. (European Commission 2019: 30.)

<sup>34</sup> See for example: Kaziaj 2019: 6-7.

<sup>35</sup> See also ECRI 2015: § 35.

<sup>36</sup> ECRI 2015: § 37.

*Measures taken by the authorities*

30. As outlined in its GPR No. 15 on combating hate speech, ECRI considers that action is required in several areas to effectively prevent and combat hate speech. These encompass awareness-raising, prevention and counter speech, support to victims, self-regulation, the use of regulatory powers and, as a last resort, criminal investigation and punishment.
31. In order to enhance the criminal law responses to hate speech, the authorities jointly with the CPD and in cooperation with the state police, organised the training of state police officers at district level. 19 training sessions were held in 12 regions of Albania and 471 local police directorate staff members were trained. The training was not limited to hate speech only, but covered anti-discrimination measures in general, including the work of the CPD and the ECtHR, and also specifically referred to the situation of the LGBTI community. In addition, the General Prosecutor's Office is working together with human rights NGOs on guidance for hate crime investigations.
32. ECRI notes with satisfaction that in 2018, the Albanian Parliament adopted a Code of Conduct that, inter alia, prohibits MPs from using racist and homo-/transphobic hate speech in Parliament, as well as forms of discrimination and stereotyping in both parliamentary and non-parliamentary activities. In the case of violations, it is foreseen that disciplinary measures are applied against the MP.<sup>37</sup>
33. The Audiovisual Media Authority (AMA)<sup>38</sup> also handles complaints about hate speech. Since 2016, they have dealt with six cases in which hate speech was manifest. While in some cases AMA communication with content-producers led to public apologies, the agency can also issue fines of up to € 3 200. These, however, can be challenged in court. ECRI was informed that most complaints regarding hate speech are related to social media/TV online portals. Here as well, Roma and LGBTI-persons are often the target groups.
34. Apart from the People's Advocate and the CPD, public condemnation of hate speech and active counter speech from high-ranking political or other public figures is extremely rare. Hate speech is still far too often considered to be an acceptable or even normal feature of public debates. ECRI emphasises the special importance of counter-speech, also given that criminal law provisions do not cover all aspects of hate speech.
35. ECRI recommends that the authorities take inspiration from ECRI's General Policy Recommendation No. 15 on combating hate speech and strongly and publicly condemn incidents of hate speech, especially against LGBTI persons and Roma. They should also encourage other public figures to condemn such acts and engage in counter-speech.

**B. Hate-motivated violence**

36. ECRI did not receive any official data about cases of hate-motivated violence and was informed by various interlocutors that such incidents are rare. Nevertheless, it received some information from NGOs pointing to sporadic hate-based violence against members of the LGBTI- and the Roma communities. The fact that these are not brought to the attention of the law enforcement authorities may well be due to the lack of trust in the police among members of these communities, as already mentioned in paragraph 28 above. In this regard, ECRI refers to its recommendation in paragraph 29.

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<sup>37</sup> The Assembly of the Republic of Albania (Decision No. 61/2018): Article 6.

<sup>38</sup> See also ECRI 2015: § 44.

37. ECRI notes that the measures taken by the authorities in response to hate speech (see above), as well as the anti-bullying activities in schools (see section I.B), can also be relevant for tackling violence. Therefore, ECRI strongly encourages the authorities to closely monitor the situation concerning hate-motivated violence, in particular against LGBTI-persons and Roma, and adapt existing measures or design additional specific ones, as and when necessary.

### III. INTEGRATION AND INCLUSION

#### A. Roma and Egyptians

38. Albania has various national minorities.<sup>39</sup> In this respect, ECRI refers to the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) and its work (see also paragraph 73 in section IV).<sup>40</sup> The Advisory Committee also covers issues related to the expression of a separate identity, such as mother-tongue education, which are not covered by ECRI. Furthermore, analysing the situation from an integration and inclusion perspective, ECRI does not aim at covering all minority groups in this report, but limits itself to the most socially marginalised and excluded ones, namely Roma and Egyptians.
39. According to the 2011 census, there were 8 301 Roma and 3 668 Egyptians living in Albania.<sup>41</sup> However, NGOs criticised that the census enquired about “national minority”, “ethnicity” and “culture” without explaining these terms and that in reality the number might be much higher. In its recent conclusions, the CERD also noted that the 2011 census did not provide a realistic picture of the ethnic composition of the State party.<sup>42</sup> The Albanian authorities indicated that a new census was planned for 2020 and that the corresponding law would ensure respect for the principle of self-identification.<sup>43</sup> ECRI was informed that currently the authorities as well as civil society representatives operate on the assumption that the combined numbers of the Roma and Egyptian communities in the country come to about 30 000 to 40 000 persons.
40. It should be noted that Roma and Egyptians, while often discussed jointly due to similar problems and obstacles to their integration and inclusion, are in fact different groups.<sup>44</sup> Some representatives of the Egyptian community point out that they do not agree with the political approach of designing one public policy towards both groups. In this regard, ECRI finds it positive that the Albanian authorities emphasise the need for respecting differences between Roma and Egyptian communities, as well as within these communities. Most interlocutors ECRI met, both at national as well as local level, agree that Egyptians are, generally speaking, more integrated into Albanian society than Roma. However, where Egyptians and Roma reside in the same neighbourhoods they often tend to encounter similar obstacles to full inclusion, especially in the fields of education, employment and housing. Therefore, in this report, ECRI discusses the situation of both groups together without wanting to undermine each group’s right to self-identification.
41. ECRI is pleased to note that the authorities adopted, in December 2015, the new National Action Plan for the Integration of Roma and Egyptians 2016-2020. The Action Plan is a follow-up to the earlier National Strategy “For the improvement of

