Collection of Trans specific recommendations from the European Commission Against Racism and Intolerance (ECRI)

The European Commission Against Racism and Intolerance (ECRI) is the only continuous watchdog in the Council of Europe. It is a forum of independent human-rights experts who monitor racism, xenophobia and intolerance in all member states. Recently, ECRI has been including homo- and transphobic violence in its country reports, documenting cases, and its recommendations call upon state authorities to introduce specific legislation and take pronounced measures against this violence.

This document highlights the observations and recommendations that are relevant explicitly for trans people in the online reports. This information will be listed by countries.

Countries where the reports do not (yet) include trans related content: Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Finland, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Republic of Moldova, Monaco, Montenegro, Netherlands, Portugal, Romania, Russia, Serbia, Slovenia, Spain, Sweden, Turkey, Ukraine, United Kingdom

http://www.coe.int/t/dghl/monitoring/ecri/activities/countrybycountry_en.asp

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Trans specific recommendations extracted from the ECRIs’ reports
Albania
Report published on 9 June 2015


- **Context information from ECRI**

  p.9: There are some gaps in the criminal law protection against racism and homo/transphobia.

  p.10: 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.

- **Transphobia and data on hate crimes in the country**

  49. There is no data from the authorities on hate crime towards LGBT persons. 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. 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. 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. 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. At the same time, the CPD reports that some LGBT persons have faced harassment by the police when asking for protection or help. 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.

- **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”.

  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.

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.

- **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. 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). 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. 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. In addition, the Parliament organised for the first time in 2014 a hearing on LGBT issues.

- **List of recommendations from ECRI**

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.

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).

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.
Austria

Report published in June 2015


- **Context information from ECRI**

p.9

In 2010, Austria created a special regime of registered partnership for same sex couples. Since then, the courts have annulled several discriminatory provisions and lowered the preconditions for legal gender recognition of transsexual persons. The Vienna Antidiscrimination Office for Same-sex and Transgender Life-styles is tasked with eliminating discrimination and establishing a social climate where all persons can live as equals. The living conditions of LGB persons are improving.

Certain media publish clearly racist content and do not respect the Press Council’s decisions and members of vulnerable groups are given too little space to express their views. Hate speech on online forums is not systematically monitored; such content was also posted on the web pages of the Federal President and several ministers. There are no official statistics on homophobic and transphobic incidents; numerous racist, homo- and transphobic acts go unreported.

- **Transphobia and data on hate crimes in the country**

There is little official data and research on LGBT persons who experience comparatively high levels of discrimination. Young LGBT persons are subject to mobbing and lack assistance during their coming-out. On the federal level, there is no comprehensive approach to LGBT issues. The authorities have not enacted specific legislation on transgender issues and they have not abolished all unjustified differences in the regulation of married and registered same-sex couples.

29. ECRI notes that there are no official statistics on homo and transphobic offences. Moreover, the authorities have informed ECRI that they cannot provide an estimate of the number of unreported cases; they are in the process of reviewing their statistics as recommended in ECRI’s 4th report.

As on hate speech, there is no official data on homophobic and transphobic violence. 23% of the respondents at the FRA’s LGBT survey responded that they had been physically or sexually attacked or threatened with violence during the last five years. 54% of those who had been subject to such an attack in the past 12 months thought that this had happened partly or entirely because they were perceived to be LGBT. Only 19% of the victims had reported an incident to the police.

With regard to the attack on the Roma encampment in 2013, it again underlines that the authorities should intensify their action to prevent the dissemination of racist, homo- and transphobic content on the Internet and refers back to the recommendations previously made in this report.

78. In Austria, little official data and research are available on LGBT persons. Their number can be estimated at several hundreds of thousands.116 The FRA LGBT survey provides precious insights into their living conditions and the Vienna Antidiscrimination Office for Same-sex and Transgender Life-styles (VAASTL) recently commissioned a survey of the living conditions of LGBT persons in the

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**Trans specific recommendations extracted from the ECRIs’ reports**
ECRI considers that sound quantitative and qualitative research is needed to understand the living conditions of and design and evaluate the legal framework and policies for LGBT persons. ECRI recommends that the authorities undertake research and collect data on the living conditions of LGBT persons as well as on intolerance and discrimination against them.

86. The FRA LGBT-survey of 2012 showed comparatively high levels of discrimination experienced by LGBT persons in Austria. 78% answered that casual jokes about LGBT are fairly or very widespread in everyday life. 65% are of the opinion that positive measures to promote respect for the human rights of lesbian, gay and bisexual (LGB) persons are fairly or very rare. 60% strongly agree and 27% agree that training of public servants (e.g. police, teachers) on the rights of LGBT would improve their situation. Among transgender persons this figure was 77%. LGB representatives reported on a positive note that their situation is improving and that the victory of Conchita Wurst at the 2014 Eurovision song contest has contributed to a better public awareness about LGB issues. The situation of transgender persons remains much worse; the general population and civil servants have little knowledge about their situation. There is also very little knowledge about intersex persons.

**Legislative issues**

83. In Austria there are administrative procedures for changing a transgender person’s first name, for gender recognition and for changing the gender marker in official documents. However, there exists no specific legislation on these issues, as the Constitutional Court, in 2006, annulled secondary legislation on the ground that it lacked an adequate legal basis. According to civil society representatives the authorities still use a decree from 1983. On 27 February 2009, the Higher Administrative Court (HAC) decided that to have access to legal gender recognition, it is sufficient to have undergone gender-corrective measures which have led to a significant similarity in the external appearance of the opposite sex; the Court also recalled that gender recognition was not restricted to unmarried persons. It can be deduced from this decision that no sterilisation is needed. In 2014, the Federal Ministry for Health issued recommendations according to which a medical opinion is needed prior to any change in the personal status. The HAC has also held that the change of gender of a married person needs to be taken into account when issuing a new marriage certificate. As there is persistent legal uncertainty on crucial aspects of transgender persons’ private life, ECRI considers that the authorities should enact legislation on the matters discussed in this paragraph.

**Education & Awareness raising**

89. The coming-out process is a particularly sensitive phase for young LGBT persons. Many of them are victims of mobbing and homosexuals are at higher risk of suicide than heterosexuals. During the FRA survey, 73% responded that they had never talked openly about their being LGBT at school. About 90% agreed or strongly agreed that measures implemented at school to respect LGB persons would allow them to feel more comfortable as a LGB person (82% of transgender persons responded likewise). Research indicates that LGBT issues are not addressed in a systematic or standard way in schools even though sexual education is part of the curriculum. In Vienna for example, there are no requirements concerning the number of hours for sexual education, the issues to address and
materials and methods to use. Teachers are not sufficiently prepared to address LGBT issues and do not treat them adequately or do not treat them at all. The Federal Ministry for Education’s decree on sexual education dates back to 1990 and does not refer to homosexuality, same-sex partnership, diverse family structures, sexual orientation or gender identity. Nevertheless, specific information and training for schools is provided by LGBT organisations.

7. ECRI welcomes the fact that the authorities are in the process of updating the decree on sexual education; at the same time ECRI considers that additional.

91. ECRI recommends that the authorities of the Federation and the Länder provide LGBT adolescents with the necessary information, assistance and protection to enable them to live in accordance with their sexual orientation and gender identity. It also recommends that they implement, in particular in schools, measures to promote mutual understanding and respect for all persons irrespective of sexual orientation or gender identity.

Concerning the situation of transgender persons it has to be stated that the recommendations issued by the Federal Ministry for Health in 2014 regarding the treatment process on gender dysphoria and transsexualism were developed by an interdisciplinary and multi-professional expert group, in which also legal specialists were represented. Regarding ECRI’s recommendation to enact legislation on the matters discussed, the competent Federal Ministry of Health will take this suggestions into consideration when dealing with the next legal reform process.

- **List of recommendations for Austria from ECRI**

The authorities should set up an IT-based system for recording and monitoring racist, homo and transphobic incidents. They should apply the law in a more vigorous way to curtail the activities of organisations that promote racist ideology and counter and condemn hate speech systematically, in particular during election campaigns. The authorities should encourage the media to strengthen their self-regulation and give adequate space to members of vulnerable groups to express themselves.

The authorities should task, at federal level, an administrative service to develop and coordinate an action plan for LGBT persons. They should undertake research and collect data on their living conditions, enact legislation on transgender issues and reexamine whether each of the remaining differences in the regulation of married and same-sex couples is justified. Finally, they should provide LGBT adolescents with the necessary assistance and protection.

In particular, the police and prosecution services should adopt a broad definition of racist, homo- and transphobic incidents and establish a tool that automatically searches for keywords in their files, which can help to detect cases which might have been motivated by racism, homo- or transphobia.

18. (§ 84) ECRI recommends that the authorities re-examine whether there is an objective and reasonable justification for each of the remaining differences in the regulation of married and same-
sex couples and that they abolish all unjustified differences. It also recommends that legislation is enacted on the issues of access to gender reassignment treatment, changing a transgender person’s first name, gender recognition and changing the gender marker in documents.

32. ECRI recommends that the authorities set up an IT-based system for recording and monitoring racist, homo- and transphobic incidents, and the extent to which these incidents are brought before the prosecutors and are eventually qualified as racist or homo/transphobic offences (§ 12 of General Policy Recommendation No. 11 on combating racism and racial discrimination in policing).

46. ECRI, in its 4th report, recommended that the authorities systematically condemn all forms of racism in political discourse. In this respect, human rights monitoring in the city of Graz - covering the use of hate speech during election campaigns - can be cited as a good example. Unfortunately, on the federal level, racist and homo- and transphobic speech, in particular hate speech from politicians, is not systematically countered.

79. ECRI recommends that the authorities undertake research and collect data on the living conditions of LGBT persons as well as on intolerance and discrimination against them.

84. ECRI recommends that the authorities re-examine whether there is an objective and reasonable justification for each of the remaining differences in the regulation of married and same-sex couples and that they abolish all unjustified differences. It also recommends that legislation is enacted on the issues of access to gender reassignment treatment, changing a transgender person’s first name, gender recognition and changing the gender marker in documents.

ECRI considers that the authorities should have a more systematic approach to LGBT issues. They should adopt a strategy or action plan to ensure the LGBT persons’ right to equality and to address the specific needs of each subgroup and also intersex persons. Also, an administrative unit should be tasked, on the federal level, with initiating and coordinating research on and policies for LGBT persons. At the level of the Länder, Vienna can serve as a good example. The VAASTL is tasked with eliminating discrimination against LGBT persons and establishing a social climate where all persons can live as equals.

19. (§ 88) ECRI recommends that the authorities task at federal level an administrative service to develop and coordinate an action plan or a comprehensive programme for LGBT persons aiming to ensure that LGBT persons can live on an equal footing with others in Austria.
Belgium

Report published in February 2014


- Context information from ECRI

p 9:

The Belgian authorities have launched an action plan to combat homophobic and transphobic violence and in particular to improve its reporting, investigation and prosecution.

Legislation guarantees respect of most aspects of family and private life of lesbian, gays, bisexual and transgender persons (LGBT) on an equal footing with the rest of the population.

The legislative process to turn the existing Centre for Equal Opportunities and Opposition to Racism into an inter-federal institution is not yet completed. Data on hate speech and racist and homo/transphobic violence is too fragmentary or too general to give a clear picture of the situation in the country as regards these phenomena.

- Transphobia and data on hate crimes in the country

The authorities should ensure that the new regulations for collecting data on racist and homo/transphobic incidents are applied in practice so that specific and reliable information on hate speech offences and the reaction of the criminal justice system is made available.

46. The importance of reliable data as a condition sine qua non for countering the hate speech phenomenon should be underlined. ECRI hopes that the new circular will lead to an improvement in the recording of racist and homo/transphobic crime in general and, in particular, hate speech offences.

47. ECRI recommends that the authorities ensure that the new regulations for collecting data on racist and homo/transphobic incidents are applied in practice so that specific and reliable data on hate speech offences and the follow-up given to them by the criminal justice system is made available.

75. In terms of monitoring and reporting of hate speech, the Centre is responsible for LGB persons on grounds of sexual orientation. Since direct discrimination based on sex change is treated for the purpose of the Gender Equality Federal Act as a direct discrimination on grounds of sex, the Institute is competent for hate speech against transgender persons.

76. As it is the case for hate speech, ECRI reiterates the need for an improvement of the data collection mechanism on criminal offences related to racist and homo/transphobic violence. This mechanism should produce more detailed and easy to read statistics. The already mentioned new circular (COL 13/2013) on the registration of homophobic crimes is a positive step in this direction.

80. Despite the fact that the Prosecution Service reports only five homophobic criminal offences in 2012 and no cases of murder, in the same year media reported several violent crimes perpetrated against individuals on the basis of their real or perceived sexual orientation, including two murders. In addition, these official statistics regrettably do not include specific data on transphobic crime.
82. The Prosecution Service has acknowledged that the number of “homophobic” cases registered by the prosecution (only 42 in five years) cannot give an accurate image of the phenomenon. They have explained that LGBT people file complaints with the police without specifying that they concern homo/transphobic aggression or that the victims decide not to file a complaint with the police at all. In addition, the police do not always mention in the initial records the “homophobic” nature of the offence (although this figures as compulsory in Directive point 1 of Chapter III of COL No. 14/2006) or that the administrative staff omit to enter the specific code in the IT system.

- Legislative issues

142. As already stated the Anti-discrimination Federal Act of 10 May 2007 prohibits discrimination on the basis, among other grounds, of sexual orientation. Moreover there are present at least 11 legislative texts at federated level with relevance to discrimination on the basis of sexual orientation. Contrary to sexual orientation, gender identity is not a prohibited ground per se. It has been already indicated that discrimination of transgender people is mostly covered under the ground of “sex” which is the object of a separate piece of legislation, the Gender Equality Federal Act. Article 4, paragraph 2 provides that for the purposes of the Act direct discrimination based on change of sex is treated as direct discrimination on grounds of sex.

143. ECRI notes therefore that discrimination on grounds of sexual orientation (for LGB persons) and discrimination on grounds of gender (for transgender persons) are covered by two separate pieces of legislation at the risk of entailing a number of discrepancies in their application. A number of NGOs noted that the ground “sex change” is narrower than the ground “gender identity”, which is a recognised prohibited ground of discrimination in a number of international legal and political texts, and they called upon the authorities to include “gender identity” as an explicitly prohibited discrimination ground.

144. In January 2013 the government presented the first part of the Action Plan aimed at combating homophobia and transphobia (the Action Plan). Inter alia, the Action Plan recommends adding gender expression and gender identity as explicit grounds of discrimination in the various anti-discrimination laws at federal, Community and Regional level. ECRI recommends that the authorities amend the anti-discrimination legislation at federal and federated level in order to include gender identity among the prohibited grounds of discrimination.

147. The Transgender Federal Act of 2007 provides transgender people with a legal basis for the registration of the change of their sex and name. However, this law makes legal gender recognition dependent on inter alia certification by a psychiatrist that the person concerned is convinced that s/he belongs to the opposite gender, sex reassignment surgery and the medical certification of the permanent inability to procreate. Due to these rather stringent conditions, this law applies to only some transgender people (i.e. transexuals). According to it, people who do not undergo sex change surgery cannot legally register their change of sex and name.

148. An analysis of this legislation was conducted by the Institute in consultation with organisations representing transgender people and work is underway to put forward recommendations concerning
reformulation of the criteria for gender reassignment, measures for protecting privacy and the need for a transition identification document.

150. Since discrimination on grounds of sexual orientation (for LGB) on the one hand and discrimination on grounds of gender (for transgender people) on the other hand are covered by two separate pieces of legislation, two entirely different bodies deal with discrimination on this matter, one on the ground of sexual orientation (the Centre) and the other on the ground of gender (the Institute). This report has already dealt extensively under Legislation with the Centre’s mandate.

153. Since direct discrimination based on sex change is treated for the purpose of the Gender Equality Federal Act as direct discrimination on grounds of sex, the Institute is competent for discrimination against transgender people. However, this applies only to transgender people who have undergone or are planning to undergo sex reassignment treatment.

