

**1002353 [2010] RRTA 589 (18 July 2010)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1002353

**DIAC REFERENCE(S):** CLF2009/130530

**COUNTRY OF REFERENCE:** Romania

**TRIBUNAL MEMBER:** Paul Fisher

**DATE:** 18 July 2010

**PLACE OF DECISION:** Melbourne

**DECISION:** The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Romania, arrived in Australia [in] July 2009 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] October 2009. The delegate decided to refuse to grant the visa [in] February 2010 and notified the applicant of the decision and his review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] April 2010 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

### RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

### Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:  

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204

CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

## CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

### Background

20. This case is one of two related applications, in which the applicants, [name deleted: s.431(2)], and [Mr A], are [kinship deleted: s.431(2)]. Both are also Romanian citizens of Roma ethnicity.
21. The applicant in this review, [name deleted: s.431(2)], arrived in Australia [in] July 2009 as the holder of a subclass 651 e-Visitor visa granted [in] June 2009. His Protection visa application was lodged [in] October 2009.
22. The application form indicates that [the applicant] is married with two children, received 10 years of education up until 1988, and was employed from 1992 – 2009 as a casual farm labourer. He holds a Romanian passport issued [in] November 2007 and valid until [a date in] November 2017, and states that he visited Spain from November 2007 until April 2008.
23. [The applicant]'s protection claims were set out in response to questions 40 - 45 of Part C of the application form as follows.
24. In response to the question *Why did you leave that country?* the applicant stated:

I was born in a family of 6 children to [names]. Mum and dad were born in a family of gipsies/romas in a village named [Village 1] of Piatra Neamt. My grandfather was persecuted as a gipsy during Antonescu Regim. Antonescu was known as a person who wanted to eradicate gipsy people from Romania. In practice in Romania not much has changed. We are persecuted, mistreated and discriminated against constantly. This is done by Romanian people and authorities to move away from their city to a complete unknown region known Dobrogea, in the hope that their children will not suffer the same he did as a child forced to hoard sheep as slave to a Romanian rich man. Moving to city of Constanta it also meant that my dad made the decision that we are not going to be thought the traditions and believes or anything to do with gipsy culture. In doing so dad wished that we as children will not have the same treatment as they did. Unfortunately it did not change anything due to the colour of our skin my family was immediately upon our arrival branded as gipsy family. My Id [sic] be my place till end of high school. Life was shaltered [sic] by family until I had to go to school. On my first day I remember being told to sit on the last bench and that would be my place until the end of High School.

I was abused verbally and physically by Romanian children and by teachers. When I completed school I could not find a job in my occupation, ant) to find a job was difficult almost impossible. What I call job - for me was casual job, they would call me when they wanted and this was always paid less then a Romanian would get for the same work done. Regardless of leading a withdrawn life I was picked lip by police and taken for beating and questioning. I was taken to a police station for the first time when I was a teenager they beat me and requested I admit declaring I had broken into a news agency. The persecution continued from that moment as I refused to admit the crime I did not commit. Since then I was taken by police again and again. Also I was randomly beaten by Romanians and when I reported to police they would beat me as well or just say to go away and call me names. It is terrible to live without any protection from authorities. My sister [name] and my brother were granted refugee visas in Australia and I see that they are being treated as other people. I would like to lead such life as well and to have my family live like that not being treated like animals.

25. In response to the question *What do you fear may happen to you if you go back to that country?* the applicant stated:

Going back home I fear for my life and of my whole family, for I always think my family will be the next target of the Romanian people driven by racism and discrimination or simply another way of entertaining by beating up gipsy people. I am [age], and I feel responsible for my wife and 2 daughters who I feel so hopeless to protect as I can not rely on anyone including the law.

I am not a violent person, and I feel the years of being put and insulted is taking away from me the confidence a man should have.

26. In response to the question *Who do you think may harm/mistreat you if you go back?* The applicant replied:

The police and Romanian community which is driven by racism. I don't want to go back to be beaten and mistreat again as many times before. I am always in guard, living in state of stress. As I feel I have to protect my family from being the target of this people my family being the target of this people from the moment the day start.