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<sup>39</sup> The Law on protection of national minorities (2017) recognises nine groups: Aromanian, Bosniak, Bulgarian, Egyptian, Greek, Macedonian, Montenegrin, Roma and Serb.

<sup>40</sup> See for example: Advisory Committee on the Framework Convention for the Protection of National Minorities (2019).

<sup>41</sup> Civil Rights Defenders 2018: 5. – See also ECRI 2015: § 52.

<sup>42</sup> CERD 2019: § 7.

<sup>43</sup> The Council of Europe, in 2012, found the average estimate to be considerably higher at 115 000, or 3.59% of the overall population. (See: Council of Europe, Estimates and Roma population in European countries.)

<sup>44</sup> See also ECRI 2015: § 52.

the living conditions of the Roma minority” and the Action Plan of the “Decade of Roma Inclusion” (2005-2015).<sup>45</sup> The new Action Plan (2016-2020) focuses in particular on objectives and activities in education (in conjunction with the promotion of intercultural dialogue), employment and vocational training, health care and social protection, housing and urban integration, as well as civil registration and access to justice. The Action Plan, which involves the engagement of Roma and Egyptian community organisations in its design, implementation and monitoring, includes a set of indicators for measuring progress and takes into account the gender dimension of social inclusion, for example by providing gender-disaggregated data – which ECRI highly appreciates. The relevant ministries have identified budgets for the implementation of the respective measures. In cases where public funding is insufficient, the ministries also identified funding gaps for which the financial assistance of international/foreign donors is requested.

42. The total expenditure for the full implementation of the Action Plan is estimated to be around € 56 million. Of this amount, € 31 million are to be provided by the state budget and the additional € 25 million to be requested from international donors. ECRI shares the concern expressed, among others, by the FCNM Advisory Committee that such a reliance on foreign funding carries the risk of undermining the authorities’ ownership of the Action Plan’s implementation.<sup>46</sup> While ECRI understands that external resources are being sought to complement national resources, it strongly encourages the authorities to ensure that the National Action Plan is fully funded and that unavailability of external funds does not become a reason for non-implementation of planned activities. If necessary, additional funding should be mobilised at domestic level. In this regard, it is of concern to note that some activities which feature in the Action Plan rely entirely on donor funding: for example the provision of free healthcare services to Roma and Egyptians who do not have health insurance, through licensed healthcare contractors as an interim measure until the coming into effect of the universal health-care coverage.<sup>47</sup> This problem is of particular importance as many Roma and Egyptians are either unemployed or work in the informal sector (see paragraph 49).

### *Education*

43. ECRI notes with satisfaction that the authorities place particular emphasis within the National Action Plan on the education sector, in conjunction with promoting intercultural dialogue, the latter being rightly perceived as a means to diminish discrimination of Roma and Egyptian children in schools and therefore reduce one of the disincentives for their attendance. Tackling the problem of low educational achievements, including early drop-out and illiteracy, is an obvious necessity for preventing future unemployment, poverty, precarious housing situations and other factors that will further cement social exclusion. In this context, it is positive to see that the authorities included comprehensive measures, starting with striving to enrol more Roma and Egyptian children in pre-school and compulsory education. Against the 2015 baseline of 4 437 children, the figure in 2018 was already 13 310.<sup>48</sup> This is a very positive development for which the authorities should be commended. The 2018 reporting on the Action Plan also shows that these efforts have not only been focused on some cities but cover a very broad geographical area. It is also noteworthy that the entire planned budget for 2018 on this measure has been fully utilised.<sup>49</sup> While in 2011, only 48% of Roma and Egyptian children

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<sup>45</sup> See also ECRI 2015: § 55.

<sup>46</sup> FCNM 2019: § 13. See also ECRI 2015: § 56.

<sup>47</sup> See: Government of Albania 2019: 37 (Health – Measure M 1.5).

<sup>48</sup> Government of Albania 2019: 7 (Education – M 1.1).