154. ECRI is aware that a number of issues in this subsection are specific to transgender people. Of course this should not prevent the Institute and the Centre from enhancing cooperation on LGBT issues, thus further strengthening protection of these vulnerable groups as a whole. ECRI therefore welcomes the fact that both the Institute and the Centre have been tasked by the Action Plan to create a network of experts. This network will be responsible for the exchange of scientific knowledge and research results and for identifying gaps in the implementation of the Action Plan. It will also be responsible for the evaluation of the Action Plan.

155. According to a recent survey of the EU Agency for Fundamental Rights (FRA), the majority of LGBT persons in Belgium avoid revealing their sexual orientation at work fearing rumours, hints and derisions. Transgender people are obviously even more vulnerable to harassment and discrimination in employment due to their gender expression. ECRI has been informed by the Institute that they face numerous problems: 54% of them declare that they hide their gender identity at work and 15.6% are unemployed despite a relative high level of education. According to the Institute there is a need to raise further awareness about transgender issues and the rights and responsibilities of employers and workers.

156. Regarding good practices, in the Flemish Region a programme focusing specifically on employment opportunities for transgender persons was set up and a brochure entitled Transgender on the work floor, with advice and practical tips for employers, was published.

159. Concerning access to health, the study Being transgender in Belgium pointed out that 60% of transgender persons have sought medical or psychological assistance related to their gender identity. 62% of respondents had contemplated suicide and 22% had attempted suicide. The study showed that support for transgender persons is not sufficient and that access to health for transgender people is not optimal. According to the study, generalist physicians and psychologists often do not have sufficient information to welcome properly and advise transgender people. In view of this a Transgender Info Point opened on 15 March 2013 at the center for sexology and gender issues of the university hospital of Ghent.

160. According to transgender associations, a major problem is the high cost of mandatory gender reassignment treatment and the lack of a clear legal framework for the refunding of the expenses by
private insurers or the National Institute for Sickness and Disability. ECRI is aware that the issue of the mandatory gender reassignment treatment should be addressed in the context of the case-law of the European Court of Human Rights related to Article 8 of the ECHR which protect the right to respect for private life. ECRI is also aware that on this specific issue, States enjoy a certain margin of appreciation. According to Recommendation CM/Rec (2010) 5 prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

- **Education and awareness-raising**

161. As already noted in Belgium education is a matter within the competence of the Communities. The Flemish authorities have produced a number of manuals to guide teachers on how to address LGBT issues in schools. In addition a web site provides tips for gender neutral and LGBT-friendly schools. The Flemish authorities fund the educational work of LGBT organisations. In the French Community, on 26 June 2012, the Decree defining the priority mission of teaching in primary and secondary education was amended, making education in emotional, social and sexual life (EVRAS) a mandatory subject. However, LGBT organisations have criticised this decree for its vagueness and proposed that the Action Plan adopt a definition of EVRAS in accordance with the WHO standards and expressly include the fight against homophobia and transphobia among its objectives.

163. ECRI recommends that the authorities implement at all levels, be it in the framework of the Inter-federal Action Plan against homophobia and transphobia or at federated entities’ level, measures to promote mutual tolerance and respect in schools regardless of sexual orientation and gender identity. In particular, these measures should provide pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity.

- **List of recommendations from ECRI**

10. (§47) ECRI recommends that the authorities ensure that the new regulations for collecting data on racist and homo/transphobic incidents are applied in practice so that specific and reliable data on hate speech offences and the follow-up given to them by the criminal justice system is made available.

14. (§87) ECRI recommends that the authority proceed to an overall evaluation of the current criminal legislation on racism and homo/transphobia before any amendment to it.

15. (§90) ECRI recommends that the authorities proceed without any further delay to designate in each police district a contact person responsible for racism and homo/transphobic issues. These contact persons should be networked and there should be close communication between the contact person in the police in the police district and the contact prosecutor in the corresponding prosecution department.

23. (§163) ECRI recommends that the authorities implement at all levels, be it in the framework of the Inter-federal Action Plan against homophobia and transphobia or at federated entities’ level, measures
to promote mutual tolerance and respect in schools regardless of sexual orientation and gender identity. In particular, these measures should provide pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity.

86. ECRI takes positive note of the intention of the legislator to give with these amendments a strong signal about acts that are believed to have no place in societies such as homophobic murders. However, this is not the first time that the authorities chose to amend the legislation as the only response to hate crime phenomena. One may wonder whether these piecemeal changes, often simply consisting in heavier penalties, are consistent with a thoughtful criminal policy against racist and homo/transphobic violence.

87. ECRI recommends that the authority proceed to an overall evaluation of the current criminal legislation on racism and homo/transphobia before any amendment to it.

88. Moreover, ECRI notes that alternative measures are still rare in the Prosecution Service’s records related to the follow-up given by the criminal justice system to racist and homo/transphobic violence cases. ECRI underlines the importance of alternative measures, including restorative justice when this is feasible. ECRI is therefore of the opinion that the judiciary should continue to be provided with specific training on this.

The new Circular COL/2013 foresees the designation of a contact person within the police responsible for racism and homo/transphobic issues.

90. ECRI recommends that the authorities proceed without any further delay to designate in each police district a contact person responsible for racism and homo/transphobic issues. These contact persons should be networked and there should be close communication between the contact person in the police in the police district and the contact prosecutor in the corresponding prosecution department.

91. In order to counter the problem of under-reporting especially among LGBT people, the Institute and the Centre disseminate information on how to enforce the rights of LGBT to potential victims of discrimination and trans/homophobic violence. The study Being Transgender in Belgium published in 2009 also contributed to the dissemination of relevant information. In addition both the Centre and the Institute maintain close and regular contacts with LGBT associations; numerous conferences and seminars are organised on the subject contributing to spreading information on the rights and remedies available to victims; the websites of the Institute and the Centre are a useful source of information. The Brussels-Capital Region, in partnership with Brussels police and LGBT NGOs, launched in April 2011 a campaign against violence towards people because of their sexual orientation or their gender identity. The draft resolution on allowing anonymous complaints of
homophobic violence and the proposed parliamentary resolution to improve the respect for the rights of LGBT people in Belgium should also be mentioned.

92. In the wake of the events related to crime perpetrated against gay men in 2012, the government adopted an action plan in two parts to combat homophobic and transphobic violence and in particular to improve its reporting, investigation and prosecution. ECRI is looking forward to the implementation of this ambitious plan. However, ECRI considers that this plan should not be limited to preventing and fighting homo/transphobic violence, but should be extended to racist violence.

139. As concerns transsexual people, the national civil registry’s statistics indicate that, between 1993 and 2012, 631 individuals officially registered their change of sex and name in Belgium. This data of course does not give a comprehensive idea of the number of transgender people in Belgium, since only those who have undergone a full sex transition (see further on this) can have the change of their sex and name officially registered. As regard same-sex marriage, legally recognised in Belgium since June 2003, between that date and 2010, out of a total of 307,886 marriages, 15,219 were between same-sex couples. Statistics indicate also that in 2010 out of a total of 72,191 civil partnerships, 2,245 were between same-sex couples. As concerns child adoption, in 2011 a quarter of all national adoptions were made by lesbian or gay couples, showing a higher number of adoptions by same-sex-couples in the Flemish Community than in the French Community.

145. ECRI recommends that the authorities amend the anti-discrimination legislation at federal and federated level in order to include gender identity among the prohibited grounds of discrimination.
Bulgaria

Report published on September 2014


- Context information from ECRI

p.10:

There is no official data on the LGBT population in Bulgaria and no specific legislation regulating gender reassignment. In this report, ECRI requests that the authorities take further action in a number of areas; in this context, it makes a series of recommendations, including the following.

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

117. Concerning employment, according to research conducted by the Open Society Institute in Sofia, just over 40% of those polled think that an “untraditional” sexual orientation is an obstacle to competition in the labour market. In answer to the question "who is the person that you would never hire?", more than 25% replied “a homosexual”. Transgender and gender non-conforming individuals are the ones who experience most difficulty in accessing jobs and are the most commonly fired from work.

- Transphobia and data on hate crimes in the country

57. Six cases of violence against LGBT people have been recorded by NGOs during recent years. They believe that there is under-reporting of this type of violence. The most serious case involved the homophobic murder of a medical student in the Borisova Gradina Park in September 2008. The two suspects who were arrested admitted to police that they had also beaten 10 other gay men as part of their aim to “clean the park”. Transgender people in Bulgaria are also particularly vulnerable to violence because they are more visible as gender non-conforming. In June 2009, a transgender woman and a bisexual man survived a violent attack by a group of skinheads. The victims did not report the attack to the police because they believed, based on past experience and stories from other survivors of similar attacks, that the police would not investigate. Research conducted by the European Union’s Fundamental Rights Agency (FRA) in all countries has repeatedly and consistently shown that victims of hate crime in general are reluctant to come forward and report.

112. ECRI recommends that the authorities collect data on hate speech and hate crime against LGBT persons, including on the number of cases reported, investigated and prosecuted.

115. ECRI encourages the authorities to undertake research and collect data on LGBT persons in Bulgaria as well as on discrimination and intolerance against them.

- Legislative issues

119. ECRI notes that there is no specific legislation regulating gender reassignment for trans and intersex persons. Article 76 (4) of the Civil Registration Act stipulates that a person's name and gender
can only be changed following court proceedings. No procedures or criteria for allowing or refusing an application for gender rectification are defined. However, as regards gender reassignment, the very small number of cases brought so far (11) has established a positive trend; following an assessment by psychiatrists and sexologists, the way a person self-identifies is the primary criteria upon which to base the decision. There is no case law concerning intersex conditions. It appears that these are treated through medical intervention in early childhood without the opinion of the child being taken into account. ECRI points out that this practice is not in line with international standards and current expertise on the issue. ECRI considers, therefore, that the legislation needs to be further developed to include the essential criteria and necessary steps concerning both gender recognition and gender reassignment. For example, gender reassignment should not be a prerequisite for gender changes in personal documents.

120. ECRI recommends that the authorities develop legislation on gender recognition and gender reassignment ensuring that it is in line with international standards and expertise.

- **Education and awareness-raising**

116. According to a recent LGBT Survey of the European Union Agency for Fundamental Rights, 91% of the people interviewed believe that in Bulgaria positive measures to promote respect for the human rights of LGBT people are fairly rare or very rare. The survey shows that many LGBT people have to hide their sexual orientation at school or work. 19% of the people interviewed affirm that they have been discriminated against because of their LGBT status when looking for a job; 25% of them feel discriminated against at work; 12% feel discriminated against when looking for accommodation to rent or buy; 9% affirm feeling discriminated against by health care personnel.

118. ECRI notes that sex education is not part of the basic curriculum in Bulgaria, but aspects of it comes up in health education and subjects such as biology and man and nature. However, there is no obligation for teachers of these subjects to discuss sexual orientation or trans and intersex issues in their classes. ECRI has been informed that transgender pupils are the most common victims of bullying and school policies do not provide for any particular support to them.

- **List of recommendations from ECRI**

121. ECRI notes that surgery relating to a change of sex is covered under the national health insurance system. Hormone treatment, on the other hand, is not covered, as such treatment is only provided for “illnesses”. The costs must be borne by the trans or intersex person concerned. In view of the fact that hormone therapy is an essential part of gender reassignment, ECRI encourages the authorities to consider providing financial assistance to those in need of such treatment.

122. In view of the above-mentioned lack of information about LGBT people in Bulgaria and the significant discrimination, harassment and violence to which they are exposed, ECRI considers that the authorities should draw up and adopt an action plan to increase tolerance vis-à-vis LGBT persons and to combat homophobia and transphobia.
123. ECRI recommends that the authorities draw up and adopt an action plan to combat homophobia and transphobia in all areas of everyday life, including education, employment and health care, taking inspiration from Recommendation CM/Rec(2010) 5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity.
Czech Republic

Report published in October 2015


- Context information from ECRI

40. Nevertheless, ECRI is very concerned that right-wing extremist groups organised a series of anti-Roma demonstrations and protests throughout 2013. These usually began with racist and inflammatory speeches against “inadaptables” and mostly ended in extreme violence. As ECRI observes in the section below on Racist and homo/transphobic violence, these extremist groups showed their capacity on numerous occasions to incite ordinary local people to acts of violence. ECRI considers that they must be regarded as a threat to society.

58. As for prevention, ECRI welcomes the steps taken by the authorities to counter the wave of extremism in the country which was observed in ECRI’s fourth report. A Strategy for Combating Extremism, including a Concept for Fighting Extremism with concrete tasks for ministries, municipalities and police, was drawn up and is revised each year; annual reports are presented to Parliament. The Strategy is preventive rather than repressive in nature. According to the authorities, the campaign against extremism has been successful, with the neo-Nazi scene of the years 2008-2009 now in disarray. Extremists are currently less radical and less visible (see also the next section on Racist and homo/transphobic violence).

59. Regarding counter speech, ECRI notes a few examples of good practice. In 2011 almost the entire political scene reacted in opposition to the homophobic opinions of the then President and his advisor on the Gay Pride festival (see § 37). One senior politician even stated that the advisor was “inciting hatred against a minority population in our country”. Furthermore, 13 Prague-based embassies issued a joint statement in support of the event.

In 2012, a former Constitutional Court judge and current senator renounced her membership of the senators’ club in protest against the racist attitudes of two other senators, including the leader of Dawn of Direct Democracy. On the other hand, as far as ECRI is aware, no other political or public figure has condemned Dawn’s leader for his antiimmigrant, anti-Muslim and anti-Roma comments. ECRI considers that where intolerant statements do not reach the level required for criminal sanctions, political and public figures should take a strong stand against them by means of counter speech.

- Transphobia and data on hate crimes in the country

121. ECRI notes that there is no official data on the LGBT population in the country, although the authorities carried out an in-depth Analysis of the Situation of the Lesbian, Gay, Bisexual and Transgender Minority in the Czech Republic in 2007. Research demonstrates that in general there is broad tolerance for LGBT persons in the country. In a global survey published in June 2013, the Czech Republic had the third highest percentage in Europe (80%, after Spain and Germany) and
worldwide (on a par with Canada) of people agreeing that “society should accept homosexuality”. In August 2014, the fourth Gay Pride took place under the auspices of the Minister for Human Rights. The official opening was held in the Hrzánský Palace, a government building. In previous years there were protests against the festival, but this appears not to be the case in 2014. Nevertheless, ECRI notes that of 2,469 respondents from the Czech Republic who took part in the FRA survey of LGBT people’s experiences of discrimination, 36% felt discriminated or harassed because of their sexual orientation in the year preceding the survey (the EU average was 47%).

There is no specific reference to homophobic hate speech. However, Section 356 on incitement to hatred provides a possibility for punishment through open-ended wording (“or against another group of persons”), but Section 355 on defamation sets out a closed list of grounds not including sexual orientation or gender identity. Section 352 of the Criminal Code provides for the racism-specific offence of violence against a group of persons or an individual. The list of grounds is exhaustive and does not include sexual orientation or gender identity (see ECRI’s recommendation in § 123 of this report). According to information provided by the authorities, a total of 61 persons were prosecuted in 2013 under Section 352 and 50 were convicted and sentenced. As already observed, the data is not broken down according to the hate motive.

- Promoting tolerance and combating discrimination

129. ECRI is pleased to note that in some fields of everyday life, steps have been taken to promote tolerance towards LGBT persons. In education for instance, the subject People and the World, which provides information on sexual orientation and gender identity, is part of the framework curriculum for all pupils at elementary and secondary levels. Public health insurance covers the costs of gender reassignment and counselling. Between 2012 and 2014, 173 applications for gender reassignment were registered and all but one were accepted. However, hormonal treatment is not covered; in view of the fact that hormone therapy is an essential part of gender reassignment, ECRI encourages the authorities to consider providing financial assistance to those in need of such treatment.