27. In response to the question *Why do you think this will happen to you if you go back?* The applicant stated:

Because they will continue to harm me and discriminate against me and my girls and most of all my daughters have been the target of name calling and discrimination and bad treatment at school.

28. In response to the question *Do you think the authorities of that country can and will protect you if you go back? If not, why not?*, the applicant replied:

No, police does not offer protection. I was badly treated by police before with no reason and have no trust to go again to report the mistreatment of if ever hurt as no action was taken when I've done so. Police would often beat us or verbally abuse us when we go and report something that happened to us. Many police members in Romania are not afraid to show their dislike and disrespect and have no consideration for gipsy people.

29. The Department was also provided with submissions of fact and law in support of the application and including the following:

The applicant is an ethnic Roma/gypsy. He and his family have suffered from extreme racial discrimination all their lives in Romania. The applicant's uncle and auntie were granted Australian visas as refugee. The applicant arrived lawfully in Australia from Romania on a visitor visa. He claims that he is of Roma ethnicity and because of his ethnicity he suffered gross violations of human rights in Romania. He claims that he was subject of abuse and torture by the Romanian officials and that racial policy towards him was adopted and executed by the Romanian authorities. The applicant instructs me that in Romania being a Roma/Gypsy alone is sufficient for persecution and the general public, through media and by Romanian politicians is encouraged to discriminate them. The persecution has impacted on all aspects of his life, and the immunity from persecution is nearly guaranteed when the suspect culprits are police officers.

The applicant has instructed that in Romania he did not have any rights, in fact he was recognised as a member of 'uncivilised' people, and irrespectively of his education or how well he was dressed or how well he presented himself, the broad community in Romania and government representatives have always rejected him because of his Roma's ethnicity.

Local people, people in his neighbourhood and local policemen constantly harass his Gypsy community. In the recent past it was not uncommon for Gipsy property to be blatantly stolen,

burned to the ground and people beaten and taken to police stations for unlawful questioning.

The applicant instructed that due to fear for family's safety his family decided not to speak their traditional language nor practice their Culture in any way. Unfortunately his ethnicity was not easily hidden simply by language and cloths. The authorities have information about people's ethnicity and in the applicant's case his skin colour was sufficient for the members of public to recognise him as Roma/Gypsy and abuse him because of that.

The applicant further advised that he and his family suffered constantly because of his Gypsy (Roma) background while in school he was constantly harassed, beaten and spat upon. After he completed school because of his ethnicity he could not find a job in his field, he instructs that the best he could get was a casual job.

...

It is a well known fact that Roma/Romany or Gypsy how they are often called experience considerable discrimination and harassment in Romania. Police brutality, false accusations, restrictions to education and medical assistance, discrimination in workplace and employment, school, social discrimination against Romanian population have been recognised by Amnesty International. United States Department (State Country Reports) and European Roma Rights Centre.

...

The applicant's fear in this case is well clear. The applicant has suffered repeated and maltreatment, harassment, racism, torture solely because of being a Roma/Gypsy which has left him a very fearful and withdrawn man which is normal result for any human being. Therefore, the applicant has passed the subjective test. In general the situation in Romania regarding the minorities especially Roma (Gypsies) are well documented by the International Community. This is evidenced by the ensuing passage in the Amnesty International Report:

Ill-treatment and excessive use of force by law enforcement officials continued to be reported. Many of the victims were members of the Romani community.

- A Romani man, Ion Boacă, and his 15-year-old son alleged that they were injured when local police and gendarmerie officers entered their house in the village of Clejani, Giurgiu County, in August. The officers hit Ion Boacă in the face with a gun and fired a rubber bullet at his son. Two children, aged two and four, lost consciousness after police fired tear gas into the house.
- On 4 March the European Court of Human Rights ruled that Romania had failed to conduct a proper investigation into allegations of police ill-treatment of Constantin Stoica. The 14-year-old Romani boy, who was represented by the NGOs European Roma Rights Centre and Romani CRISS, was injured during a clash between law enforcement officers and Roma outside a bar in Giulia in April 2001. He was knocked to the floor, beaten and kicked in the head by officers, despite telling them that he had recently undergone surgery on his head. Medical records following the attack stated that he was severely disabled as a result of the beating. The Court also found that the police officers' behaviour had clearly been motivated by racism.