<sup>49</sup> Government of Albania 2019: 7 (Education – M 1.1).

were enrolled in compulsory education (lasting from 7 to 15 years of age) – as compared to 91% among the overall population, this increased to 66% in 2018.<sup>50</sup> However, it is also clear that this number is still far too low and therefore ECRI reminds the authorities that closing, and not just narrowing, the enrolment gap between children of Roma and Egyptian origin and other children should be the overall aim in order to ensure access to education on an equal footing.

44. Furthermore, particular attention needs to be paid to discrepancies between *enrolment* and *attendance* rates. There is no reliable data on the latter. However, a number of interlocutors including at local level informed ECRI that Roma and Egyptian children often have a much lower attendance rate<sup>51</sup> due to a range of factors, such as being requested by their parents to work in order to supplement the meagre household income or being put off by discriminatory practices against them, which in some cases might even amount to segregation (see paragraph 46 below). The Action Plan contains some positive measures to deal with the first attendance obstacle by reducing costs, such as offering free transport, textbooks and school meals. In 2018, 10 360 children benefited from free textbooks (compared with 8 000 in 2015).<sup>52</sup> However, only 33 benefited from free pre-school transportation (against 1 500 in 2015).<sup>53</sup> It is noteworthy that the transportation service is the responsibility of local governments and ECRI was informed in this respect that the necessary capacity is often lacking at this level (see paragraph 65). There are also 80 social scholarships of €30/month, which are however only applicable to Roma and Egyptian children who completed the ninth grade to allow them to continue their education in upper secondary schools.<sup>54</sup> ECRI encourages the authorities to increase the number of these scholarships and make them available also to pupils in lower grades, which would help to increase attendance rates at an earlier stage and subsequently also the rate of compulsory education completion, which is still extremely low for Roma and Egyptian children at only 43%.<sup>55</sup>
45. With regard to the problem of a non-inclusive school environment and discrimination, the Action Plan contains measures, for example on increasing the number of Roma and Egyptian pre-school educators and teachers in compulsory education or introducing auxiliary positions for homework and studying assistance in lower grades. Nevertheless, achievements in this area are still unsatisfactory. In 2015, for example, 93 Roma and Egyptians worked as educators or teachers and this number only marginally increased to 99 in 2017, subsequently slightly dropping to 96 in 2018. Similarly, the target of reaching 1 420 children with homework/studying assistance in 2018 was not met: 1 116 children benefited from this measure, which was in fact even lower than in 2015 when it stood at 1 300.<sup>56</sup> Also, the training of teachers on the management of multicultural classes and co-operation with parents from different cultural and socio-economic backgrounds has severely declined. In 2015, 350 teachers were trained, but this number dwindled to just 30 in 2016 and 2017 each, with no information being available for 2018.<sup>57</sup> Similarly, the review of curricula and textbooks in order to reflect tolerance and intercultural attitudes and to add material on Roma and Egyptian identities has made no progress.<sup>58</sup>

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<sup>50</sup> European Commission 2019: 31.

<sup>51</sup> Civil Rights Defenders 2018: 14.

<sup>52</sup> Government of Albania 2019: 12.

<sup>53</sup> Government of Albania 2019: 13.

<sup>54</sup> FCNM 2019: § 117.

<sup>55</sup> European Commission 2019: 31.

<sup>56</sup> Government of Albania 2019: 8-9.

<sup>57</sup> Government of Albania 2019: 16.

<sup>58</sup> Government of Albania 2019: 17.

46. In their report on the implementation of the National Action Plan for 2018, the authorities state that segregation of Roma and Egyptian children in schools does not exist.<sup>59</sup> However, in recent years segregation has been reported in some schools, namely in Korca, Morava and Elbasan.<sup>60</sup> Roma NGOs also mentioned an alleged case in Skhodra in this regard. ECRI visited Korca and had meetings with the city's administration and representatives of the Roma community. It understands that the situation regarding segregation in the schools is not one created intentionally, but the result of a traditionally very high concentration of Roma and Egyptians in particular neighbourhoods of the city (neighbourhoods 6, 8 and 17). In this area, the three existing schools have a majority of Roma and Egyptian pupils with 530 out of 700 (according to self-declaration, since no ethnicity is recorded in the civil registry). The overall average by school is 70%: Naim Frashëri (95%), Asdreni (51%), Ismail Qemali (67%). ECRI noted a constructive and pragmatic approach by the Mayor and his team to resolve this issue. In response to complaints about its sub-standard conditions, €250 000 have been spent on renovating and refurbishing the Naim Frashëri school, which as a result is now considered to be among the best in the city in terms of material infrastructure. Furthermore, as concerns the ethnic make-up of the pupils, the municipal administration is considering merging two of the three schools so that none has a higher ratio than 75% of Roma or Egyptian children. Apparently a similar attempt to mix pupils is considered in Skhodra, for example by providing transport to different school districts.
47. ECRI recommends that the authorities closely monitor the situation regarding de facto structural segregation of Roma and Egyptian pupils in schools and assist, if necessary, local authorities in finding workable solutions to address this problem.
48. With regard to the availability of comprehensive and reliable data, ECRI notes that some progress has been made, for example a database in the Ministry of Education and Sports on Roma and Egyptian children enrolled in school.<sup>61</sup> However, the figures provided in the government reporting on the National Action Plan often do not indicate the overall enrolment *rate* of Roma and Egyptian children, as the total number of children that should be enrolled is not provided.<sup>62</sup> This shows the crucial importance of data collection in order to be able to assess to what extent the measures taken contribute to effective equality. In this context, it is unfortunate that the planned general database of children of pre-school and compulsory school age has not been created yet, as was envisaged in the National Action Plan.<sup>63</sup>