130. Although there is no government action plan or strategy to promote tolerance and combat discrimination against LGBT persons in the Czech Republic, ECRI welcomes the setting up, in 2009, of a Committee for Sexual Minorities in the Government Council for Human Rights. 77 Its members include representatives of ministries and civil society. They analyse the situation and rights of sexual minorities in the Czech Republic and may present to the Government Council proposals concerning legislative amendments or solutions to other problems facing LGBT persons. For example, the Committee helped create a handbook on Homophobia in the Classroom and recommendations for the media on how to treat and present to the public different sexual identities. In addition, as mentioned above (§ 71), the Government is planning a Campaign against Racism and Hate Violence to be conducted in 2016, focusing on vulnerable minority communities including LGBT.

- Legislative issues

122. The Criminal Code does not specifically mention homophobic or transphobic motivation under Section 352 (violence against a group of persons or an individual), Section 355 (defamation) or
Section 356 (incitement to hatred). In theory, public incitement to hatred against LGBT persons could be covered by the wording “or other group of persons”, but there is no case law confirming this.

123. ECRI recommends that Sections 352, 355 and 356 of the Criminal Code should include specific references to the grounds of sexual orientation and gender identity.

124. The Anti-Discrimination Act prohibits discrimination based on sexual orientation and covers so-called “sexual identification” (gender identity) under the ground of sex. As concerns the burden of proof, ECRI regrets that, in the case of discrimination on grounds of sexual orientation and gender identity, the sharing may only occur when discrimination is alleged in the field of employment; it does not apply in any other area. ECRI refers to its recommendation in § 18 of this report.

125. While a number of laws ban discrimination on the basis of sexual orientation and gender identity (the Labour Code, the Employment Act and the Anti-Discrimination Act), according to the above-mentioned FRA survey, 59% of respondents were not aware of the existence of a law forbidding discrimination on account of sexual orientation when applying for a job. ECRI encourages the authorities to organise an awareness raising campaign on this issue.

126. Same sex marriage is not permitted. However, in 2006 the institution of registered partnership was recognised in law. LGBT activists claim that the extent of partners' rights and obligations remains very disadvantageous in comparison with marriage. Differences include that partners cannot jointly own property, there are no tax benefits as provided to a husband and wife, and there is an automatic ban on adoption of a child. As concerns adoption, ECRI notes that the Public Defender, when investigating a complaint, did not find any objective and rational reason for denying registered partners the possibility of adoption and considered the relevant provisions of the Registered Partnership Act unconstitutional. Procedures have been initiated for an assessment by the Constitutional Court.

127. Gender reassignment is regulated by the 2012 Act on Special Health Services. Persons wishing to change their sex must obtain the positive opinion of a committee of experts which consists of seven persons, including a representative of the Ministry of Health. Legal gender recognition is not possible without surgery; a certificate of surgical gender reassignment is required for change of birth number and name. ECRI considers that gender reassignment should not be a prerequisite for gender changes in personal documents. According to the new Civil Code of 2014, “marriage or registered partnership ceases to exist automatically as a result of gender reassignment transition”

128. Lastly, ECRI notes that the Czech Republic has explicitly recognised in its national legislation that sexual orientation is included in the notion of “membership of a particular social group” for the purpose of refugee recognition.

- **List of recommendations from ECRI**

17. (§ 123) ECRI recommends that Sections 352, 355 and 356 of the Criminal Code should include specific references to the grounds of sexual orientation and gender identity.
Estonia

Report published on October 2015


- **Context information from ECRI**

p.9: Estonia does not suffer from a specific problem of hate speech but the following issues continue to give rise to concern: the prevalence of racist remarks on Internet news portals and the failure to take action in response to homo/transphobic speech by politicians. The under-reporting of cases of racial or homo/transphobic hatred or violence urgently raises the question of the lack of training activities for the police and members of the judiciary.

37. ECRI notes that the political classes are not exempt from hostile attitudes towards LGBT persons. For example, at a government weekly press conference in 2010, a former Minister of Education and Research said that homosexuality would not be promoted in Estonian schools, in response to news that the Netherlands had introduced the topic of same-sex marriage into its school education. In March 2013, Erki Nool, the former athlete and then member of parliament, made a number of homophobic statements, calling on gays to turn to psychotherapy and religion and avoid the company of “practising homosexuals”. ECRI also notes that in November 2012, the Foundation for the Protection of the Family and Traditions launched a campaign in Estonia in reaction to the plans to draw up a code on cohabitation (see § 93). This campaign was centred on a petition which, it was claimed, contained several homophobic statements.

46. The information forwarded to ECRI by the Estonian authorities (see § 33) refer solely to incidents of incitement to hatred (or racial discrimination); accordingly, it is necessary to turn to information gathered by civil society organisations which undertake monitoring activities in order to have some insight into the scale of the problem of racist and homo/transphobic violence. In the light of this information, as will be seen below, ECRI believes that contrary to what might be suggested by the data provided by the authorities, Estonia is not exempt from this problem.

ECRI notes, moreover, that according to representatives of civil society, neither of these instances of homo/transphobic speech received sufficient condemnation from the authorities.

The Criminal Code does not contain any provisions stipulating that sexual orientation or gender identity constitutes an aggravating circumstance to hate crimes and speeches. ECRI understands that the addition of such an aggravating circumstance may have been discussed in the Ministry of Justice’s proposed amendment, but that there is no assurance that it will ultimately be included. ECRI believes that this addition is essential to ensure an appropriate level of protection for LGBT persons.

- **Legislative issues**

99. In the health field, the situation of transgender persons is complicated by the lack of legislation. Issues related to gender reassignment are governed by a “regulation on common requirements of medical acts of gender reassignment” adopted by the Ministry of Social Affairs. This regulation relates only to the medical requirements and the activities of the committee of medical experts which decides...
on the admissibility of gender reassignment requests. However, according to certain LGBT NGOs, there are cases where individuals who have requested gender reassignment surgery have been refused on the ground that their application was motivated by aesthetic considerations. Lastly, according to the procedures in force, the change of name takes place only at the very end of the gender transition period, raising numerous administrative and social problems for the persons concerned.

100. ECRI recommends that the Estonian authorities review the legislation or regulations in force so as to clarify the administrative situation of persons undergoing gender reassignment.

102. ECRI recommends that the Estonian authorities carry out a detailed study of the situation of LGBT persons in the employment field, and in particular the discrimination they suffer in this area, and identify and implement remedial measures.

**List of recommendations from ECRI**

12. (§ 39) ECRI recommends that the Estonian authorities introduce without delay in parliamentary proceedings a draft amendment to Article 151 of the Criminal Code, removing the restriction whereby an offence cannot be deemed to have taken place unless it is proven that it entails a risk to the health, life or property of the victim. At the same time, ECRI recommends that the authorities put in place a system to collect data and produce statistics offering an integrated and consistent view of the cases of racist and homo/transphobic hate speech and violence brought to the attention of the police and/or being pursued through the courts. (see § 51).

13. (§ 44) ECRI recommends that the authorities organise an extensive campaign to inform and raise awareness among all sections of Estonian society about racist and homo/transphobic hate speech, the legal provisions and rights existing in this field, and procedures for reporting or filing complaints against instances of such speech.

14. (§ 51) ECRI recommends that the Estonian authorities put in place a system to collect data and produce statistics offering an integrated and consistent view of the cases of racist and homo/transphobic hate speech brought to the attention of the police and/or being pursued through the courts. ECRI recommends that the authorities adopt the same approach with regard to racist and homo/transphobic violence (see § 39).

17. (§ 56) ECRI further recommends that the authorities take steps to encourage victims and witnesses of homo/transphobic incidents to report such occurrences, provide training and awareness-raising for representatives of the law-enforcement agencies in the recognition of the homo/transphobic motivation of an ordinary crime and ensure that the police thoroughly investigate homo/transphobic offences.
29. ECRI recommends that the authorities take decisions to enhance the independence of, and increase the resources available to, the institution of the Gender Equality and Equal Treatment Commissioner, in order for it to function properly.

30. Should this be the case, ECRI recommends that the authorities amend the Equal Treatment Act so as to confer on the Gender Equality and Equal Treatment Commissioner the authority to bring cases before the courts and to contribute to the training of certain key groups.

32. ECRI recommends that gender identity be specifically added to the prohibited grounds in Articles 151 and 152 of the Criminal Code and that a provision be added to that Code explicitly stipulating that sexual orientation and gender identity constitute an aggravating circumstance in any ordinary offence.

39. ECRI recommends that the Estonian authorities introduce without delay in parliamentary proceedings a draft amendment to Article 151 of the Criminal Code, removing the restriction whereby an offence cannot be deemed to have taken place unless it is proven that it entails a risk to the health, life or property of the victim. At the same time, ECRI recommends that the authorities put in place a system to collect data and produce statistics offering an integrated and consistent view of the cases of racist and homo/transphobic hate speech and violence brought to the attention of the police and/or being pursued through the courts. (see § 51).

43. Concerning homo/transphobic speech, ECRI notes that the statements of the former Minister of Education and Research in 2010 do not appear to have been retracted nor did they give rise to any reactions from other members of the government.

44. ECRI recommends that the authorities organise an extensive campaign to inform and raise awareness among all sections of Estonian society about racist and homo/transphobic hate speech, the legal provisions and rights existing in this field, and procedures for reporting or filing complaints against instances of such speech.

ECRI recommends that the authorities adopt the same approach with regard to racist and homo/transphobic violence.

51. ECRI recommends that the authorities put in place a system to collect data and produce statistics offering an integrated and consistent view of the cases of racist and homo/transphobic hate speech and violence brought to the attention of the police and/or being pursued through the courts.

53. ECRI strongly recommends that the authorities implement its 4th cycle recommendations regarding awareness-raising measures for the general public on the criminal-law provisions concerning racist crimes and that they extend this awareness-raising to cover homo/transphobic crime.

56. ECRI further recommends that the authorities take steps to encourage victims and witnesses of homo/transphobic incidents to report such occurrences, provide training and awareness-raising for
representatives of the law-enforcement agencies in the recognition of the homo/transphobic motivation of an ordinary crime and ensure that the police thoroughly investigate homo/transphobic offences.

91. ECRI recommends that the authorities carry out surveys and collect data on LGBT persons in Estonia and on the discrimination and intolerance of which they are the victims.

92. ECRI also notes that there have been few studies or research on the nature and causes of hostile and negative attitudes towards LGBT persons. Nonetheless, reference can be made here to the Eurobarometer surveys, a survey carried out in 2012 by the Tallinn University of Technology,56 and the 2012 FRA survey on Lesbian, Gay, Bisexual and Transgender persons in the European Union. Lastly, the Law Faculty of the Tallinn University of Technology carried out a survey of LGBT persons in June 2014 as part of its “Diversity enriches” project. According to the results57 of this survey, 34% of the respondents find homosexuality acceptable while 59% do not, acceptance of same-sex cohabitation has fallen by 6% as compared to 2012 (from 46% to 40 %), and 64 % of respondents believe that gays and lesbians should be legally protected against discrimination also outside the labour sphere.
France

Report published on March 2016

http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/France/FRA-CbC-V-2016-001-ENG.pdf

- **Context information from ECRI**

p.9:

ECRI notes a substantial rise in hate speech and above all violence driven by racism and intolerance, resulting in several incidents involving attempted murder, particularly in connection with antisemitism. This situation is all the more worrying given the high level of under-reporting of racist and homo/transphobic crime, the loopholes which undermine the effectiveness of the criminal provisions covering hate crimes and the commonplace use of political statements to stigmatise vulnerable groups which help to trivialise racist and intolerant attitudes within the population.

- **Transphobia and data on hate crimes in the country**

ECRI is disappointed that it has received no information on reports of homophobic/transphobic acts, but notes that the government plans to produce such statistics with effect from 2016.

To remedy the under-reporting of hate crime, the authorities should step up training for law enforcement agency representatives with regard to dealing with the public, take measures to improve their working methods regarding the registration of complaints and identity checks and implement Ministry of Justice directives on dealing with reports of racist offences and extend these arrangements to cover homo/transphobic offences. They should also propose legislative provisions on the collection of data on equality. Finally, it should be possible to break down data relating to cases of racist and homo/transphobic crime in terms of vulnerable groups and crossreference them with the outcome of subsequent judicial proceedings.

20. The data on hate speech provided by the Ministry of the Interior with regard to threats recorded by the police indicate an overall increase of 6% in the number of instances in the last three years (1,193 in 2012, 1,010 in 2013 and 1,256 in 2014). Racist acts, excluding anti-Muslim and antisemitic acts, have gone down by 5% (606 in 2012, 528 in 2013 and 577 in 2014). Anti-Muslim acts fell by 48% (149 in 2012, 164 in 2013 and 78 in 2014). On the other hand, antisemitic acts rose by 39% (438 reports in 2012, 318 in 2013 and 610 in 2014). ECRI is disappointed that it has received no information on reports of homophobic/transphobic acts, but notes that the government plans to produce such statistics with effect from 2016.

27. In its annual reports, 26 SOS Homophobie provides some details on the number and nature of homophobic/transphobic acts. From 2010 to 2014, the number of reports rose from 1,483 to 2,197. For 2014, the statistics show that 47% of reports concerned insults and 18% defamation, while 40% of all the acts reported occurred online. Homophobic/transphobic hate speech came to a head in France at the time of the passing of Law No. 2013-404 of 17 May 2013 legalising same-sex marriage (also known by the term “marriage for all”). The public debate that took place on that occasion gave rise to a
large number of cases of homophobic/transphobic hate speech, especially by some participants in mass public demonstrations held in January and March 2013.

- **The authorities' response to homophobic/transphobic hate speeches**

30. The many convictions involving Jean-Marie Le Pen and Dieudonné M'BalaM'Bala have prompted ECRI to analyse the effectiveness of the French criminal law provisions. In its 4th report, ECRI recommended that the French authorities continue evaluating the effectiveness of the criminal law provisions to combat racism. ECRI understands that the provisions making hate speech a criminal offence are to be found in two separate bodies of law, namely the Law on Freedom of the Press (which punishes public incitement to violence, hatred or discrimination and public insults or defamation) and the Criminal Code (which punishes threats). However, the limitation period for offences punishable under the Law on Freedom of the Press is less than that provided for by the Criminal Code. Furthermore, legal entities are not covered by that law. Moreover, the applicable judicial procedures are different and, finally, racist and homophobic/transphobic grounds can only be considered aggravating circumstances for a limited number of ordinary offences. ECRI believes the ability to combat hate speech would be improved if the French authorities were to harmonise these different provisions. If measures were to be taken to this effect, ECRI thinks it would be important to train everyone involved in implementing the new provisions.

35. Apart from their criminal-law and administrative-law responses, the French authorities have taken a series of measures to combat hate speech, for example their action to combat online racist and homophobic/transphobic statements. In its 4th report, ECRI recommended that the authorities pursue and reinforce their efforts to combat forms of racist expression propagated via the Internet. In its interim conclusions, ECRI considered the French authorities’ efforts in this area to be satisfactory, especially with the strengthening of the PHAROS platform for reporting cases and its association with the Central Office to Combat Offences Linked to Information and Communication Technologies (OCLCTIC). ECRI notes that this system is now very well known to the public at large: for example, 8,605 content items were reported in 2011, a figure that rose to 13,295 in 2014.

37. The government also informed ECRI of several initiatives to prevent racist and homophobic/transphobic behaviour in sport. These include the drafting and dissemination among all sports federations of a handbook on tools for observing and recording behaviour contrary to the values of sport, including racism and homophobia. The French Football Association has extended its monitoring of behaviour to include all acts of a discriminatory nature and the French Basketball Federation has established a similar monitoring mechanism. Two million euros have been set aside to enable other federations to develop such mechanisms.

43. ECRI believes in particular that combating the prevalence of both racist and homophobic/transphobic stereotypes and prejudices is a priority area for action and understands that measures 24 to 27 to equip schools with the means of transmitting and giving full effect to the values of the Republic will help make significant progress in this regard. ECRI understands that these measures correspond in particular to the secular teaching of religious beliefs, already featuring in school curricula, and a new moral and civic education curriculum (see paragraph 36). It is, however,
aware that the main aim of these initiatives is the transmission of knowledge based on principles, rules, historical facts or theoretical concepts. ECRI is concerned that both the content of these new educational curricula and the training of education staff will not focus sufficiently on resolving the specific practical issues relating to living together that arise every day, both in private and social life in general and in the school environment in particular. ECRI also believes that these measures should include combating homophobia/transphobia.