In December 2008 the Council of Europe's Committee for the Prevention of Torture (CPT) published a report of its visit to Romania in June 2006. The report noted that a significant proportion of the detainees interviewed reported "excessive use of force by the police during their arrest or physical abuse during interrogations that followed."

The Romanian government failed to amend legislation on the use of firearms by law enforcement officials to bring it into line with relevant international standards.

- The authorities failed to respond to the findings of an investigation by the UN Interim Administration Mission in Kosovo (UNMIK) into the deaths of two men and the serious injury of another during a demonstration on 10 February 2007 in Pristina, Kosovo. The UNMIK investigation had established that the deaths and injuries occurred as a result of the improper deployment of out-of-date rubber bullets by members of the Romanian Formed Police Unit. By the end of the year, no individual had been found responsible for the deaths;

the investigation was continuing: <http://report2009.amnesty.org/en/regions/europe-central-asia/romania>

Perhaps the most profound illustration of systematic discrimination in the region was against Roma, who remained largely excluded from public life in all countries. Roma families were unable to enjoy full access to housing, education, employment and health services. Many lived in what amounted to segregated ghettos, physically isolated from other parts of the community, and often with limited or no water or electrical supplies, sanitation systems, paved roads or other basic infrastructure. Unlawful forced evictions of Roma in places such as Italy drove them deeper into poverty: <http://report2009.amnesty.org/en/regions/europe-central-asia>

30. Also to be found on the departmental file is a report from [Service A] dated [in] November 2009 which was actually prepared after a referral by the Australian Red Cross in connection with application for asylum seeker assistance. The report includes the following:

Thank you for your referral. [The applicant] was assessed at [Service A] yesterday with the assistance of an accredited Romanian interpreter. [The applicant] was born in Romania and identifies as having generational gypsy ethnicity. He has suffered all his life from discrimination and marginalisation from within Romanian society but in 2009 his circumstances became life endangering and he has come to Australia on a visitor's visa. He is now seeking asylum because he fears for his life if he had to return to Romania.

[The applicant] is suffering psychologically from the Impacts of the recent trauma where he was beaten threatened, detained and tortured (suspended by his wrists off the floor for long periods and interrogated). This followed [the applicant] seeking assistance from the police who [the applicant] claims became complicit in the abuse. [The applicant]'s family were also targeted and forced to perform humiliating sexual acts, their house was raided and his eldest child has been denied schooling at the local village. [The applicant]'s family have gone into hiding being too terrified to carry out their normal activities.

Our assessment at [Service A] confirms that [the applicant] is suffering from the symptoms of PT50. He is experiencing significant disability in performing activities of daily living. This is congruent with the traumatic experiences he has endured. [The applicant] is unable to work while he is experiencing this current level of distress. He has no other financial support and is relying on the generosity of family in Australia. [The applicant] expresses guilt about how his family has suffered on his account and this adds further to his distress. [Service A] is recommending [the applicant]'s inclusion in the ASAS scheme and that he receive ongoing psychological support as soon as this is possible.

31. The applicant was interviewed in respect of his claims [in] December 2009, at which point he also submitted the following country information said to support those claims [emphasis in original]:

28 September 2009 <http://www.romarights.net/content/enemy-within>:

Despite European Union legislation on the subject, Europe's Roma remain the victim of discrimination and abuse, as much in the media as in society at large. In Romania, Bulgaria and Hungary, not to mention Italy, it is the media that more often than not instigate the witch hunts.