### *Employment*

49. The situation of Roma and Egyptians in the field of employment and work continues to be characterised by high levels of unemployment and/or activities in the informal sector which rarely provide an opportunity to earn a decent income. Roma are still often self-employed, primarily in low-profile occupations such as scrap metal collection or small second-hand trade. Egyptians are more frequently involved in the service sector, domestic care and construction work.<sup>64</sup> The National Action Plan (2016-2020) contains an ambitious goal for providing equal opportunities for formal employment to Roma and Egyptians: 80% more Roma and Egyptian men and women participating in vocational training and active employment programmes should be integrated into the labour market by 2020.

<sup>59</sup> Government of Albania 2019: 18.

<sup>60</sup> Civil Rights Defenders 2018: 14.

<sup>61</sup> FCNM 2019: § 116.

<sup>62</sup> See for example Government of Albania 2019: 6 (Objective 1, Milestone 2017) and 19 (M 3.1).

<sup>63</sup> Government of Albania 2019: 19 (M 3.2).

<sup>64</sup> Civil Rights Defenders 2018: 11.

50. For 2018, however, it is estimated that over 56% of Roma of working-age were unemployed, with informal work accounting for some 62% of total Roma economic activity.<sup>65</sup> The Action Plan contains a measure to increase the participation of Roma and Egyptians in public vocational training for professions highly in demand in the labour market. Although the spent budget was double the planned amount (€60 000 instead of €30 000), only 148 persons completed such courses instead of the 265 that were envisaged. In previous years, those numbers were even lower: 90 persons in 2016 and 67 persons in 2017.<sup>66</sup> Given the overall scale of the problem, it appears self-evident that these numbers are far from sufficient to bring about the massive change that is required to lift a large number of Roma and Egyptians out of unemployment and poverty. Also, while vocational training and active employment programmes are provided to registered unemployed jobseekers, most Roma are not registered<sup>67</sup> and therefore remain outside of the reach of such programmes. Furthermore, minimum educational requirements to participate in such training activities are often too high given the low educational outcomes of many Roma. The authorities informed ECRI that the usual requirement of having completed nine grades of compulsory education (6-16 years of age) is already often waived for Roma and Egyptians and now specific programmes for those who have only completed primary education are being introduced as well. However, the authorities also informed ECRI that according to their estimates more than 50% of Roma and Egyptians have not completed primary education.
51. ECRI recommends that the authorities further expand vocational training activities and active employment programmes for Roma and Egyptians, including to those who only completed primary education or have no formal education at all, as well as those who attended school but remained illiterate. Furthermore, Roma and Egyptians not registered as unemployed should also be actively encouraged to participate in these activities through close cooperation with local communities.

#### *Access to registration and identity documents*

52. A positive trend can be observed in the area of civil registration of Roma and Egyptians who until recently did not possess relevant identity documents. Over recent years, UNHCR supported the Albanian civil registration administration to include so far unregistered persons. Nearly 1 500 Roma and Egyptians were assisted in this way. Receiving identity documents is an important step for the individuals concerned to be able to access various social services. A particular problem in this regard was the situation of children born abroad, mainly in Greece. Due to the fact that many Albanian Roma and Egyptians resided in Greece without the necessary permit, they could not obtain birth certificates for their children but only a hospital note. Following a recent change in the Albanian Law on Civil Status, such hospital notes are now accepted in lieu of birth certificates for Albanian children born in Greece. Furthermore, the authorities informed ECRI that the Ministry of Education is currently working on plans to use the end-of-year school certificates to register children in the civil registry. ECRI encourages the authorities to implement these plans.

#### *Housing*

53. The housing situation is still extremely difficult for many Roma and Egyptians in Albania. Besides the often very poor conditions, the widespread lack of ownership titles or secure tenancy arrangements renders many members of this community vulnerable to evictions. Many erected their dwellings on unused public land but

<sup>65</sup> European Commission 2019: 31.

<sup>66</sup> Government of Albania 2019: 27 (M1.3).