44. ECRI recommends that the French authorities fight racial and homophobic/transphobic stereotypes and prejudices effectively to deal better with the concrete challenges that arise due to living together in an intercultural world. To this end, ECRI recommends that school curricula and teacher training programmes are revised in order to enable teachers and pupils to understand better societal issues linked to questions such as religions and beliefs as well as immigration matters.

101. The annual reports of the association SOS Homophobie also contain useful information for assessing the situation. Over the last five years, the association has recorded a significant increase in the number of reported incidents: 1,259 in 2009 compared with 2,197 in 2014, with a peak of 3,517 in 2013. A sudden rise between 2012 and 2013 (+78%) can be largely explained by the explosion of homophobic/transphobic hatred following the debates on and passing of the law to allow same-sex marriage (see the section on hate speech, paragraph 27). In 2014, 20% of reports related to cases of discrimination in various areas, 1% of them concerning cases of dismissal. Above all, however, the number of cases relating to the school environment rose by 25% between 2012 and 2013, justifying an appropriate response (see paragraph 103).

104. After it had been established that the situation had reached alarming proportions among very young people, a study was carried out in 2013 to assess the discrimination suffered by young LGBT people at school. A pilot project, “Les ABCD de l’égalité” (“ABCD of Equality”), the aim of which was to combat gender stereotypes from a very young age and teach values of equality and respect between girls and boys, women and men was carried out in 2013. It was succeeded in 2014 by the Equality between Girls and Boys at School action plan. ECRI notes that numerous organisations consider these initiatives insufficient when it comes to combating homophobic/transphobic prejudices at and by schools, as evidenced by the adoption and signing of a declaration in May 2015 calling for the implementation of the recommendations in the Teychenné report and for the fight against homophobia/transphobia to be stepped up in the field of education. ECRI reiterates its recommendation on combating stereotypes in the education system (see under hate speech, paragraphs 43-44) and considers that combating homophobic/transphobic stereotypes should be part of general action to counter discrimination.

105. In this report, ECRI has repeatedly noted that there is insufficient data to have a clear picture of the situation with regard to either racist and homophobic/transphobic crime or discrimination. It has also noted the lack of studies and assessments by the authorities in respect of integration and antidiscrimination policies and the effects of these policies on vulnerable groups. This situation is all
the more worrying as ECRI notes an increase in hate speech and violence motivated by racism and intolerance. ECRI consequently believes that much work needs to be done in these areas.

108. With regard to the conduct of identity checks, ECRI notes the efforts being made by the French authorities. It refers to the adoption of a new Code of Ethics for the Police and Gendarmerie, which emphasises the need for exemplary relations with the population, and to sustained efforts to provide initial and in-service training with regard to these new provisions. As far as the issue of ethnic profiling is concerned, it notes that police uniforms now bear an identification number, but there have been many claims that these numbers are too long and too small, making them difficult to read. What is more, they are removable. ECRI notes that the CNCDH (in 2010) and the Defender of Rights (in 2012) proposed various practical solutions to this problem such as the requirement for police officers to provide an identity check receipt bearing their name, but they have not been tested despite the requests from these institutions for this to be done. Finally, as regards the matter of entries in the police daybook, ECRI understands that the Ministry of Justice regularly issues a reminder about the obligation to record offences of a racist nature in the form of a formal complaint and not as a daybook entry, but the Ministry of the Interior apparently does not intend to put an end to this practice. ECRI understands that only formal complaints are sent to the prosecuting authorities and that, accordingly, a significant proportion of racist or homophobic/transphobic acts are not subject to any judicial procedure.

110. ECRI recommends that the French authorities organise a major information campaign to lower the rate of under-reporting of cases of hate speech.

- Legislative issues

9. As far as paragraph 21 of GPR No. 7 is concerned, ECRI noted in its 4th report that, subsequent to the Law of 9 March 2004 on adapting the justice system to developments in crime, the Criminal Code provided that racist motivation could be taken into account as an aggravating circumstance for an entire range of offences committed against persons or property (especially in cases of intentional homicide, torture and acts of barbarism, violence leading to death or injury, damage to private property, threats, theft and extortion). ECRI then reiterated its recommendation that the principle of aggravating circumstances constituted by racist motivation be extended to all offences. ECRI has not been informed about any significant developments in this connection but notes the announcement of a legislative initiative (see paragraph 4). As regards homophobic/transphobic motivation, Article 132-77 of the Criminal Code provides for sentences to be increased for some offences9 when committed because of the victim’s sexual orientation. ECRI further notes that the government wishes to make racism, homophobia/transphobia and antisemitism an aggravating circumstance in all crimes and offences.
10. ECRI recommends (1) that the following conduct is expressly criminalised: (i) the public expression of an ideology claiming the superiority of or depreciating or denigrating a group of persons; (ii) the creation or leadership of a group which promotes racism, support for such a group or participation in its activities; (2) that a provision is added to the Criminal Code expressly providing for racist motivation to constitute an aggravating circumstance of every ordinary offence; and (3) that the homophobic and transphobic motivation is also considered an aggravating circumstance of every ordinary offence.

96. As far as the use of the criminal law to combat homophobia and transphobia is concerned, ECRI reiterates that sexual orientation and sexual “identity” are included as grounds in the provisions making incitement to hatred, violence or discrimination a criminal offence and refers to the discussion in paragraphs 5, 9 and 10. Furthermore, Law No. 2008-496 of 27 May 2008 prohibits any discrimination based on sexual orientation or sexual identity in the fields of healthcare, education, access to goods and services, and employment. This ban is repeated in Articles L1132-1 et seq. of the Labour Code, and Article 6 of Law No. 83-634 of 13 July 1983 extends it to the civil service.

97. There is no specific legal or regulatory provision in French law governing a change of a person’s gender designation in the public records. However, the courts have long recognised the possibility of such a change for this category of people. An opinion supporting an application for a change of civil status is issued by a judicial decision, following an opinion given by a psychiatrist, as soon as the hormone treatments that bring about a permanent physical or physiological transformation have led to an irreversible change of gender without there necessarily being a need to remove the genital organs. The CNCDH criticises the considerable lack of legal certainty here and advocates legislative intervention. 72 ECRI understands that bills are currently being drafted on this subject.

98. ECRI recommends that the French authorities quickly carry out the legislative work that will enable the procedure for changing a person’s gender designation in the public records to be regulated. As this is such a sensitive issue, ECRI recommends that the authorities involve the organisations that represent LGBT persons and take into account the opinion of the CNCDH.

99. As far as asylum is concerned, sexual orientation and gender identity are among the grounds taken into account for granting refugee status. ECRI notes that no law makes explicit reference to this possibility but that international protection is granted on the basis of the 1951 Geneva Convention, in particular on the ground of belonging to a social group. The applicability of this concept to sexual orientation was recognised in the 1990s in the decisions of the Refugees Claims Commission (which later became the National Court for the Right of Asylum) and the Conseil d’État. Similarly, LGBT persons can be granted “subsidiary protection”.

- Education and awareness-raising

The authorities should fight racial and homophobic/transphobic stereotypes and prejudices effectively to deal better with the concrete challenges that arise due to living together in an intercultural world. To
this end, school curricula and teacher training programmes should be revised in order to enable teachers and pupils to understand better societal issues linked to questions such as religions and beliefs as well as immigration matters.

- **List of recommendations from ECRI**

2. (§ 10) ECRI recommends (1) that the following conduct is expressly criminalised: (i) the public expression of an ideology claiming the superiority of or depreciating or denigrating a group of persons; (ii) the creation or leadership of a group which promotes racism, support for such a group or participation in its activities; (2) that a provision is added to the Criminal Code expressly providing for racist motivation to constitute an aggravating circumstance of every ordinary offence; and (3) that the homophobic and transphobic motivation is also considered an aggravating circumstance of every ordinary offence.

7. (§ 44) ECRI recommends that the French authorities fight racial and homophobic/transphobic stereotypes and prejudices effectively to deal better with the concrete challenges that arise due to living together in an intercultural world. To this end, ECRI recommends that school curricula and teacher training programmes are revised in order to enable teachers and pupils to understand better societal issues linked to questions such as religions and beliefs as well as immigration matters.

18. (§ 95) ECRI recommends that the authorities carry out surveys and collect data on LGBT persons in France and on the discrimination and intolerance of which they may be victims.

19. (§ 98) ECRI recommends that the French authorities quickly carry out the legislative work that will enable the procedure for changing a person’s gender designation in the public records to be regulated. As this is such a sensitive issue, ECRI recommends that the authorities involve the organisations that represent LGBT persons and take into account the opinion of the CNCDH.

20. (§ 109) ECRI recommends that the French authorities intensify the training of law enforcement representatives with regard to the contents of the Code of Ethics concerning the need for exemplary relations with the population, that they review the system of numbers affixed to police uniforms in order to facilitate identification, including by testing the solutions proposed by the CNCDH and the Defender of Rights, and that they take steps to implement the Ministry of Justice’s instructions on recording racist offences in the form of a formal complaint and not as a record in the police daybook, and to extend this arrangement to homophobic/transphobic offences.

21. (§ 110) ECRI recommends that the French authorities organise a major information campaign to lower the rate of under-reporting of cases of hate speech.
Georgia

Reports published on March 2016


- **Context information from ECRI**

In 2014, the Georgian Parliament enacted the Law on the Elimination of All Forms of Discrimination. The enumerated grounds of discrimination include race, colour, language, citizenship, origin, religion or belief, national, ethnic or social origin, sexual orientation and gender identity.

The responses of the Georgian authorities to these incidents cannot be considered adequate. The authorities did not always sufficiently investigate and prosecute hate crime. The application of Article 53 of the Criminal Code of Georgia on aggravating circumstances is rare and there has not been a single case in which it was applied with regard to sexual orientation or gender identity.

Hate speech against ethnic and religious minorities, as well as against LGBT persons, continues to be a widespread problem in Georgia. Physical attacks against these groups also occur with worrying frequency.

- **Transphobia and data on hate crimes in the country**

There is no official data concerning racist and homo-/transphobic hate speech. Several NGOs document examples of hate speech by journalists and politicians and while they are indicative, they are not exhaustive. In its last report, ECRI recommended that the authorities monitor manifestations of stereotypes, prejudices and misconceptions of minority groups. However, little has been done in this regard, except by the Public Defender. ECRI recommends that the Georgian authorities establish an effective monitoring system for racist and homo-/transphobic hate speech.

The number of homo-/transphobic attacks in Georgia has grown in recent years.

ECRI was also informed that plans to create special units within the police to deal with racist and homo-/transphobic violence were discussed in the past, but that no further steps were taken.

24. ECRI recommends that the Georgian authorities establish an effective monitoring system for racist and homo-/transphobic hate speech. They should build on the expertise of the Public Defender and relevant NGOs.

35. Hate speech against LGBT persons ranges from insults in daily life to hateful comments made by politicians, journalists or members of the Georgian Orthodox clergy. The situation worsened during the discussion about the inclusion of sexual orientation and gender identity into the anti-discrimination law.

105. The Georgian authorities have no specific strategy to combat discrimination and intolerance against LGBT persons. Although the National Human Rights Strategy and its Action Plan include sexual orientation and gender identity, no effective measures have been implemented so far.

- **Legislative issues**
3. Language, religion and nationality are not listed as grounds in Article 142-1, but Article 142 prohibits “…violation of equality of human beings due to their language, sex, age, citizenship, origin, place of birth, place of residence, material or social status, religion or belief, social belonging, profession, marital status, health status, sexual orientation, gender identity expression, political or other opinion or any other ground that substantially violates human rights…”. The prohibition in both articles, 142 and 142-1, is limited to acts that “substantially violate human rights”. However, there is no case law to assess how this condition is interpreted.

8. The Law on the Elimination of All Forms of Discrimination was adopted on 2 May 2014 and entered into force on 7 May 2014. The purpose of the Law is to eliminate discrimination on the grounds of race, colour, language, sex, age, citizenship, origin, place of birth or residence, property or social status, religion or belief, national, ethnic or social origin, profession, marital status, health, disability, sexual orientation, gender identity and expression, political or other opinions, or other characteristics (Article 1). The law prohibits direct and indirect discrimination (Articles 2.2 and 2.3 respectively). Article 2.7 allows for special measures intended to promote increased levels of de facto equality, which shall not be considered as discrimination. This is in line with ECRI’s GPR No. 7, § 5. Furthermore, Article 2.5 prohibits “any action carried out for the purpose of forcing, encouraging, or supporting a person to discriminate against a third person”. However, acts of segregation, discrimination by association, and announced intention to discriminate are not mentioned, as recommended in ECRI’s GPR No. 7, § 6.

109. There is currently no recognised form of same sex partnerships in Georgia. This absence of recognition leads to various forms of discrimination in the field of social rights. In this regard, ECRI draws the attention of the authorities to the Recommendation CM/Rec(2010)5 of the Council of Europe’s Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity.

110. The criteria for gender reassignment surgery are unclear and not standardised. The requirements for official recognition of a new gender identity and associated changes of documents are also vague. ECRI would in particular like to draw the authorities’ attention to Resolution 2048 (2015) of the Council of Europe’s Parliamentary Assembly

- **List of recommendations from ECRI**

5. (§ 33) ECRI recommends that the authorities review their contracts with media outlets and cancel or not renew them in cases where media are known to engage in racist or homo-/transphobic hate speech. The authorities should also ensure that future contracts contain a clause stipulating that racist or homo-/transphobic hate speech will result in contract termination.

9. (§ 46) ECRI recommends that a provision prohibiting racist and homo-/transphobic insults and providing for measures and/or sanctions to be taken in case of its breach be introduced in the Parliament’s Rules of Procedure. ECRI further recommends that all political parties take a firm stand against racist and homo-/transphobic discourse.

11. (§ 62) ECRI recommends close monitoring of whether the police investigates potential racist and homo-/transphobic motivations. Furthermore, ECRI recommends that racist and homo-/transphobic motivations are considered from the outset of judicial proceedings.
12. (§ 67) ECRI recommends that the training activities for the judiciary and law enforcement officials on investigating incidents of hate crime are scaled up. Furthermore, the trainings should cover homo-/transphobic hate crime. ECRI also recommends that the authorities conduct an impact assessment to evaluate the trainings and, if necessary, adjust them.

13. (§ 68) Moreover, ECRI recommends that the Georgian authorities set up a specialised unit within the police to deal specifically with racist and homo-/transphobic hate crime. When establishing this unit, the authorities should seek expert advice from the Public Defender, relevant NGOs and international organisations.

14. (§ 70) ECRI recommends informing the general public of the existence of criminal law provisions enabling racially motivated acts or acts of religious intolerance or homo-/transphobic acts to be punished; and to encourage victims to lodge complaints concerning such acts. ECRI also recommends initiating awareness raising programmes in schools and universities to combat racist and homo-/transphobic hatred.

22. (§ 108) ECRI recommends taking steps to combat intolerance and discrimination against LGBT persons. This should be done in close cooperation with the LGBT community and the Public Defender, who should receive support to establish a dedicated LGBT unit. Suitable elements for awareness-raising in schools should also be developed.

23. (§ 111) ECRI recommends that the authorities develop clear guidelines for gender reassignment procedures and their official recognition.
Germany

Reports published in 2013


- Context information from ECRI

p.9:

“The Constitutional Court has played an important role in improving the legal situation of LGBT persons. Several Länder have adopted measures and action plans to increase tolerance towards LGBT lesbian, gay, bisexual and transsexual persons (LGBT) and combat homo/transphobia. The great majority of the population are in favour of bringing the status of same-sex couples fully into line with that of married couples.”