In its first number of 2009, the weekly Academia Catavencu, one of the most respected publications in Romania, published the article "Gypsiness comes eating". In what can only be seen as a grotesque mockery of the Romani Holocaust, the article imagines a screenplay with some of the most famous Roma musicians in Romania in the roles of Hitler, Goering and Eva Braun, shamelessly adopting the popular stereotypes of unwashed, animal-like and thievery-prone Roma.

The most popular Romanian TV news station, Realitatea TV, continues to present profoundly negative and stereotypical images of Roma as a background to any discussion directly or indirectly related to Roma. This stimulates the desired Pavlovian reflex among its audience; postings on Realitatea TV's website - **over 1000 in March 2009 - have been calling for the annihilation of Roma.**

There is nothing new in all this: the treatment or image of Roma issues in the media in most of the former communist states is similar. In Hungary, for instance, anti-Semitic articles in the media are fairly regular, but with the exception of the gay community, no other group is treated in this way so consistently and blatantly as the Roma. On 8 February, Romanian handball player Marian Cozma was stabbed to death in an attack outside a nightclub in Veszprem in Hungary. At the memorial for Cozma there were cries of "Death to Gypsies". The incident was followed by numerous anti-Roma demonstrations across Hungary. Reporting on the murder, journalist Zsolt Bayer wrote in the daily Magyar Hirlap about "members of the Gypsy community who have given up on coexistence and humanity" and described Roma criminals as "not human beings, but animals".

**On 23 February, a Roma man and his five-year-old son were shot dead in an attack on a family home in Hungary, and two children were injured when the house was set on fire. The attack in Tatarszentgyorgy, a village 40 miles southeast of Budapest, is the latest in a series of attacks on Roma houses involving firebombs and firearms, in which seven people have died over the past year. In striking contrast to this, but with no apparent effect, both Hungarian and Romanian governments have strongly condemned any form of racism.**

**But it is in Romania that anti-Gypsyism and anti-Roma hate speech in the media is most extreme and persistent.** From time to time there are rants against Hungarians and Jews but on a very much lower scale and, again unlike the Roma, who are subjected to this treatment regardless of the quality or otherwise of the medium, only exceptionally in mainstream newspapers. **Neither Romania's accession to the European Union in 2007, nor the passage in that year of anti-racist legislation by the EU, has changed anything.**

**On 19 April 2007, more than six years after the initial proposal, the EU adopted the Framework Decision on Racism and Xenophobia (FDR)Q. The proposed law, which must be implemented in 2009, makes incitement to racism an EU-wide crime punishable by a period of one to three years imprisonment. The FDRX covers public incitement to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin, as well as the public condoning, denial or "gross trivialization" of crimes of genocide, crimes against humanity and war crimes.**

Some countries make an effort to clean up their act before admission to the EU and subsequently lapse once entry is achieved. **The EU appears to do little to follow up on its own terms and conditions of entry.** In Romania, the EU accession process played an important role in bringing the Roma issue onto the public agenda. Even if extrinsic and discontinuous, EU pressure led to efforts towards curbing racism and raising awareness regarding strident discrimination and sometimes blatant hate speech targeting Roma.

Developments were slow and unequal, impeded both by formal acceptance of the EU requirements and language, and limited overall public support for anti-racism campaigns. This was compounded by the very limited progress made in increasing the capacity and motivation of legislators to react to hate-speech and racism.

**One direct result of EU pressure was the establishment of the National Council for Combating Discrimination (NCCD). This was intended to act as the guardian of non-discrimination in Romania with power to sanction acts of discrimination, but has yet to prove itself by strengthening its capacity to carry out research and identify hidden discrimination, its effects and ways to combat it. Overall, on the evidence to date, the NCCD seems unaffected by the fact that Romania is now part of the EU.**

On 24 November 2008, one of the biggest circulation non-tabloid newspapers in Romania, Adevarul, published in its section on the Spanish Press an article signed by Roxana Pall under the title "The map of the gypsy Romanian thieves from Madrid's metro".[1] The article quoted the security company that produced the map to the effect that "the majority of those stealing in the metro are Roma (Gypsies) of Romanian citizenship". The original article in El Pais,[2] on which the article in Adevarul was based, made no use whatsoever of the term "Roma" or "Gypsies" but referred only to "Romanians".