<sup>67</sup> FCNM 2019: §§ 155-156.

also on property whose ownership remained unclear after the fall of communism in the early 1990s. The authorities usually tolerated the use of public land by Roma and Egyptians for as long as the plots in question were not designated for any other purpose, such as infrastructure projects or sale to commercial enterprises. With increasing economic development in Albania, Roma and Egyptians living in informal dwellings have come under pressure to abandon their places of residence, in some cases being evicted multiple times from different places without easy access to alternative and permanent housing solutions. Given that overall demand for social housing in the country surpasses the supply, this is usually not an immediate solution, except for a small number of persons affected. However, many Roma and Egyptians prefer, or even insist, on staying together in their established groups, which not only constitute a cultural identity for them, but also important support networks to better cope with poverty and the effects of social marginalisation.

54. In its previous report, ECRI recommended that (i) the authorities step up their efforts to regularise illegal housing for Roma and Egyptians; (ii) persons evicted from their homes enjoy all the guarantees provided by the relevant international standards (advanced notification, appropriate legal protection, availability of alternative housing); and (iii) priority access for social housing by reformed in order to better include persons affected by demolition of dwellings/evictions.<sup>68</sup>
55. ECRI notes that in early 2019, the envisaged working group within the former Ministry of Urban Development and Territory in charge of assisting Roma and Egyptians with the administrative procedures required for the legalisation of buildings had still not been set up. Due to the very bureaucratic nature of the legalisation process on the one hand, and the difficult socio-economic and educational situation of many Roma and Egyptians (as well as a still ineffective legal aid system) on the other hand, establishing such a working group could be a very useful step towards resolving outstanding legalisation issues. ECRI therefore strongly encourages the authorities to finally set up such a working group.
56. On the positive side, a new Law on Social Housing was approved by the Albanian Parliament in May 2018. The Law addresses some shortcomings in the field of housing and forced evictions, for example by spelling out the conditions under which evictions can take place as well as requiring a quota of 5% of social housing to be reserved for the most vulnerable members of the Roma and Egyptian communities.<sup>69</sup> However, the relevant secondary legislation still needs to be enacted in full (see also paragraphs 70-72 below). Furthermore, many observers point out that in order for the Law on Social Housing to be effective, the necessary budgetary resources for social housing programmes need to be substantially increased, especially to support municipalities. As concerns improvements to existing housing, in 2018 there were 424 Roma families (508 in 2017) that benefited from such projects.<sup>70</sup> Nevertheless, the overall shortcomings in the area of housing remain insufficiently addressed and the cases mentioned below merely illustrate some of the problems.
57. In recent years, evictions of Roma and Egyptians continued. A group of approximately 45 Roma families living in the Bregu i Lumit neighbourhood of Tirana, for example, was evicted because the area in which they resided had been designated for an infrastructural project. However, the municipal authorities did not give the required advance notice of 30 days prior to the planned eviction, as stipulated in Article 6 of the 2018 Law on Social Housing. On the day itself, the police arrived in the early morning, several hours earlier than announced, and used what many observers considered to be disproportionate force, including tear gas,

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<sup>68</sup> ECRI 2015: §§ 74, 75 and 82 respectively.

<sup>69</sup> European Commission 2019: 31.

<sup>70</sup> European Commission 2019: 31.

which is being investigated by the Ombudsman. Furthermore, no alternative housing had been offered to the residents. It is particularly worrying that the municipal authorities ignored the notice period stipulated in Article 6 of the Law on Social Housing and argued that because the bylaws (secondary legislation) for the overall Law had not yet been enacted, the entire Law was not yet applicable. However, representatives of the national authorities indicated to ECRI that in their view Article 6 was applicable. ECRI joins various other human rights organisations in pointing out that Article 6 is already sufficiently precise and does not require any bylaws in order to be applicable. Nevertheless, even if the relevant provisions are already applicable, the bylaws should be enacted swiftly in order to avoid any such controversies and negative actions in the future. ECRI refers in this context to its priority recommendation contained in paragraph 72 below.