“Since the reunification the number of murders and the level of violence motivated by racism and homo/transphobia are high in Germany. There is no reliable statistical tool for measuring the scale of violence and hate speech motivated by racism and homo/transphobia. The high rate of "under-reporting" of offences involving racism and homo/transphobia reflects a lack of confidence on the part of vulnerable groups in the effectiveness of criminal proceedings brought by the police and the prosecution services. This ineffectiveness was highlighted by the failings in the investigation of the murders committed by the National Socialist Underground (NSU) movement. A racist motivation is recognised in only a small number of judgments.”

p.10:

There is considerable discrimination towards LGBT persons, which contributes to the tendency for LGBT persons to conceal their sexual orientation. Particularly in schools, there is a high level of homo/transphobia. The situation of transgender persons is particularly bad in the employment field. Transsexualism is classed as a "disorder of personality and behaviour". Many LGBT persons suffer discrimination from health professionals. There are significant differences in law between recognised same-sex couples and married couples.

p.11:

“The federal government and those Länder which have not yet adopted an action plan or a comprehensive programme to promote tolerance towards LGBT persons and combat homo/transphobia should take inspiration from existing plans in this field and draw up their own measures or action plan.

The right of transsexuals to change their gender marker in documents such as educational diplomas and employment certificates should be inserted into legislation. Issues specific to transgender persons should be systematically included in action plans to promote equality. Financial support for organisations campaigning for their rights should be increased.”

p.33:
During the last micro-census in 2011, 67,000 households made up of homosexual couples were declared in Germany. 113,270 households had been registered in accordance with the Law on registered partnerships. According to official statistics, 7,000 children were living with parents of the same sex. The number of transgender persons is difficult to pinpoint. Between 1995 and 2010, the courts dealt with 11,514 applications from individuals wishing to change their forenames or gender registered.

**Legislative issues**

Article 3 GG, which guarantees the equality of all persons and expressly prohibits discrimination on ten different grounds, mentions neither sexual orientation nor gender identity. In 1994 the two-thirds majority required to include these grounds was not achieved, whereas it was for the ground of disability. Another initiative geared to raising the level of protection for LGBT persons was rejected by the Bundesrat in 2009. The constitutions of several Länder comprise a prohibition of discrimination on the ground of sexual identity. The Law on registered partnerships came into force in 2001. It applies solely to same-sex couples and allows them to establish legal cohabitation. Most of the legal consequences are similar to those of marriage. Most Länder have granted registered partners the same rights as married couples in all fields coming under their jurisdiction.

The Law on transsexuals came into force in 1980. In 2008 and 2011 the Constitutional Court decided that several of the conditions laid down in the law for legal recognition of gender changes were contrary to the Basic Law: the applicant could not be married, had to have had a surgical operation and be sterile. Given that Articles 5 and 10(2) of the Law on transsexuals prohibit disclosure of the former sexual identity following the change of forename and legal recognition of the change of gender, the courts have also recognised the right of transgender persons to change their gender marker in such important documents as diplomas and employment certificates. However, this right is not widely known among employers, schools and even the organisations specialising in combating discrimination.

ECRI recommends that the German authorities insert into the law the right of transsexuals to change their gender marker in documents such as educational diplomas and employment certificates.

**Transphobia and data on hate crimes in the country**

The system for recording and following up “racist, xenophobic, homophobic and transphobic” incidents should be reformed to ensure that all cases involving such a motive are recorded. The police and prosecution services in all the Länder should set up contact points to register such complaints.

The statistics on politically motivated criminal offences exhibit several shortcomings. ECRI was informed that only a small proportion of racist and homo/transphobic insults are recorded in them. For example, they show only 186 cases of hate speech motivated by sexual orientation in all 16 Länder, whereas the Berlin prosecution department recorded 90 cases until 16 October 2013 alone. According to a survey of 24,000 LGBT persons carried out by an NGO in 2006 and 2007, 39.4% of
them had been insulted or bothered during the last 12 months, 14.4 % had received threats and 13.6 % had been subjected to harassment or pressures. 31 The title of the official statistics suggests that they should only cover “politically motivated” offences, although a good many racist and homo/transphobic offences are not based on any political motivation. Even if the definition given by the German police of the concept of “political motivation” specifies that the statistics should include all racist and homo/transphobic hate speech, police officers may be misled by this title when recording offences.

54. ECRI considers that current statistics do not permit an assessment of the extent of racism and homo/transphobia. 67 The huge disparities between official and civil society figures should lead the police and judicial authorities in the first instance to question their statistics on racism. They should also consider whether the judicial system is sufficiently accessible for victims of racism and homo/transphobia.

56. ECRI recommends that the German authorities reform their system for recording and following up “racist, xenophobic, homophobic and transphobic” incidents in order to ensure that all cases involving such a motive are recorded (§ 12 of General Policy Recommendation No. 11).

58. ECRI was also informed that some police officers are reluctant to register complaints of offences with a racist or homo/transphobic motive. This applies not only to insults, but also to damage to property. Some police officers fear the formalities involved in registering complaints of this type. Other information suggests that racist ideas and sympathy towards extreme right-wing organisations are widespread in the police.

59. The Chief Prosecutor of the Land of Saxony-Anhalt has noted a lack of awareness and knowledge of the existing tools in the authorities responsible for prosecuting offences of “racism and discrimination”. 70 Another expert mentions the case of a prosecutor who considered that it was not in the public interest to bring a criminal prosecution against an assailant who had insulted his victim with expressions such as “bum-fucker”, “fucking queer” and “disgrace to Germany” and had told him to “go to Auschwitz to be gassed”. However, as provided for under the proposed amendments to the guidelines for criminal proceedings, the prosecuting authorities should systematically find that there is a public interest in bringing a criminal prosecution where there is a racist or homo/transphobic motive, because hate crimes not only affect the victim, but also spread fear throughout the whole group in question.

60. The survey referred to in § 7 above shows that the recording of an offence as a hate crime is, however, decisive to ensure that racist motivation is taken into account in sentencing. In practice it would seem that the onus is often on the victim’s lawyer to prove the offender’s racist motivation. These findings confirm ECRI’s belief in the importance of the police making the necessary effort to ensure that all offences with a racist or homo/transphobic motive are recognised and registered as such and that this registration is followed by an effective investigation. 71 It should also ensure that the changes under preparation in the guideline requiring an investigation into the presence of a “racist, xenophobic or other particularly reprehensible motive” are systematically complied with.
105. A recent FRA survey shows that there is still heavy discrimination against LGBT persons in Germany and that policies to combat such discrimination could be improved. 49% of LGBT persons consider that measures to promote respect for LGB human rights are few and far between. 79% voice the same opinion in connection with transgender persons. Despite a strong tendency for LGBT persons to conceal their sexual orientation, 15% of the persons interviewed in Germany considered that they had suffered discrimination in job-seeking, 21% in the workplace and 17% when seeking housing. Knowledge of the different forms and extent of discrimination against LGBT people on the housing market is still scanty.

106. Homo/transphobia is one of the main problems in German schools. 73% of LGBT students have never spoken openly about their sexual orientation at school. 64% have heard negative comments about a classmate who has been perceived as LGBT. The word “gay” is one of the commonest insults at school. 17% of LGBT students have suffered discrimination from school or university staff. ECRI considers that the ministries responsible for education should make sexual diversity a cross-cutting issue in the curriculum in order to promote tolerance vis-à-vis young LGBT persons and enable them to talk openly about their sexual orientation. ECRI also encourages them to devise measures to combat the discrimination and violence suffered by young LGBT persons at school.

107. The situation of transgender persons is particularly difficult in the employment field. They are disadvantaged in terms of access to employment and career prospects, and they suffer rejection, harassment and even violence. They are more often affected by job loss, unemployment and poverty and are frequently overqualified for their jobs. They are subjected to transphobic conducts on the part of colleagues and superiors.

108. Where health is concerned, transsexualism is still classified as a “disorder of personality and behaviour”. There is also a lack of awareness on the part of physicians, psychotherapists and medical professional associations of the different problems for each of the component groups of the LGBT community. 12% of LGBT persons say that they have suffered discrimination from a physician or another health professional in the past 12 months. One group which is particularly exposed to this type of discrimination is elderly LGBT persons. Many of them are afraid of being subject to exclusion after their move to a retirement home or sanatorium.

109. ECRI welcomes the fact that several Länder have adopted measures and action plans to increase tolerance vis-à-vis LGBT persons and combat homophobia and transphobia. The Land of Berlin recently assessed the implementation of its 2010 Action Plan. The Action Plan implemented by the Land of North Rhine-Westphalia might also be mentioned as a good example. It addresses almost all the fields covered by Recommendation CM/Rec(2010)5 of the Committee of Ministers. A further strong point in these processes is the intensive participation of civil society in their development. ECRI considers that the Federation and the other Länder should follow these examples.

110. ECRI recommends that the Federal Government and the Länder which have not yet adopted an action plan or a comprehensive programme to promote tolerance vis-à-vis LGBT persons and combat homophobia and transphobia take inspiration from the existing plans to draw up their own measures or action plan.
111. ECRI notes that the problems transgender persons face have not yet become sufficiently rooted in the collective consciousness. For instance, in evaluating its action plan, the City of Berlin noted that transgender issues had only played a minor role. As the transgender community set up its structures for defending its members fairly late on, they are still short of political and financial support. The ADS and the German Association of Lesbians and Gays (LSVD) in North Rhine-Westphalia only began publishing the first two major surveys on the situation of transgender persons in 2010.

112. ECRI recommends that the German authorities systematically include specific transgender issues in their action plans on promoting equality and increase financial support for organisations fighting for their rights.

113. As regards the low rate of declaration of discrimination by LGBT persons, ECRI once again refers to its recommendations on increasing the financial and human resources of the ADSs and setting up contact points for vulnerable groups within the police agencies and the prosecuting authorities.

- **List of recommendations from ECRI**

6. (§ 56) ECRI recommends that the German authorities reform their system for recording and following up "racist, xenophobic, homophobic and transphobic" incidents in order to ensure that all cases involving such a motive are recorded (§ 12 of General Policy Recommendation No. 11).

16. (§ 104) ECRI recommends that the German authorities insert into the law the right of transsexuals to change their gender marker in documents such as educational diplomas and employment certificates.

17. (§ 110) ECRI recommends that the Federal Government and the Länder which have not yet adopted an action plan or a comprehensive programme to promote tolerance vis-à-vis LGBT persons and combat homophobia and transphobia take inspiration from the existing plans to draw up their own measures or action plan.

18. (§ 112) ECRI recommends that the German authorities systematically include specific transgender issues in their action plans on promoting equality and increase financial support for organisations fighting for their rights.
Greece

Report published in February 2015


- Context information from ECRI

p.10:

“There is also considerable discrimination towards LGBT and in particular against transgender persons. Harassment by the police is a common phenomenon as is discrimination in the education sector. The individuals concerned do not have sufficient support or protection from discrimination.”

“The question of a racist and/or homo-/transphobic motivation in cases of violent incidents should be made an integral part of investigations and judicial proceedings from their very beginning. There should be further training provided to the police, for which programmes proposed by international organisations could be used. The authorities should also offer training to judges and prosecutors on the application of Article 81A of the Criminal Code on hate motivated offences.”

- Transphobia and data on hate crimes in the country

48. ECRI recommends that a provision prohibiting racist and homo-/transphobic insults and providing for measures and/or sanctions to be taken in case of its breach is introduced in the Parliament’s Standing Orders.

53. ECRI has been informed by LGBT groups that homo- and transphobic hate speech, verbal harassment and inappropriate comments are common amongst the general public, resulting in LGBT persons feeling constantly discriminated against and excluded in day-to-day life.

57. ECRI recommends that the authorities make a public declaration condemning homo-/transphobic hate speech. It also recommends that all political parties take a firm stand against homo-/ transphobic discourse by their representatives.

58. There is a severe problem with underreporting of racist or homo-/transphobic violence in Greece. In so far as racist violence is concerned, this is mainly due to fear amongst victims of being arrested and deported when reporting such a crime to the police, given the fact that many of them do not have residence permits. Other deterrents include the absence of successful prosecutions of culprits, and the persistent and continuing allegations, some of which were officially investigated, of collusion between police officers and Golden Dawn, which have severely diminished trust in the police amongst victims of racist violence. Furthermore, the fact that the police have requested a number of victims to pay a fee of € 100 to lodge their complaints created an additional obstacle, although the authorities indicated to ECRI that in such cases no fee should be charged by the police.36 This has been made clear in Law 4285/2014, which in Article 5 expressly rules out such fees.

59. ECRI recommends that the authorities ensure that clear instructions are issued to all police officers that no fee is to be charged for reporting racist or homo-/transphobic violence; the victims should always be informed accordingly.
There were hardly any criminal proceedings against perpetrators of racist violence until the arrests of the Golden Dawn leadership. Furthermore, ECRI was informed by the prosecuting authorities, the Ombudsman and several NGOs that the racist and/or homo-/transphobic motivation of an act, in line with Article 79 of the Criminal Code on aggravating circumstances, was considered only at the end of a trial, when deciding the length of a sentence. This means that usually the full racist and/or homo-/transphobic background and dimension was not properly taken into account during the collection of evidence, the investigation and the judicial proceedings, in spite of a 2006 Police Circular regarding the inclusion of such motivations in police investigations. This in turn also led to a skewed picture with regard to the extent of hate crime committed and the severity of this problem within Greek society. Several recommendations had been made in the past by human rights organisations concerning the need to take racist or homo-/transphobic motivations into account from the outset of an investigation and at the beginning of a trial. Given the scale of the problem in Greece, it is difficult to comprehend why this had not been done before. The new Article 81A of the Criminal Code on hate motivated offences, introduced in 2014, is intended to remedy this problem now.

76. ECRI recommends that a racist and/or homo-/transphobic motivation in cases of violent incidents is made an integral part of investigations and judicial proceedings from their very beginning. ECRI recommends training for the police, for which programmes proposed by international organisations could be used. ECRI also recommends that the authorities offer training to judges and prosecutors on the application of Article 81A of the Criminal Code on hate motivated offences.

- **Legislative issues**
- **Policies to combat discrimination against LGBT persons**

140. Greece does not have an effective policy for the protection of LGBT persons against discrimination or a strategy to promote tolerance vis-à-vis this group. Sexual orientation and gender identity were included as grounds in the old Article 79(3) of the Criminal Code on aggravating circumstances, and in Law 4285/2014, which added the new Article 81A on hate motivated offences to the Criminal Code. 94 Sexual orientation, but not gender identity is also included in the grounds of Law 3304/2005 (see section I.1 above). However, there is no national programme in place to raise awareness among the public and combat negative stereotypes and prejudices.

141. In the 2012 LGBT survey of the European Union’s Fundamental Rights Agency (FRA), 68% of respondents in Greece said that offensive language about LGBT people by politicians is “fairly” or “very widespread” in their country (EU average: 44%). 95 ECRI was informed by LGBT groups that homo- and bisexual persons can usually only avoid discrimination by not revealing their sexual orientation, as levels of intolerance are still high. While it is regrettable that anyone feels compelled to resort to secrecy, such an “option” is often not even available to transgender and transsexual people.

142. A cause for serious concern is the homophobia and transphobia exhibited by some staff in educational institutions. FRA’s LGBT survey showed that nearly one quarter (24%) of respondents felt
discriminated against because of being LGBT by personnel in educational institutions. The case of a transgender person, who was harassed in an Athens evening school and was finally driven to abandon her further education, is one of the cases in point and even led to an intervention by the Ombudsman. However, in this case it seems particularly peculiar and counter-productive that the only teacher, who had supported the victim in the absence of any support from the headmaster, was subsequently suspended in dubious circumstances and allegedly without due process.

143. ECRI strongly recommends that the Greek authorities develop a national strategy, together with LGBT representatives, to combat discrimination and homo-/transphobia, including in educational facilities. Furthermore, all educational staff should be encouraged and supported to assist victims of bullying. The authorities should also develop a national strategy, together with LGBT representatives, to combat discrimination and homo-/transphobia, including in educational facilities. Furthermore, all educational staff should be encouraged and supported to assist victims of bullying.