The Gypsies are coming like wolves, they're multiplying like sheep. The first to leave will be international companies. There won't be anyone to sell their new shit to and they'll move away to somewhere with less Gypsies and more money. Who's going to buy soap for soft and tender white skin? Dirty Gyposos?

**The difference between Gypsies and cattle is that cattle are subject to veterinary control. Livestock can't behave like Gypsies, but the reverse is allowed. Bovine rights and freedoms have been under serious pressure for years, and during that time the Gypsy woman has given birth to twins again and she's as bloody-minded as a cow yet again.**

The above are to be found in articles by Kalin Rumenov, the recipient of the 2008 Bulgarian Chernorizetz Hrabur [Young Journalist] Prize. Similar articles were regularly published in the national newspaper Novinar, which made no effort to distance itself from his views or to publish any balancing material to counter Rumenov. The Bulgarian Press Ethics Commission did not consider this to be a problem worthy of their attention. Similar articles can be found in Romania where the attitude of radio and TV is no different from that of the printed press. The following excerpt, published on 30 August 2007, is from an article in the magazine Cultura (Culture) published by the Romanian Cultural Foundation.

The social problem created by Roma is not from yesterday or today, it has been present since the Europeans first had contact with this ethnic group [...] Everywhere, the gypsies managed to inculcate an almost complete lack of trust and to build an image of professional criminals. Nobody loves the gypsies (with the extraordinary exception of those who have never had contact with them) (...) the gypsies have only their own law, and their respect for the other is either equal to zero, or depends on immediate interest or individual friendships [...]

According to its director Augustin Buzura, a member of the Romanian Academy, this foundation functions as part of Romanian "cultural diplomacy" Eugen Simion, former president of the Romanian Academy, is also one of the main contributors to Cultura. And another, published in the newspaper Flacara lasului on **27 and 28 September 2007:**

**Gypsies (...J "those disgusting beings" with "filthy and lewd women" dragging their "broods that shit on themselves" [ . ..] "a living proof we come from monkeys"; "hysterical"; "cunning"; "treacherous", "societal abortions"[ . ..] "those gypsies multiply like rabbits (my apologies to rabbits) only to get their stinky dirty paws on the welfare of some poor children ( . ...J the gypsies steal, are rapists" The excerpts from two articles in Flacara lasului are signed by two members of the Romanian Writers Union, one of whom is the spokesperson for the museum of literature.**

**The materials quoted above on Roma in Romania and Bulgaria are inadequate, fragmented and biased, if not blatantly racist. Most of the media in these countries is commercial media, driven by market forces; they have little appetite or will to produce programming that promotes tolerance and combats the social exclusion of Roma. On the contrary, commercial television and tabloid newspapers overwhelmingly portray Roma in a negative light and reproduce racist stereotypes.**

Even in the rare positive portrayals of Roma, journalists look at the most dramatic angles, encouraging an emotional response from their audience. This approach is often counter-productive since people tend to see those portrayed as exceptions and automatically different from the "typical" Roma. It is clear that programmes and articles are the products of journalists' own subjective perspectives, which include both rational and emotional convictions. **Considering the anti-Gypsyism ingrained in society, it is almost impossible to avoid extremes since the majority of the news and reports are focused on Roma ghettos or neighbourhoods. The residents of the ghettos not only may not recognize themselves in the image reflected back to them by the media, but consider it - in an abrasive dissonance with the opinion of the journalists - a disservice that helps to further the stigmatization process.**

**One finds a shockingly limited causal approach to reporting events concerning the Roma, as practically no news looks at the context of events, the frequently invisible triggers of dramatic incidents. This is in sharp contrast to reports that cover the**

majority population, where very often the causes of violence, aggression and vandalism are well researched and quite often found to justify the behaviour in question.