58. ECRI reiterates its recommendation that the authorities ensure that all Roma and Egyptians, as well as any other persons, who may be evicted from their homes enjoy all the guarantees that international texts provide for in this connection. In particular, 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. Furthermore, ECRI recommends that the authorities take action to prevent any use of unlawful, unnecessary or disproportionate force during evictions.
59. ECRI learned that two distinct housing problems exist for the Roma and Egyptian communities in the city of Pogradec. In the early 1990s, after the fall of the communist regime, Roma and Egyptian families settled in the Kabash area in a four-storey building previously used by the Ministry of Defence as a military compound. Around 15 families, approximately 50 persons, are still residing there today due to a lack of alternatives. The conditions are said to be dire, with no access to water or electricity supply and no proper road leading to the compound. The municipality has made plans to invest in the building and upgrade the infrastructure to ensure decent living conditions, but can only do so if ownership is transferred to it. However, the Ministry of Defence stated that it is not the owner, while the Prefecture (which operates under the Office of the Prime Minister) confirmed that it was state property – but was unable to point out exactly which state entity was the actual owner. For several years now, this situation has stalled all attempts to improve the conditions for the local Roma and Egyptian residents. In another case in the city, an apartment-building formerly used and still owned by a state-owned mining company, currently in liquidation, under the Ministry of Energy, houses some 40 Roma and Egyptian families (approximately 150 persons in total). Again, the building is in severe need of infrastructural upgrading to ensure acceptable living conditions. This building was scheduled to be auctioned off to the highest bidder, which would have most likely resulted in the eviction of the current residents. Following an intervention by the CPD, the auction was postponed in order to search for an alternative solution. Similarly to the Kabash case, the municipality – which on the whole has a good relationship with the local Roma and Egyptian communities – is willing to invest funds for the renovation and upgrading of the building, but cannot do so until a transfer of ownership occurs. It is particularly disturbing that in both cases the properties in question are publicly owned but that the obligation to provide decent living conditions to the Roma and Egyptian residents does not seem to be taken seriously enough to result in a pragmatic solution that cuts through the existing “red tape”. Different state entities seem to be unable to cooperate effectively for the benefit of the citizens concerned.
60. ECRI recommends, as a matter of priority, that the authorities find a speedy solution to the long-running housing crises affecting the Roma and Egyptian communities in the Kabash and Guri i Kuq areas of the Pogradec municipality.
61. From the above, as well as from various other cases that have come to the attention of ECRI, it is clear that the still ineffective legal aid system in the country

has a particular negative effect on members of the Roma and Egyptian community, in particular when it comes to such essential and urgent matters as evictions. In this regard, ECRI refers to its second priority recommendation contained in paragraph 72 below.

### *Health*

62. Roma and Egyptians continue to face obstacles in accessing healthcare on an equal basis. While official data on their health situation is still patchy, according to various community groups, progress since ECRI's previous report in 2015 appears to be limited. Many members of these communities do not have health insurance cards (see also paragraph 42 above) due to the fact that they are neither regularly employed nor registered as unemployed. Poor housing conditions, low levels of education and health-related knowledge, physical distance from healthcare centres and experiences of discrimination aggravate existing problems. Outcome indicators, for example vaccination rates among children, are often lower for members of the Roma and Egyptian communities compared to the overall population.<sup>71</sup>
63. ECRI notes positively that several useful measures in the area of healthcare are contained in the National Action Plan (2016-2020). These include (i) the provision of baby and maternal care packages for Roma and Egyptian mothers who give birth at a hospital; (ii) the construction of new health centres close to Roma and Egyptian settlements which are lacking access to health facilities; (iii) the employment of qualified Roma and Egyptians as healthcare personnel; and (iv) the training of healthcare professionals on equitable service provision to vulnerable people, including Roma and Egyptians. The first measure was implemented very successfully, with a steep increase in the number of mothers being reached from 1 961 in 2016 to 2 059 in 2017 and 7 080 in 2018. However, the other measures were far less successful. Concerning the second, in the years 2016-18 only one clinic/centre has been constructed in 2017 and no further progress has been made in 2018 when the planned budget of € 25 000 remained completely unused. On the third measure, two Roma and Egyptian interns were recruited in 2017 but the envisaged job upon completion of the internship programme in 2018 did not materialise. Finally, of the 520 healthcare professionals who were supposed to be trained in 2018, only 56 actually participated in the relevant training.<sup>72</sup>
64. As already mentioned above, another positive example is the provision of free-of-charge healthcare cards for Roma and Egyptians who do not have health insurance. The implementation by far surpassed the envisaged additional 4 480 persons for 2018 by managing to include 25 593 new individuals, thus bringing the total number to 55 947. However, concerns about sustainability of this measure arise from the fact that it is entirely reliant on donor funding (see paragraph 42 above).

### *Capacity of local authorities*

65. With regard to the responsibility for the implementation of the National Action Plan (2016-2020) for the integration of Roma and Egyptians, it cannot be overlooked that an increasing number of tasks are allocated to local or regional authorities. This is especially the case in the areas of service provisions, such as facilitating pre-school and school education, vocational training for employment and better access to healthcare services. The government reporting on the implementation of the Action Plan indicates that several of the measures that were to be implemented by local authorities have fallen short of the expected targets. This pattern corresponds to the information ECRI has received from the authorities and different

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<sup>71</sup> European Roma Rights Centre 2018: 39.

<sup>72</sup> Government of Albania 2019: 36-37 (M1.2-1.4).

civil society organisation, including Roma NGOs, during its visits. While ECRI agrees that decentralising responsibilities for integration activities to the local level is generally desirable, notably because the local authorities should be in a position to react with a greater degree of flexibility to a given situation instead of imposing a “one-size fits all” approach, this must go hand-in-hand with building the necessary capacities at local level for increased service delivery to vulnerable groups.