144. Not only are sexual orientation and gender identity not included into the mandate of the newly established anti-racism police units (see section I.3 above), but repeated and consistent allegations have been brought to ECRI’s attention concerning routine police harassment of transgender persons by fining them for solicitation and attempted prostitution merely based on their appearance and the discrepancy between their looks and the sex indicated on their identity cards.

145. ECRI strongly recommends that the Greek authorities issue a clear instruction to all police officers that transgender persons should not be fined for alleged prostitution offences merely due to their identity and appearance.

146. In the run-up to the 2013 Thessaloniki Pride, a group of transgender people was arrested and charged with public order offences allegedly caused by their transgender identity. Their lawyer, who visited them in the police station, was also detained, allegedly without justification, and intimidated by police officers. The Greek authorities informed ECRI that an internal police inquiry has been conducted, but that the case was closed as the claims against the police officers could not be substantiated. ECRI notes that the investigation was not independent; moreover, it has received no information as to whether a criminal prosecution against the policemen concerned will be initiated.

147. ECRI recommends that the authorities ensure a full and independent investigation of this incident.

- Education and awareness-raising

p.11:

The authorities should develop a national strategy, together with LGBT representatives, to combat discrimination and homo-/transphobia, including in educational facilities. Furthermore, all educational staff should be encouraged and supported to assist victims of bullying. The authorities should also
issue a clear instruction to all police officers that transgender persons should not be fined for alleged prostitution offences merely due to their identity and appearance.

- **List of recommendations from ECRI**

13. (§48) ECRI recommends that a provision prohibiting racist and homo-/transphobic insults and providing for measures and/or sanctions to be taken in case of its breach is introduced in the Parliament’s Standing Orders.

16. (§57) ECRI recommends that the authorities make a public declaration condemning homo-/transphobic hate speech. It also recommends that all political parties take a firm stand against homo-/transphobic discourse by their representatives.

17. (§59) ECRI recommends that the authorities ensure that clear instructions are issued to all police officers that no fee is to be charged for reporting racist or homo-/transphobic violence; the victims should always be informed accordingly.

20. (§76) ECRI recommends that a racist and/or homo-/transphobic motivation in cases of violent incidents is made an integral part of investigations and judicial proceedings from their very beginning. ECRI recommends training for the police, for which programmes proposed by international organisations could be used. ECRI also recommends that the authorities offer training to judges and prosecutors on the application of Article 81A of the Criminal Code on hate motivated offences.

22. (§80) ECRI recommends including sexual orientation and gender identity in the mandate of the new anti-racism police units.

43. (§143) ECRI strongly recommends that the Greek authorities develop a national strategy, together with LGBT representatives, to combat discrimination and homo-/transphobia, including in educational facilities. Furthermore, all educational staff should be encouraged and supported to assist victims of bullying.

44. (§145) ECRI strongly recommends that the Greek authorities issue a clear instruction to all police officers that transgender persons should not be fined for alleged prostitution offences merely due to their identity and appearance.
Hungary

report published in June 2015


- Context information from ECRI

129. ECRI notes that there is no government strategy or action plan to promote tolerance and combat discrimination against LGBT persons in Hungary, despite evidence of prejudice in various fields of everyday life. The difficulties faced by the organisers of the Budapest Pride festival in obtaining permits to hold the event in 2011 and in 2012 testify to such prejudice, although there were no problems in 2013. The Commissioner for Fundamental Rights has conducted several investigations into the Pride festival marches and the conduct of the police. These concluded that by cordonning off the entire route to prevent incidents, the police had secured the safety of participants at the expense of freedom of assembly. The 2014 festival was also held amid heavy police presence along a cordoned-off route. ECRI is pleased to note that training for police on this particular issue has been provided to some 2,500 police officers.

130. As regards health issues, ECRI has been informed that there are no clinical guidelines or medical protocols in relation to transgender issues. Hungary’s health insurance cover for gender reassignment treatment is 10% of the total costs. No applications for funding have been denied so far, but the lack of specialised surgeons in the public health care system remains an obstacle.

131. Concerning school education, while the national curriculum includes elements on discrimination and difference, homosexuality and homophobia-related topics are not explicitly mentioned. According to a report of the Council of Europe’s Commissioner for Human Rights, schools do not provide any information about homosexuality or only biased, incorrect information.

132. In view of the above, ECRI considers that the authorities should draw up and adopt an action plan to promote tolerance towards LGBT persons in different areas, as well as to combat homophobia and transphobia.

133. ECRI recommends that the authorities draw up and adopt an action plan to combat homophobia and transphobia in all areas of everyday life, including education, employment and health care, drawing inspiration from Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity.

- Transphobia and data on hate crimes in the country

Racist and homo/transphobic violence fall under Criminal Code Article 216 (violence towards members of a community). According to information provided by the authorities, between 2009 and 2013, there were 191 reported cases of alleged hate motivated violence; 94 of these resulted in
convictions with 33 prison sentences handed out. The authorities informed ECRI that 54% of the victims of these offences were Roma, 8.5% were Jews and 17% involved violence against the Hungarian majority. No data was provided as to any LGBT victims.

- **Legislative issues**

  Hungary has explicitly recognised in its national legislation that sexual orientation is included in the notion of “membership of a particular social group”. Therefore, persons fleeing persecution on grounds of their sexual orientation are able to be recognised as refugees and benefit from international protection. In 2014 there was a case of refugee recognition on the basis of transsexualism.

  Transgender persons are able to have their new gender recognised by means of legal/administrative procedures for change of name and legal gender. Thus, official documents can be changed to match the gender identity. No compulsory medical/surgical intervention is required for legal gender recognition, nor is sterilisation or proof of infertility. However, the person who applies for a rectification of the recorded sex has to be unmarried. This entails mandatory divorce if the person is already married.

  As regards health issues, ECRI has been informed that there are no clinical guidelines or medical protocols in relation to transgender issues. Hungary’s health insurance cover for gender reassignment treatment is 10% of the total costs. No applications for funding have been denied so far, but the lack of specialised surgeons in the public health care system remains an obstacle.

- **List of recommendations from ECRI**

  10. (§66) ECRI recommends that the National Crime Prevention Strategy should be revised to include measures aimed at combating crime motivated by racial and homo/transphobic violence.

  23. (§133) ECRI recommends that the authorities draw up and adopt an action plan to combat homophobia and transphobia in all areas of everyday life, including education, employment and health care, drawing inspiration from Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity.
Italy

From press release from June 2016

http://www.coe.int/t/dghl/monitoring/ecri/Library/PressReleases/222_2016_06_07_Italy_en.asp

The report also notes that an increasing number of incidents of hate speech have given rise to legal proceedings; that the new Action Plan against racism proposes measures to combat hate speech and racist, homophobic and transphobic violence in line with ECRI recommendations; and that the Observatory for protection against discriminatory acts (OSCAD) facilitates the reporting of hate crimes and communication between police and victims.
Lithuania

From press release from June 2016

http://www.coe.int/t/dghl/monitoring/ecri/Library/PressReleases/219_2016_06_07_Lithuania_en.asp

In addition to incidents of hate speech and violence, which are mainly directed at historical minorities, Lithuania experiences a widespread problem of incitement to homo-/transphobic hatred as well as acts of violence against LGBT persons.

Therefore ECRI recommends as priority that the authorities:

- resolve the difficult housing situation of Roma, by co-operating with and financially supporting local authorities, in particular the Municipality of Vilnius, to provide social housing to members of the Roma community in need; working with rental agencies and associations of private landlords to overcome prejudices against Roma in the private-sector housing market; and providing proper accommodation for the Roma living in the Kirtimai settlement, ensuring that no evictions take place in the meantime, and that all necessary public services are provided.

- develop a comprehensive strategy to tackle effectively the problem of racist and homo-/transphobic hate speech.
Norway
Report published in 2014

- Context information from ECRI

The 2008 action plan for improving the quality of life among lesbian, gay, bisexual and transgender (LGBT) persons is perceived as a historical milestone. Police statistics do not provide a clear picture of the extent of hate speech and racist and homo/transphobic violence. Many such incidents are not reported to the police. LGBT persons have a higher risk than the general population of suffering from psychological problems, suicide attempts, substance abuse and sexually transmitted diseases. There is a general lack of knowledge about transgender issues. Transgender persons face intolerance and transphobia, but gender identity is not mentioned in the hate-crime provisions. Only one hospital provides specific trans-related public healthcare.

LGBT persons have a higher risk than the general population of suffering from psychological problems, suicide attempts, substance abuse and sexually transmitted diseases. There is a general lack of knowledge about transgender issues. Transgender persons face intolerance and transphobia, but gender identity is not mentioned in the hate-crime provisions. Only one hospital provides specific trans-related public healthcare.

The police should set up specialised units or appoint specialised officers in each police district to deal with racist and homo-/transphobic incidents. An IT-based system should be set up for recording and monitoring these incidents.* One or more police units should be given responsibility for combating hate speech on the Internet and initiate preventive and repressive action throughout the country.

The authorities should develop a new comprehensive action plan for LGBT persons. It should place particular emphasis on improving knowledge and openness in connection with transgender persons. Moreover, the authorities should include gender identity into the hate crime provisions. They should also develop legislation on gender recognition and gender reassignment. Gender reassignment and other specific treatment for transgender persons should be available in several medical facilities.

80. In 2010 the Norwegian Institute of Public Statistics conducted a living-conditions survey on lesbian, gay and bisexual persons; 1,5% of the respondents defined themselves as LGB and 0,3% were unsure how to define themselves. However, the authorities tend to rely on a higher estimate given by researchers: 3 to 5% of the population. Little quantitative research has been done on transgender persons. In 2012, the authorities estimated their number to be at least 19 000; for approximately 700 persons the diagnosis of transsexualism had been made. Moreover, according to the authorities, every year 10 to 12 children are born with ambiguous genitalia and about 300 with atypical genitalia. ECRI welcomes the research done so far on LGB; it encourages the authorities to collect data on them on a more regular basis, for example when gathering statistics on the general population.104 ECRI also encourages the authorities to fill the obvious gap that exists in so far as data on transgender persons is concerned.
Transphobia and data on hate crimes in the country

38. On 22 July 2011, Norway was shaken by the terrible attacks of Anders Behring Breivik which caused 77 deaths. Most of them were young persons. Oslo District Court found that Breivik was sane and sentenced him to 21 years of containment, a special form of prison sentence that can be extended indefinitely. ECRI considers that this case raises important questions about racist motivation; while it is not disputed that Breivik committed these offences out of hatred, the victims did not belong to a vulnerable group. It is clear that the Oslo court devoted to the motivation issue as much attention as it could in a case involving personal criminal responsibility. However, ECRI regrets that some of the broader questions – for example the possible influence of hate speech and Islamophobia in the public debate on Breivik’s motivation - were not addressed in the report of the commission discussed in § 45.

39. Breivik’s attacks were not the only hate motivated attacks in Norway. In 2011 the police flagged 139 of the recorded hate crime cases (64%) as violence, in 2012 154 (71%) and in 2013 156 (66%). In these figures cases of homicide and physical assault are bundled together with cases of damage to property, desecration of graves, attacks on places of worship, vandalism, threats and threatening behaviour. The police believe that the brutal murder of Mahmed Shirvac Jamal, a Norwegian of Somali origin on 27 August 2008 in Trondheim was racially motivated. The perpetrator, who had written racist online postings and possessed several firearms, was sentenced to compulsory psychiatric care. In October 2012, a Sami woman was attacked by a gang of men who tried to set her coat on fire. A search conducted on 16 July 2013 at the home of the Norwegian neo-Nazi Kristian Vikernes in France resulted in the seizure of five firearms. The French authorities considered that he was capable of preparing a major terrorist act. Even though Vikernes had published hate motivated statements while serving a prison sentence for murder in Oslo, he was indicted for incitement to hatred only in France. On 15 February 2014, a man of Liberian origin was attacked by five young persons, one of them using a shovel. LGBT persons are also attacked. On 25 February 2014 the court trial began of 11 youngsters who had trapped and beaten a homosexual man with a bat.

41. As already stated in § 28, police statistics do not provide a clear picture about the extent of racist and homo/transphobic violence, as there is considerable underreporting. According to a detailed report on hate crime issued by the Oslo police in 2013, there are several possible reasons for the under-reporting mentioned above: victim’s lack of confidence in the police; police officers’ reluctance to record cases; in some reported cases the racist or homo/transphobic motivation might not be perceived or identified by the police.

43. ECRI recommends that the authorities set up specialised units or appoint specialised officers in each police district to deal with racist and homo-/transphobic incidents; these should also liaise with the vulnerable groups.
44. ECRI also recommends that the authorities set up an IT-based system for recording and monitoring racist and homo-/transphobic incidents and their processing through the judicial system (§ 12 of ECRI’s General Policy Recommendation No. 11 on Combating racism and racial discrimination in policing).

81. ECRI recommends that the Norwegian authorities collect data on LGBT persons systematically.

- **Legislative issues**

9. On 1 January 2014 EADA and three other acts against discrimination on the grounds of gender, disability and sexual orientation entered into force. The authorities have informed ECRI that the new government plans to bundle these four acts into a general anti-discrimination act. ECRI is pleased to note that EADA is mostly in line with its GPR No. 7. This part of the report will concentrate on few remaining problems. ECRI encourages the Norwegian authorities to include, in the planned general anti-discrimination act, the elements that have been identified as missing in the following paragraphs.

82. ECRI notes that the protection of LGBT persons has been strengthened by the recent inclusion in the Constitution of the human right to equal treatment and of the general prohibition of discrimination (cf. § 2). However, gender identity is not mentioned in the hate-crime provisions of the CC 1902.

83. ECRI recommends that the Norwegian authorities include gender identity in all articles of the Criminal Code concerning hate motivated offences.

86. In 2008, the Action Plan for Improving the Quality of Life among LGBT (2009- 2012) was adopted. School, education and health were focal areas of the action plan, which also covered the fields of research, child and family policy, working life, police and prosecution, immigration as well as “national minorities”. Combating discrimination of sexual minorities internationally was also one of its goals. In 2011 a LGBT Knowledge Centre was set up as part of the plan, with the aim to increase knowledge about the lives of LGBT persons. According to the action plan, equal opportunities and gender issues were part of the university curriculum for those studying to become teachers. Sexual orientation was to be one of the topics for grades 1 to 4; by grade 4 at the latest, pupils were to be exposed to the concept of families with same-gender parents. Terminology was changed and new teaching material on sexual relationships was prepared. The national initiative against bullying, which had started about a decade before, was continued and a book and exhibition project named “Gay Kids” aimed at raising awareness and disseminating knowledge about same-sex relations among children and adolescents. The city of Oslo established a special health centre for LGBT persons between the age of 13 and 30. Other cities integrated such services in their general-care health centres.

88. In 2013, a large study concluded that the living conditions of lesbian, gay and bisexual persons had improved. On the one hand, a substantial proportion of lesbian and gay persons live ordinary lives with few or no special burdens related to their sexual orientation. The proportion of people with
negative attitudes against LGBT persons has also decreased and there is less fear regarding the situation of children with lesbian and gay parents. On the other hand, as negative views persist among a share of the population, it is still not uncommon for LGBT persons not to disclose their sexual orientation. The risk of psychological problems, of suicide attempts, of substance abuse and of sexually transmitted diseases persisted affecting the LGBT community more than the rest of the population. However, it is less pronounced than previously thought. Another study highlights that LGBT persons with migration backgrounds are confronted with a high degree of intolerance in their own communities. The first study on Norwegian transgender people was conducted in 2013. It concluded that there was a general lack of knowledge about transgender issues; this was felt in a particularly acute manner in the field of public health care and education. As a result, transgender persons suffered from intolerance and transphobia. Many did not dare to come out.

90. ECRI recommends that the authorities develop and adopt a new comprehensive action plan for LGBT persons focusing particularly on improving knowledge and openness in connection with transgender persons and their situation.