**In general, the Roma are subjects of "media crisis" reporting, which brings fast and often impulsive solutions. The clear focus of most reporting is on criminality, violence, and immigration as a threat to public safety. This causes a biased portrayal of the relation of ethnicity to violence and clearly obstructs other, more important aspects such as social exclusion, hidden violence, forced segregation, environment, education, perspective, social class and other possible causes of criminal behaviour. For instance, riots involving Roma are overwhelmingly presented in relation to ethnicity, regardless of the nature of the riots. In contrast, riots with predominantly white participants - football riots - are rarely analyzed for their ethnic or gender characteristics.**

28 September 2009

<http://www.signandsight.com/features/1624.html>

We never stop bad-mouthing the Gypsies - but what would we do in their place? What is it like to be born a Gypsy, and to live as a Gypsy amidst a people filled with nothing but **hatred and disdain**? Let's assume you manage to get over the cultural handicap of being born into a wretched milieu, of your father emptying the toilets, your mother cleaning the stairs and your brothers sitting in jail, of lice being discovered in your hair and you being isolated from the other children who laugh at you because none of the pupils in the school primer is as dark-skinned as you. Let's assume as a mature person you become an honest worker like everyone else.

Will anyone ever address you as anything but "Hey you, Gypsy"? Will people not eternally say "Once a Gypsy, always a Gypsy" at the slightest provocation? Will anyone ever employ you on the same terms as a Romanian? Will anyone put the slightest trust in you? Through an inhuman effort you manage to avoid the quagmire and become an intellectual. Will anyone ever see you as anything other than a "**stinking Gypsy**"? You're an engineer, as singer, a doctor: will the foreign minister not exile you to the Egyptian desert? And then: how to avoid going crazy, how to break free of the vicious circle that holds us captive: I hate myself because I'm evil, and I'm evil because I hate myself?

We're appalled when other countries see us as a nation of criminals, but we see the Gypsies in exactly the same light. And in doing so we compel them to behave accordingly. With our racist attitude toward them, and the inaction of the state, the Church and the institutions in this matter which - and I would like to stress this point - is of concern to all Romanians and not just to Gypsies, we prolong the drama. We keep misery and delinquency on their side, hatred and disdain on ours, and remain trapped over the centuries in the same vicious circle. And our sluggishness has its price, as the unfortunate incident in Rome only goes to show.

(**Mircea Cartarescu**, born in Bucharest in 1956, is the best-known contemporary Romanian author. Read our feature "Bucharest in a trance" on Cartarescu and his magnum opus "Die Wissenden" (the knowing). The article originally appeared in German in the Neue Zürcher Zeitung on November 29, 2007. Translation: lp)

28 September 2009 <http://peshasgypsyblog.blogspot.com/2009/05/anti-gypsyism-continues-to-be-major.html>:

**"Anti-Gypsyism continues to be a major human rights problem in Europe - governments must start taking serious action against both official and inter-p**

**"Anti-Gypsyism continues to be a major human rights problem in Europe - governments must start taking serious action against both official and inter-personal discrimination of Roma"**

[27/04/09] Report From The Council of Europe by Thomas Hammarberg:

New pledges were made on International Roma Day to combat anti-Gypsyism. At the same time we received information that a group of Roma children, arrested in Kosice in eastern

Slovakia, had been forced to strip and slap one another violently in the face in the police station where they were held.

The Roma part of the survey focuses on seven member states: Bulgaria, the Czech Republic, Greece, Hungary, Poland, **Romania** and Slovakia. In each of them no less than 500 Roma respondents were interviewed. The answers strongly confirm my own impression from missions to several of these countries - and to other European countries inside and outside the EU:

Half of the respondents answered that they had suffered discrimination at least once during the last 12 months and for many of them there had been several such incidents during this period (on average 11);

**The overwhelming majority of them had not reported these incidents as they did not believe that this would give any positive result. Most of them were not aware of any organisation or institution to which they could address such complaints;** One in four stated that they were victims of personal crime at least once during the past 12 months and one in five responded that they had suffered racially motivated personal crime including assaults, threats and serious harassment

28 September 2009 <http://news.bbc.co.uk/2/low/europe/2298973.stm> Friday, 4 October, 2002, Romania closes door on gypsies By Nick Thorpe North-west Romania

Romanian gypsies say it has become almost impossible to leave their own country in the last few weeks because of discrimination by officials on the border.