66. ECRI recommends that the authorities ensure that adequate capacity-building is provided to the local and regional authorities, corresponding to their increased responsibilities for implementing service-delivery measures under the National Action Plan (2016-2020) for the integration of Roma and Egyptians.

#### **B. Migrants (including refugees and beneficiaries of subsidiary protection)**

67. The overall number of migrants seeking long-term residence in Albania is very low (see also section I.C above) and this is also reflected in the number of recognised refugees and beneficiaries of subsidiary protection. In 2018, three persons were granted refugee status and 13 subsidiary protection. Both categories of persons benefit from the same social rights, such as access to healthcare and education, as Albanian citizens. They can also apply for family reunification once they have secured a residence permit, an income and housing. Persons benefiting from a permit for a "humanitarian stay" (maximum three years), however, cannot apply for family reunification.
68. In 2018, the authorities prepared a new migration strategy,<sup>73</sup> which also addresses the need to prepare for an increased mixed migration flow to Albania in the coming years, especially as a result of a larger influx of persons from neighbouring Greece.<sup>74</sup> In response, the strategy emphasises the need for a rights-based integration of migrants, including refugees and beneficiaries of subsidiary protection, through employment and education.<sup>75</sup> The development of specific integration courses for foreigners is also suggested in the strategy.<sup>76</sup> This could help migrants to overcome the language barrier. In this context, ECRI was informed that some Albanian language classes are already provided, especially to immigrant children to assist them with their integration into the education system, and less frequently to adults. It is unclear if these classes are currently sufficient. As the strategy was only adopted recently, no results are known yet. ECRI strongly encourages the authorities to monitor the implementation of the strategy and adjust it if and when necessary.
69. According to the Act on Citizenship (1999), foreigners can request naturalisation if they have legally and continuously resided in Albania for a minimum of five years and have at least a basic command of the Albanian language.

#### **IV. COUNTRY-SPECIFIC ISSUES**

##### **Missing bylaws for legislation**

70. In its previous report on Albania, ECRI recommended as a matter of priority that the authorities ensure effective access to justice for victims of discrimination through the development of a functioning and properly funded legal aid system.<sup>77</sup> In its interim follow-up conclusions, ECRI found that this recommendation had only

<sup>73</sup> National Strategy on Migration Governance and Action Plan 2019-2022 (NSMG), adopted by the Council of Ministers (Decision No. 400 of 19 June 2019).

<sup>74</sup> NSMG: 17.

<sup>75</sup> NSMG: 39.

<sup>76</sup> NSMG: 32.

<sup>77</sup> ECRI 2015: § 24.

been partially implemented.<sup>78</sup> While the legislation on the provision of legal aid was adopted in 2017 – with its provisions having been praised by ECRI in particular for including victims of discrimination as a group entitled to legal aid regardless of their income and assets<sup>79</sup> – the relevant bylaws (secondary legislation), which were supposed to have been issued within six months are still incomplete. As a result, the setting-up of the envisaged legal aid system has not made sufficient progress so far. Civil society organisations, through donor funding, continue to strive to fill the existing gap. However, this is neither adequate nor sustainable and defeats the very purpose for which the law was established, namely to provide reliable and nation-wide legal aid coverage. The absence of a functioning legal aid system disproportionately often affects members of the Roma and Egyptian communities, especially in the context of housing evictions (see also section III.A above), due to their social marginalisation and extremely low incomes.

71. In this context, ECRI notes however that the absence of bylaws, which are intended to provide the necessary details in order to operationalise legislation, are also missing with regard to other laws relevant to ECRI's work. In fact, a worrying pattern can be observed in this respect. The adoption of the Law on Social Housing, which is also particularly relevant for the Roma and Egyptian communities, has not yet been followed by the necessary bylaws. Their absence has, for example, been used by the municipality of Tirana in the case of an eviction of Roma described in paragraph 57 above. In this particular case, the intention of the law was sufficiently clear so that the absence of the relevant bylaws could not justify the actions taken by the municipality. It shows nevertheless the dangerous uncertainty and ambiguity which results from the fact that the secondary legislation has not yet been drafted and adopted, in spite of the legal obligation to do so.
72. ECRI recommends, as a matter of priority, that the Albanian authorities finalise the necessary bylaws (secondary legislation) for the Law on Legal Aid and the Law on Social Housing.
73. Similarly, the 2017 Law on the Protection of National Minorities is still without completed secondary legislation, which is necessary to ensure its effective implementation. In this respect, ECRI urges the authorities to finalise the bylaws, as has already been recommended by the Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities as well as the United Nations Committee on the Elimination of Racial Discrimination.<sup>80</sup>

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<sup>78</sup> ECRI 2018: 5.

<sup>79</sup> ECRI 2018: 5.

<sup>80</sup> FCNM 2019: 2 and 7 (§ 16); and UN CERD 2019: §§ 11-12.