91. According to civil society and research, in practice only persons diagnosed with transsexualism have full access to specific trans-related public health-care, including gender reassignment treatment. Other transgender persons do not receive adequate public health-care. In addition, transsexualism can be diagnosed in only one hospital, the Oslo University Hospital (OUH). This is also the only hospital providing gender reassignment treatment that is reimbursed by public health-insurance schemes. ECRI encourages the authorities to ensure that transgender persons (a broader category than transsexuals) can receive free treatment – which is crucial for their condition - in at least two or three specialised medical facilities.

92. ECRI recommends that the authorities ensure that gender reassignment and other specific treatment for transgender persons is made available to them in several medical facilities and that their cost is reimbursed by public health insurance schemes.

93. The legal recognition of gender change is based on administrative practice established in the 1970s. The tax authorities change the gender marker in the national identification number after certification by the OUH that the person in question has undergone a “real sex conversion” which includes irreversible sterilisation. As the OUS is the only institution which provides for such treatment, it makes key decisions in three crucial areas: fulfilment of the diagnostic criteria, provision of health treatment and determination whether the above-mentioned condition for legal recognition of change of gender is fulfilled. ECRI welcomes the fact that the authorities have set up an expert group (with the involvement of civil society) to review the issue of legal recognition of a person’s preferred gender and that they are in the process of establishing a complaints mechanism to which transgender people can turn when they are denied health care from the OUS. ECRI encourages the authorities to establish a proper legal framework, which would also spell out the procedure for gender recognition and gender
They can seek inspiration from international standards and draw on internationally available expertise.

94. ECRI recommends that the authorities develop legislation on gender recognition and gender reassignment, in line with international standards and expertise.

- **List of recommendations from ECRI**

7. (§ 32) ECRI also strongly recommends the authorities to give one or more police units responsibility for combating hate speech on the Internet along with appropriate technical and human resources.

9. (§ 43) ECRI recommends that the authorities set up specialised units or appoint specialised officers in each police district to deal with racist and homo-/transphobic incidents; these should also liaise with the vulnerable groups.

10. (§ 44) ECRI also recommends that the authorities set up an IT-based system for recording and monitoring racist and homo-/transphobic incidents and their processing through the judicial system (§ 12 of ECRI’s General Policy Recommendation No. 11 on Combating racism and racial discrimination in policing).

19. (§ 83) ECRI recommends that the Norwegian authorities include gender identity in all articles of the Criminal Code concerning hate motivated offences.

20. (§ 90) ECRI recommends that the authorities develop and adopt a new comprehensive action plan for LGBT persons focusing particularly on improving knowledge and openness in connection with transgender persons and their situation.

21. (§ 92) ECRI recommends that the authorities ensure that gender reassignment and other specific treatment for transgender persons is made available to them in several medical facilities and that their cost is reimbursed by public health insurance schemes.

22. (§ 94) ECRI recommends that the authorities develop legislation on gender recognition and gender reassignment, in line with international standards and expertise.
Poland

Report published in 2015


- Context information from ECRI

p.10:

The Criminal Code does not explicitly prohibit incitement to violence, hatred and discrimination, or public insults and defamation, or the making of threats, on grounds of sexual orientation or gender identity. Homo/transphobic violence is present in schools, while homosexuality is still seen by a large section of the population as a disease and transgender persons are subject to certain instances of discrimination in access to healthcare.

- Transphobia and data on hate crimes in the country

27. Neither paragraph 1 of Article 256 of the current Criminal Code prohibiting incitement to hatred, the propagation of fascist or totalitarian ideology and the production and dissemination of racist material, nor Article 257 prohibiting public insults, specifically mentions sexual orientation or gender identity among the prohibited grounds. ECRI notes that several proposed amendments to the Criminal Code were introduced in 2011. Two of them concern the addition of gender identity and sexual orientation, among others, to the grounds enumerated in Articles 256 and 257, among others. The third amendment, introduced by the Civic Platform party in 2012, concerns the replacement of the existing grounds in these articles with wording referring to the victim’s “natural or acquired personal qualities or beliefs”.

28. ECRI recommends that sexual orientation and gender identity be explicitly added to the prohibited grounds in Articles 256 and 257 of the Criminal Code.

30. The situation remains largely unchanged today. ECRI must, however, draw attention to the issue of hate speech based on sexual orientation and gender identity (one of the topics of the fifth cycle). In this connection, reference is made to homophobic views expressed in parliamentary proceedings concerning the draft legislation on civil partnerships; the statement by a former Government Plenipotentiary for Equal Treatment concerning the dismissal of a homosexual teacher; the statements by a former President of the Republic during a television broadcast about the presence of homosexuals in Parliament, and inappropriate comments about a transsexual MP made by another MP, which were repeated and supported on Radio Maryja, belonging to the Warsaw Congregation of the Most Holy Redeemer (see §§ 33 and 40).

The authorities informed ECRI that, according to the police, 48 cases were brought in 2009 under Article 256, paragraph 1, of the Criminal Code; 54 in 2010; 81 in 2011; 86 in 2012; and 267 in 2013. This information can be compared with the figures provided by the Ministry of Justice in connection with Article 256: 17 prison sentences and 2 cases of conditional discontinuation were handed down in 2009; 7+0 in 2010; 9+1 in 2011; and 21+3 in 2012. It should be noted that data on homophobia and transphobia are collected by the Ministry of the Interior and that these data show eight cases in 2013.
(including three cases of violence and four cases of incitement to hatred) and four in 2012 (including one case of violence). From its examination of these data, it would appear to ECRI that the conviction rate has decreased in the last few years, providing an objective basis for the impression of impunity expressed by vulnerable groups and representatives of civil society.

Lastly, ECRI notes that hate speech is regularly the subject of statements by senior political figures, such as the condemnation by the President and the Prime Minister of the extremist violence which marred the Independence Day celebrations in November 2012 or the reactions of the new Government Plenipotentiary for Equal Treatment to homo/transphobic remarks made in Parliament.

92. The little information available comes from NGO surveys or academic studies, particularly at the instigation of the Government Plenipotentiary for Equal Treatment. Data from the Interior Ministry’s Department of Control, Complaints and Petitions indicate only one incident of homo/transphobic violence in 2012 and three in 2013. As far as civil and administrative law is concerned, three cases were brought before the courts in 2012 under Article 13 of the Anti-Discrimination Act and, in each case, compensation was awarded. The report published by the FRA in 2013 following its LGBT survey in the European Union shows that the situation of LGBT persons in Poland compares unfavourably with the European average in terms of: the feeling of having been discriminated against in the previous 12 months on grounds of sexual orientation (57% in Poland as compared with 47% Europe-wide), familiarity with the laws against discrimination (46% as compared with 56%), reporting incidents of discrimination (4% as compared with 10%), the feeling that homophobic language is very widespread among politicians (83% as compared with 44%), the feeling that homophobic jokes are very widespread in daily life (47% as compared with 37%), avoiding holding hands in public due to fear of homophobic reprisals (83% as compared with 66%), and avoiding certain locations due to fear of homophobic reprisals (61% as compared with 50%).

98. In the field of healthcare, the above-mentioned survey by the FRA shows that 13% of lesbians, 10% of gays, 9% of bisexual women, 10% of bisexual men and 16% of transgender persons had felt discriminated against by healthcare personnel in the previous 12 months. The collective of Polish LGBT associations cites studies by the University of Poznan showing that more than 20% of students regard homosexuality as a disease. This collective also reports difficulties of access for transgender women to andrology services and for transgender men to gynaecology services. It also notes a lack of knowledge and lack of sensitivity on the part of health practitioners regarding LGBT issues. The Polish authorities have highlighted the fact that, under the Order of the President of the National Health Fund of 29 March 2013, there is now the possibility of obtaining reimbursement of services granted to a person whose gender is different from that indicated in his or her administrative file. With regard to the problem of discrimination against transgender persons by medical staff, the Polish authorities state that this problem has been recognised and will be the subject of action under the National Action Plan for Equal Treatment 2013-2016.

- Authorities’ response

37. The authorities informed ECRI that, according to the police, 48 cases were brought in 2009 under Article 256, paragraph 1, of the Criminal Code; 54 in 2010; 81 in 2011; 86 in 2012; and 267 in 2013.
This information can be compared with the figures provided by the Ministry of Justice in connection with Article 256: 17 prison sentences and 2 cases of conditional discontinuation were handed down in 2009; 7+0 in 2010; 9+1 in 2011; and 21+3 in 2012. It should be noted that data on homophobia and transphobia are collected by the Ministry of the Interior and that these data show eight cases in 2013 (including three cases of violence and four cases of incitement to hatred) and four in 2012 (including one case of violence). From its examination of these data, it would appear to ECRI that the conviction rate has decreased in the last few years, providing an objective basis for the impression of impunity expressed by vulnerable groups and representatives of civil society.

42. Lastly, ECRI notes that hate speech is regularly the subject of statements by senior political figures, such as the condemnation by the President and the Prime Minister of the extremist violence which marred the Independence Day celebrations in November 2012 or the reactions of the new Government Plenipotentiary for Equal Treatment to homo/transphobic remarks made in Parliament.

44. ECRI recommends that the Polish authorities (1) draw up and implement a comprehensive plan for training police officers and prosecutors in the application of the Prosecutor General’s guidelines on the participation of prosecutors in cases of crimes prosecuted upon private complaint and on the conduct by prosecutors of proceedings in cases of hate crimes; (2) rationalise the system for collecting data and producing statistics in order to provide a coherent, integrated view of cases of racial and homo/transphobic hate speech reported to the police or processed through the courts; (3) incorporate into the statistical system indicators for monitoring the effectiveness of the judicial system in dealing with hate speech cases; and (4) mount a large-scale campaign for tolerance addressed to society at large, as already recommended in the 4th cycle report.

61. ECRI recommends that the Polish authorities (1) rationalise the system for collecting data and producing statistics in order to provide a coherent, integrated view of cases of racial and homo/transphobic hate speech reported to the police or processed through the courts; (2) reinforce the group set up by the Council against Racial Discrimination, Xenophobia and Related Intolerance to study the real scale of the hate crime phenomenon; and (3) study, in consultation with civil society, the phenomenon of extremist violence occurring on the fringes of the Independence Day celebrations and draw up a comprehensive action plan for preventing and combating it.

94. ECRI also notes that proposals for amendments to the Anti-Discrimination Act were introduced in June 2013 with the aim of including gender identity among the prohibited grounds and extending protection on grounds of sexual preference or gender identity to all areas of life. Regarding the possibility of persons of the same sex marrying or entering into a partnership in another country, the Polish authorities said that they intended to introduce draft legislation on civil status documents. The draft provided for the issuance of a neutral, universal certificate based on the information contained in the central registry instead of having numerous civil status documents relating to the same person, thus enabling Polish citizens to sort out any administrative situation. Despite the assurances of the Government to ECRI, the amended Civil Status Act which was enacted does not regulate the
possibility for issuance of a certificate for Polish citizens intending to conclude same-sex marriages in other countries. On the contrary, the law now more rigorously excludes the possibility of issuing this type of certificate. 29 Lastly, ECRI understands that a public consultation was held in April 2014 on draft legislation designed to facilitate sex and name change procedures, with a view to submitting it for parliamentary procedure, and that the legislation was drafted in close co-operation with civil society players representing transgender persons, the Ministry of Health and the Government Plenipotentiary for Equal Treatment.

99. ECRI recommends that the Polish authorities draft and submit to Parliament legislation, or amendments to existing legislation, in order to enshrine in Polish law the equality and dignity of LGBT persons in all areas of life.

100. For this purpose, the authorities should (1) amend the Anti-Discrimination Act to add gender identity to the protected characteristics; (2) ensure that civil status documents can be issued to any person wishing to marry or enter into a civil partnership in other countries where that is permitted, whatever the gender of the future spouse or partner; and (3) allow anyone wishing to change gender or name to do so without having to contest the gender registered by their parents at birth.

101. Finally, ECRI recommends that the Polish authorities ensure that the curricula of all branches of school, university and vocational education contain a section on LGBT persons and the fight against discrimination towards them, and provide inservice training programmes to raise awareness among all relevant professionals (including health professionals).

- Legislative issues

46. Neither paragraph 1 of Article 118 of the current Criminal Code prohibiting homicide, nor paragraph 1 of Article 119 prohibiting violence, nor paragraph 2 of Article 255 prohibiting incitement to crime, refers specifically to sexual orientation or gender identity among the grounds for hatred. ECRI notes that the various proposed amendments to the Criminal Code referred to above (see §27) are aimed also at amending Article 119 in relation to these prohibited grounds.

47. ECRI recommends that sexual orientation and gender identity be added to the prohibited grounds in Articles 118, 119 and 255 of the Criminal Code.

- List of recommendations from ECRI

5. (§ 28) ECRI recommends that sexual orientation and gender identity be explicitly added to the prohibited grounds in Articles 256 and 257 of the Criminal Code.

6. (§ 44) ECRI recommends that the Polish authorities (1) draw up and implement a comprehensive plan for training police officers and prosecutors in the application of the Prosecutor General’s guidelines on the participation of prosecutors in cases of crimes prosecuted upon private complaint and on the conduct by prosecutors of proceedings in cases of hate crimes; (2) rationalise the system
for collecting data and producing statistics in order to provide a coherent, integrated view of cases of racial and homo/transphobic hate speech reported to the police or processed through the courts; (3) incorporate into the statistical system indicators for monitoring the effectiveness of the judicial system in dealing with hate speech cases; and (4) mount a large-scale campaign for tolerance addressed to society at large, as already recommended in the 4th cycle report.

8. (§ 47) ECRI recommends that sexual orientation and gender identity be added to the prohibited grounds in Articles 118, 119 and 255 of the Criminal Code.

9. (§ 61) ECRI recommends that the Polish authorities (1) rationalise the system for collecting data and producing statistics in order to provide a coherent, integrated view of cases of racial and homo/transphobic hate speech reported to the police or processed through the courts; (2) reinforce the group set up by the Council against Racial Discrimination, Xenophobia and Related Intolerance to study the real scale of the hate crime phenomenon; and (3) study, in consultation with civil society, the phenomenon of extremist violence occurring on the fringes of the Independence Day celebrations.
Slovakia

report from 2015


- Context information from ECRI

A recent survey of FRA indicates that the vast majority of LGBT persons in Slovakia avoid revealing their sexual orientation at work. Moreover 19% of the persons interviewed replied that they felt discriminated against because of their sexual orientation. Transgender people are obviously even more vulnerable to harassment and discrimination in employment due to their gender expression. This survey also measured LGBT persons’ experiences of discrimination in areas other than employment, namely education, healthcare and social services, and when accessing goods and services available to the public. 33% of the respondents in Slovakia replied that during the last 12 months (i.e in 2012) they had personally felt discriminated against because of being LGBT.

Moreover, the psychiatric diagnosis of “transsexualism”, which is required before a person can change name and identification number, in Slovakia still falls under the category of mental and behavioural disorder. The public health scheme only refunds sex-change treatment based on such a psychiatric diagnosis, which is not acceptable to everybody. These facts, coupled with the legislative issues mentioned in paragraphs 137 and 138, make access to health for transgender persons particularly difficult.

- Transphobia and data on hate crimes in the country

A mechanism for collecting disaggregated data on hate speech and racist homo/transphobic violence incidents should be put in place and the data made public. Gender reassignment treatment should be made available for transgender persons in Slovakia and the cost should be reimbursed by public health insurance schemes.

No official data on homo/transphobic violence in Slovakia exists and no incidents of this kind were reported in the Annual Report on Hate Crimes in the OSCE Region.51 The NGO Iniciativa Inakost launched an online tool for reporting homophobic violence - or to the same effect other homophobic incidents - and providing information for victims. The NGO will record incidents and help those who report crime in their contact with the authorities.