Romania is near the end of the long queue of countries waiting to join the European Union, but since January Romanian citizens have not needed visas to travel to the Schengen group of countries – a recognition of the progress the country has made.

However, the new freedom has made the government rather nervous about exactly who it lets out, and the gypsy minority - who often travel abroad in search of work - are regarded as a liability.

In Romania, they live in grinding poverty.

### **Insults**

In the village of Dioszeg in Romania's Bihor county, for example, barefoot gypsy children, protected from a cold northerly wind by little more than rags, collect water from a tap, to take home to their families.

" At the border the guard insulted us as gypsies, which is very upsetting - we are human beings, and we have feelings too "

### **Jakab, a gypsy**

When they asked for pipes to be laid to bring running water to each house, the gypsies say, a local official taunted them that they should drink from the polluted stream that runs through the settlement instead.

A young man, Jakab, smartly dressed in corduroy trousers and jacket, tried to cross the border - legally, with a passport, and the right amount of money to show.

He was turned back, he says, because of his dark skin - he is unmistakably a gypsy.

"I want to earn my bread honestly with the work of my own two hands. As that isn't possible here, sadly I went to work in Hungary," he says.

"At the border the guard insulted us as gypsies, which is very upsetting - we are human beings, we are also flesh and blood and we have feelings too."

### **Turned back**

In the village street everyone tells the same story, of being turned back from the border.

Since January, all Romanian citizens have to show a minimum of \$500 for those going to western

Europe, and \$250 for non EU countries.

Some admit they didn't have enough money. But most say they had all their documents in order - and that they were turned back, just because they were gypsies.

Jakab says that at Bors, the nearest big border crossing, he was told: "Go back to your whoring mother" and his passport thrown on the ground in front of him.

But the deputy commander of the border guard for the three counties of north-west Romania, Lucian Prehici, firmly refutes all allegations of racial discrimination.

"We do not discriminate against anyone on the basis of religious or ethnic background or political preferences. All Romanian citizens are equal before the law," he says.

"If anyone wants to complain they can, but we have not received any complaints."

### **Extreme example**

Many gypsies I spoke to, up and down the border, said that although the new regulations came into force in January, it only became physically impossible to cross the border three weeks ago.

Romania is the most extreme example of a... country attempting to please western European governments by keeping Romanians at home,

### **Claude Cahn, European Roma Rights Centre**

That coincides with the visit to Romania of the French Interior Minister, Nicolas Sarkozy.

He came to demand that the Romanian authorities do more to prevent what the French media call gypsy beggars and thieves from reaching France.

But the Romanian Government's efforts to satisfy the French have caused alarm elsewhere.

"Romania looks like the most extreme example of a European Union candidate country attempting to please western European governments by adopting policies that try to keep Romanians at home, and stop them from leaving the country, and again, in particular to keep Romany Romanians at home," says Claude Cahn of the European Roma Rights Centre in Budapest.

### **Misery**

A minibus-driver in Oradea, one of the biggest cities in North-west Romania, who crosses the border to Hungary every night, says he won't even let gypsies on his bus anymore.

There is no point, he says - the border guards are not letting any gypsies across.

Poor agricultural workers in this region earn the equivalent of \$60 dollars a month.

For the last decade, they have been able to supplement that by working in Hungary. That opportunity no longer exists.

28 September 2009 <http://www.independent.co.uk/news/world/europe/amnesty-accuses-romanian-police-of-preying-on-gypsies-711428.html>

Police brutality is still systematic in Romania more than 10 years after the fall of President Nicolae Ceausescu, and officers single out Romas, or gypsies for rough treatment, Amnesty International says.

Police brutality is still systematic in Romania more than 10 years after the fall of President Nicolae Ceausescu, and officers single out Romas, or gypsies for rough treatment, Amnesty International says.