## INTERIM FOLLOW-UP RECOMMENDATIONS

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

- (§ 60) ECRI recommends, as a matter of priority, that the authorities find a speedy solution to the long-running housing crises affecting the Roma and Egyptian communities in the Kabash and Guri i Kuq areas of the Pogradec municipality.
- (§ 72) ECRI recommends, as a matter of priority, that the Albanian authorities finalise the necessary bylaws (secondary legislation) for the Law on Legal Aid and the Law on Social Housing.

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

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

1. (§ 6) ECRI recommends that the authorities bring the legislation concerning the People's Advocate and the Commissioner for Protection from Discrimination fully in line with its revised General Policy Recommendation No. 2 on Equality Bodies, in particular by (i) implementing the recommendation contained in § 27(ii) of ECRI's previous report on Albania; (ii) ensuring that the Office of the People's Advocate receives the necessary financial and staffing resources to fully and sustainably cover all aspects of its mandate; and (iii) strengthening the follow-up given to the recommendations of the People's Advocate and the Commissioner for Protection from Discrimination with a view to enhancing their effectiveness.
2. (§ 11) ECRI recommends that the authorities build on the achievements already made with regard to preventing and combating racism and intolerance in schools. They should, in particular, move on from general anti-bullying activities to developing and implementing group-specific modules against bullying of members of vulnerable communities, such as Roma and/or LGBTI children and young people; as well as expanding these activities across the country, including into rural areas. In this context, the authorities should take inspiration from ECRI's General Policy Recommendation No. 10 on inclusive education and link activities to existing and future national action plans for Roma and LGBTI persons.
3. (§ 18) ECRI recommends that the authorities ensure that the National Action Plan on LGBTI persons 2016-2020 is fully funded and implemented, in partnership with relevant community organisations; and that the shortcomings identified within the framework of the National Action Plan's implementation and monitoring are adequately addressed, in particular at municipal level.
4. (§ 20) ECRI recommends that the Albanian authorities provide a legal framework that affords same-sex couples, without discrimination of any kind, the possibility to have their relationship recognised and protected in order to address the practical problems related to the social reality in which they live.
5. (§ 22) ECRI reiterates its recommendation that the authorities take the necessary steps to regulate gender reassignment procedures and the administrative recognition of a change of name and gender (including changes to relevant identity documents in a speedy, transparent and accessible way) in line with existing Council of Europe guidance and case law of the European Court of Human Rights.
6. (§ 26) ECRI recommends that the authorities establish a comprehensive monitoring system for hate speech incidents. In this respect, they should build on the experiences and expertise of, and work closely with, the People's Advocate, the Commissioner for Protection from Discrimination, the prosecution service, the police and relevant civil society organisations,

especially those from communities that are particularly affected by hate speech such as Roma, Egyptians and LGBTI persons.

7. (§ 29) ECRI recommends that the authorities continue to organise consultation meetings between police officers, representatives of vulnerable groups and NGOs in order to establish regular dialogue, mutual trust and co-operation.
8. (§ 35) ECRI recommends that the authorities take inspiration from ECRI's General Policy Recommendation No. 15 on combating hate speech and strongly and publicly condemn incidents of hate speech, especially against LGBTI persons and Roma. They should also encourage other public figures to condemn such acts and engage in counter-speech.
9. (§ 47) ECRI recommends that the authorities closely monitor the situation regarding de facto structural segregation of Roma and Egyptian pupils in schools and assist, if necessary, local authorities in finding workable solutions to address this problem.
10. (§ 51) ECRI recommends that the authorities further expand vocational training activities and active employment programmes for Roma and Egyptians, including to those who only completed primary education or have no formal education at all, as well as those who attended school but remained illiterate. Furthermore, Roma and Egyptians not registered as unemployed should also be actively encouraged to participate in these activities through close cooperation with local communities.
11. (§ 58) ECRI reiterates its recommendation that the authorities ensure that all Roma and Egyptians, as well as any other persons, who may be evicted from their homes enjoy all the guarantees that international texts provide for in this connection. In particular, 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. Furthermore, ECRI recommends that the authorities take action to prevent any use of unlawful, unnecessary or disproportionate force during evictions.
12. (§ 60) ECRI recommends, as a matter of priority, that the authorities find a speedy solution to the long-running housing crises affecting the Roma and Egyptian communities in the Kabash and Guri i Kuq areas of the Pogradec municipality.
13. (§ 66) ECRI recommends that the authorities ensure that adequate capacity-building is provided to the local and regional authorities, corresponding to their increased responsibilities for implementing service-delivery measures under the National Action Plan (2016-2020) for the integration of Roma and Egyptians.
14. (§ 72) ECRI recommends, as a matter of priority, that the Albanian authorities finalise the necessary bylaws (secondary legislation) for the Law on Legal Aid and the Law on Social Housing.

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