An amendment to the Criminal Code passed in May 2013 introduces sexual orientation among the aggravating circumstances of a criminal offence. The amendment will allow the police to record data about inter alia cases of homo/transphobic violence. ECRI therefore reiterates its recommendation already made in the Hate speech section on the need for detailed statistical data on racist and homo/transphobic crime. In so far as the policies’ results are concerned, a recent study published by the IOM (already mentioned in the section on Racist and homo/transphobic violence) reported that 56 % of the migrants interviewed felt entirely or partially accepted in Slovakia (in the Asian community this number was only 32 %). Only 46 % of the respondents thought that they had the same rights as Slovak nationals. This should be contrasted to the findings of another recent study, according to which
one of the main objectives of the foreigners’ integration policy - the gradual harmonisation of the legal status of foreigners living in Slovakia with the legal status of Slovak citizens - was being achieved.

- Legislative issues

There are legislative provisions relating to issues concerning transgender persons which are problematic, such as changing name and personal identification number given that in Slovakia this shows your gender. In principle such changes are made by the Ministry of Interior and are based on a written declaration of the person concerned or his/her legal representative and the presentation of a medical certificate stating that the person in question has undergone sex change (it appears that in the Slovakian language the word sex is also used for gender). The legislation is silent concerning specific medical requirements for changing sex. Many doctors interpret this requirement in a strict manner and in order to provide a certificate require proof of permanent change of the original reproductive organs or that the person has been diagnosed as permanently infertile. It appears therefore that the lack of clarity concerning the requirements for the change of name and personal identification number in the civil registry could be an obstacle for the acquisition of appropriate identity documents by transgender persons.

- Education and awareness raising

144. The above-mentioned FRA survey indicates that nine out of 10 persons interviewed in Slovakia have rarely encountered measures taken by their authorities to promote respect for the human rights of LGBT people. However in July 2012, the Government Council for Human Rights, Minorities, and Gender Equality decided to establish a Committee for LGBTI issues. The decision was unanimous and was taken on the initiative of nine different NGOs to promote policy with improvements in this area. The task of creating the Committee and establishing its activities was assigned to the Ministry of Foreign Affairs. Despite strong criticism by part of the public opinion of the inclusion of LGBT issues in the human rights agenda of the Government, the Committee has held several meetings.

145. ECRI hopes that this committee will become a forum for the discussion of the LGBT persons’ problems that have identified in this report, such as hate speech and unclear legal and medical standards for gender reassignment, as well as the implementation of concrete education and awareness-raising activities in favour of LGBT persons.

- List of recommendations from ECRI

29. (§135) ECRI encourages the authorities to undertake research and collect data on LGBT persons in Slovakia as well as on discrimination and intolerance against them, while ensuring respect for the principle of confidentiality, informed consent and individuals’ voluntary self-identification as a member of a particular group.

30. (§143) ECRI recommends that the authorities ensure that gender reassignment treatments, which are required by law to change name and gender identification in official documents, are made available for transgender persons in Slovakia and that their cost is reimbursed by public health insurance schemes.
Switzerland

Report from 2014


- Context information from ECRI

The Federal Supreme Court has ruled that freedom of expression must not be given such importance that it “completely voids the efforts to fight racial discrimination”. Several media concerns have adopted self-regulation measures to combat hate speech on their websites. Under public pressure, some politicians have had to resign following racist comments they had made. The level of racist, homophobic and transphobic violence remains relatively low. Several cantons and municipalities have created support bodies for Lesbian, Gay, Bisexual and Transgender (LGBT) persons. They have also adopted measures to deal with questions of sexual orientation and gender identity, particularly at school.

Refugees, cross-border workers and LGBT persons are also the target for xenophobic, homophobic and transphobic discourse.

More generally, Swiss society has not yet taken on board the extent of the specific problems faced by LGBT persons, and especially transsexual and intersexual persons. The fact is, however, that they are the victims of discrimination, rejection and hostility in many fields. One study highlights the discrimination against transsexual persons in vocational training, the labour market, when seeking housing or in their contacts with the authorities, in the health field and in their family and social environment. This is also the case for Lesbian, Gay and Bisexual persons. According to another study, the unemployment rate amongst transsexuals was 20 %, i.e. six times higher than the general rate. During the transition phase, each person questioned had had their work contract terminated and almost half had seen their occupational situation deteriorate significantly. LGBT persons are regularly required to reveal their sexual orientation or change of gender and they feel a considerable lack of support from the state. Only the city and canton of Geneva and the city of Zurich have appointed authorities tasked with promoting the rights of LGBT persons.

- Transphobia and data on hate crimes in the country

Switzerland still does neither have comprehensive and effective legislation to combat racism, homophobia and transphobia, nor easily accessible judicial procedures. The police does not systematically register offences having a racist, homophobic or transphobic motivation. The Federal Commission against Racism (CFR) has still not been given the key power of being able to hear and consider complaints of racism. At the same time, it suffers from a lack of independence. It is only Geneva, Vaud and Zurich that have appointed authorities tasked with promoting and protecting the rights of LGBT persons.
The system of police recording and following up of racist, homophobic or transphobic incidents should be improved and a police department should be tasked with actively combating hate speech on the Internet.

No statistics exist on homophobic or transphobic hate speech.

In Switzerland there are no reliable statistics on the extent of racist and homophobic/transphobic violence.

ECRI recommends that the Swiss authorities improve their system for recording and monitoring in particular incidents of violence in order to obtain more reliable statistics on the racist, homophobic or transphobic motivation of offences under the Criminal Code.

The available data suggest that the level of racist, homophobic and transphobic violence is relatively low. The counselling network for victims of racism nonetheless noted an increase in incidents of physical violence from five in 2011 to 14 in 2012. To reverse this trend, ECRI considers that the Swiss authorities must in coming years take firm steps against hate speech, as the spread of such discourse and tolerance of it lead to radicalisation and increased violence. At the same time, the authorities should exercise vigilance with regard to all forms of extremism.

It is estimated that several percent of the population are homosexual or bisexual. Up to 2012, 5,894 partnerships had been registered under the registered partnership scheme which applies only to homosexual couples. One out of three lesbian couples raises a child from a previous marriage. While the government claims that there are between 100 and 200 genuinely transsexual persons, other sources give considerably higher figures.

- **Legislative issues**

A change of name and gender by transsexual persons falls under the competence of the cantons (Article 30.1 of the Civil Code). Certain cantons require sterilisation, divorce and hormone or surgical treatment. In 2012, the Federal Office for Civil Status (OFCE), in a legal opinion, came out against surgical operations aimed at sterilisation or the construction of the genital organs of the desired gender. Drawing on the recommendations of the Council of Europe, it also stipulated that it was possible to convert the marriage or registered partnership where the partners or spouses wish to remain together. This legal opinion is binding on the cantonal authorities. While some courts have now abandoned the requirement for proof of sterility, other authorities and courts have retained these requirements, in the absence of an explicit legal basis.

- **Education and awareness-raising**

ECRI welcomes the action taken by the authorities in several cantons to address the dangerous silence which surrounds questions of sexual orientation and gender identity. Examples are the cantons of Geneva and Vaud which have decided to co-operate to combat discrimination and homophobia in schools. They have created the “mosaic” website as an information platform for young people and networks of volunteers and associates in schools to bring homophobia and transphobia out of the silence. In partnership with design schools and videomakers, poster and short film competitions have been run. A book provides advice to adolescents, their parents and teachers at the
coming-out stage. Adolescents themselves have addressed these issues and discussed homophobia and the 2013 Federal Youth Session.

- **List of recommendations from ECRI**

11. (§ 39) ECRI recommends that the Swiss authorities improve their system for recording and monitoring in particular incidents of violence in order to obtain more reliable statistics on the racist, homophobic or transphobic motivation of offences under the Criminal Code (§ 12 of General Policy Recommendation No. 11).

19. (§ 78) ECRI recommends that the authorities adopt comprehensive legislation against discrimination on the grounds of sexual orientation and gender identity and to include these grounds in Article 261bis of the Criminal Code.

20. (§ 82) ECRI recommends that the federal and cantonal authorities provide all LGBT adolescents with the necessary information, assistance and protection to enable them to live in accordance with their sexual orientation and gender identity. It also recommends that they implement measures in all cantons to promote in schools mutual understanding and respect for all persons, irrespective of sexual orientation or gender identity. They could draw on the good examples already to be found in several cantons.

21. (§ 85) ECRI recommends that the Swiss authorities task one or more independent authorities to promote understanding of LGBT persons and combat the discrimination against them. These authorities should cover the whole of Switzerland and be given a specific budget for this purpose.
The Former Yugoslav Republic of Macedonia

Report from 2016


- **Context information from ECRI**

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

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

  NGOs report that LGB persons are typically not outing themselves in the workplace, while transgender persons face difficulties obtaining employment in the first place when their transgender status is visible.

- **Transphobia and data on hate crimes in the country**

  There is no official monitoring mechanism for homo-/transphobic hate speech and the authorities do not collect statistics about incidents. International organisations and human rights defenders agree, however, that homo- and transphobic hate speech is a widespread and rapidly growing problem.19 Just like racist hate speech (see § 15), it is often part of nationalistic discourse in which, among other groups, sexual minorities and their supporters are defined as a threat to the country. Hate speech against LGBT persons in the media, in which negative stereotyping of sexual minorities is prevalent, as well as on the internet and in social media has grown in intensity and frequency in recent years. Human rights observers noted that the use of homophobic language by politicians has also increased. This became evident, for example, in the context of a 2013 parliamentary discussion on a constitutional amendment to define marriage exclusively as a heterosexual union, when several members of Parliament engaged in homophobic rhetoric, which included labelling homosexuality as a disease and akin to paedophilia.

  The density of homo- and transphobic hate speech is also causing a rising number of threats made against LGBT persons, especially those who are publicly advocating for tolerance and non-discrimination. In 2013, for example, the LGBT NGO United received several death threats on its Facebook page.24 Hate speech and threats against LGBT persons tend to increase as a result of negative media coverage in the run up to and aftermaths of public LGBT events, such as the Pride
Week. Likewise, several attacks on the LGBTI Support Centre in Skopje attracted hateful news coverage portraying the victims as provocateurs, which were followed by threats.

So far, the courts have not found anyone guilty of racist or homo-/transphobic hate speech. Moreover, on many occasions the Public Prosecutor have not even taken the initiative to file charges. In spite of the increase in hate speech in recent years, there were no court proceedings for cases related to causing national, racial and religious hatred, discord or intolerance in 2013 and 2014.

Racist and homo-/transphobic hate speech in the media remains unpunished as there is no adequate response taken by the regulatory body or other relevant authorities against its widespread use.

Civil society organisation have made significant efforts over the past years to react to racist and homo-/transphobic hate speech, for example by drawing public attention to incidents and condemning them (see for example § 21). The authorities, on the other hand, have not adopted such a positive attitude. A proposed declaration for the condemnation of hate speech against LGBT persons, for example, was submitted to Parliament in 2012 by Liberal Party MP Ivon Velichkovski. The Parliament, however, rejected the proposal.

ECRI recommends that the authorities take urgent measures to tackle the growing problem of racist and homo-/transphobic hate speech, in particular by:

i) stepping up the training activities on hate speech for law enforcement officers, prosecutors and judges;

ii) introducing administrative sanctions for hate speech in the Law on Audio and Audiovisual Media Services of 2013;

iii) providing the regulatory authority for audio and audio-visual media services with the possibility of issuing warnings or demanding apologies in cases of racist or homo-/transphobic hate speech and related breaches of professional journalistic standards and ethics;

iv) setting up a system of information sharing through which the regulatory authority for audio and audio-visual media services receives information from prosecutors and courts concerning cases that it forwarded in order to enable the regulatory authority to improve and optimise its media monitoring activities;

v) establishing effective regulatory bodies, while respecting the principle of media independence, that can monitor incidents of hate speech in print media and internet services. Furthermore, ECRI recommends that an evaluation of past initiatives to prevent hate speech is carried out with a view of building on existing efforts and expanding good practices, especially in the media and education sectors.

The authorities do not collect comprehensive data concerning racist or homo-/transphobic violence and the country has not submitted any data to the OSCE/ODIHR annual hate crime reporting exercise. In 2013, the NGO Helsinki Committee for Human Rights of the Republic of Macedonia (henceforth: MHC), supported by the OSCE Mission to Skopje, began to collect information and to monitor and map such acts of violence to fill the gap caused by the absence of official data.
In 2013, some 100 incidents of racist or homo-/transphobic violence were recorded by MHC. Types of offences include assault, arson and vandalism. The majority of attacks were committed by juveniles. Victims and perpetrators were usually of different ethnicity, belonging to the two largest ethnic groups in the country. An estimated 84% of incidents occurred due to ethnic hatred, demonstrating the tense relationship between the two major communities in the country. An example is the event of 1 March 2013, when a mob of 100 to 200 youths attacked ethnic Albanians in the centre of Skopje, injuring several victims.

The growth in homo-/transphobic hate speech in the country (see section I.2) has created a general atmosphere in which violence against LGBT persons, in particular those advocating for LGBT rights, is becoming increasingly accepted. Hatred based on sexual orientation or gender identity was the motivation in 9% and 10% of the incidents recorded by MHC in 2013 and 2014 respectively (see §§ 35 and 37). While these proportions do not seem to be very high, LGBT organisations point out that they reflect only a part of the problem because they mainly include cases which attracted public attention. Given the generalised intolerance against LGBT persons in the country (see section II.5), underreporting seems to be a bigger problem in the field of homo-/transphobic attacks than in the area of violence based on ethnic or religious hatred. In the latter category, victims usually have less of a problem making their identity known, also because they can often rely on established political networks representing their respective group at local and national level. LGBT persons, on the other hand, face high levels of stigmatisation if they reveal their identity by reporting a homo-or transphobic attack to the police. They also have no political support network.

In ECRI’s view, the importance of LGBT networks engaged in countering discrimination and assisting victims of homo-/transphobic violence cannot be overestimated. It is therefore of particular concern when these organisations themselves become the target of violence, as happened repeatedly. In the evening of 23 October 2014, for example, some 60 persons were celebrating the second anniversary of the LGBTI support centre in a Café in the Old Bazaar of Skopje, when they were suddenly attacked by a mob of about 40 masked men who injured several guests with glass bottles and punches. The centre has been attacked six times in total. On 22 June 2013, a group of dozens of masked men armed with stones, bars and glass bottles attacked the approximately 40 guests of the opening seminar of the Pride Week and endangered their lives by throwing pyrotechnical items into the LGBTI support centre. Violence against LGBT groups is not confined to Skopje. In April 2013, several members of the LGBT NGO United were attacked by seven men in the city of Bitola when the activists were placing posters in support of LGBT rights.

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

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

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

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

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

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

- **Legislative issues**

There are no clear provisions in the legislation providing for transgender persons to change their name or gender in identity documents. While the authorities informed ECRi of one case in which such changes were made, several civil society organisations described the practice as arbitrary. Furthermore, ECRi notes that there are also no regulations clarifying whether the cost of gender reassignment treatment can be covered by the public health care system.

- **List of recommendations from ECRi**
1. (§5) ECRI recommends that the authorities bring the country’s Criminal Code, in general, into line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should explicitly (i) criminalise public racist insults and defamations; (ii) add sexual orientation and gender identity to the list of enumerated grounds in Articles 39(5) and 319; and (iii) introduce a general provision to criminalise the creation or the leadership of a group which promotes racism; support for such a group; and participation in its activities.

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

6. (§ 48) ECRI recommends that existing training initiatives on racist and homotransphobic violence for members of law enforcement agencies and the 36 judiciary are expanded. ECRI also recommends that the authorities ensure that a possible existence of a bias motivation is consistently taken into consideration in police reports and investigations, as well as in any further judicial proceedings, in relevant cases of violence. Furthermore, ECRI recommends that in order to address the problem of underreporting the authorities implement confidence-building measures to enhance the relationship between the police and vulnerable groups, in particular the LGBT community.

19. (§ 97) ECRI recommends that the authorities regulate the procedure and conditions of gender reassignment, as well as the issuing of new identity cards to persons who have undergone gender reassignment surgery.

20. (§ 103) ECRI recommends that the authorities carry out an independent comprehensive study on all forms of discrimination against LGBT persons jointly with the LGBT community. This study should also pave the way towards preparing and adopting an action plan to end such forms of discrimination.