Routinely, police fire on unarmed suspects, even when they pose no threat to police or bystanders, and Romanian law condones the use of guns on unarmed suspects, the civil liberties group reports.

On 18 May, a plainclothes officer shot Mugurel Soare, a 20-year-old gypsy, point blank in the head. Police say Mr Soare was armed with a knife and had wounded an officer in the chest. They say he was hit accidentally in a scuffle with the policeman, who was trying to fire a warning shot. But Amnesty says a witness claims Mr Soare was unarmed and that police already had him under control. One officer was beating Mr Soare and deliberately shot him. The gypsy spent five days in a coma, and is permanently paralysed on his right side.

Amnesty says police held witnesses for 10 hours and tried to intimidate them into giving false accounts.

On 21 May, the report says, police shot at two gypsy men trying to escape arrest in a car. One, Petre Letea, was killed.

On 27 October last year, police allegedly shot dead Radu Marian, a 40-year-old gypsy who was a suspected cigarette smuggler, when he tried to run from them. Two other men trying to escape were wounded.

<http://www.independent.co.uk/news/world/romanians-vent-old-hatreds-against-gypsies-the-villagers-of-hadareni-are-defiant-about-their-murder-of-vermin-adrian-bridge-reports-1511734.html>

ASILE BUDEAN does not normally count himself a smoker. Like most people in the small Transylvanian village of Hadareni, he leads a relatively stress-free life: most of his days are spent working in the fields, most of his evenings with his wife and daughter or friends.

Just recently, however, Mr Budean has felt an extraordinary need for cigarettes. Sitting in the ramshackle village cafe, he puffs away. He is unable to relax; there is something heavy on his mind.

'Don't get the wrong idea,' he warns. 'We were all stone-cold sober on that night. Every one of us was determined to do what had to be done. We have absolutely no regrets. And we would do it again if need be.'

Mr Budean's sense of self-righteousness is shared by nearly everybody in the village. But then, they are all in it together. For the event to which he was referring was nothing less than a pogrom against the village's Gypsy minority, carried out one dark night late last month.

At the end of the night, two Gypsies - one of whom had earlier stabbed and killed a young Romanian villager after an argument - had been clubbed to death by a mob. The charred remains of another were later found in one of the 13 Gypsy houses that were torched.

It was a classic case of mob justice. Out of a desire for revenge for the death of one of their own, the mob, which included women and children, took the law into its own hands and decided to 'solve' the village's 'Gypsy problem' once and for all. 'We are proud of what we did,' said Maria and Ion, an elderly couple who stood with the others and watched the flames and heard the screams. 'On reflection, though, it would have been better if we had burnt more of the people, not just the houses.'

It is impossible not to double-take on hearing such remarks. Maria and Ion are hardly neo-Nazi extremists or members of some organised terrorist group. They have three daughters, and six grandchildren. Like most of the villagers of Hadareni, they are the salt of the earth. When it comes to Gypsies, however, there is a vast blind spot in their moral universe.

'We did not commit murder - how could you call killing Gypsies murder?' protested Maria. 'Gypsies are not really people, you see. They are always killing each other. They are criminals, sub-human, vermin. And they are certainly not wanted here.'

Such views, which could have been lifted straight out of Adolf Hitler's Mein Kampf, are all too common in Romania today. In part they stem from a deep-rooted antipathy towards Gypsies which, although suppressed during the Communist era, never disappeared altogether.

As in other European countries with Gypsy minorities, Hadareni's villagers view them as thieves, murderers, swindlers and parasites. There is hardly a house that has not had a thick lock added to

its front door. The problem is compounded, say the villagers, by the fact that attempts to report criminal acts committed by Gypsies to the authorities are simply met with an indifferent shrug of the shoulders.

According to Vera Cimpeanu of the Bucharest branch of the Helsinki Committee human rights watchdog, the state-controlled Romanian television network also fosters anti-Gypsy sentiment. In its coverage of the events at Hadareni, one television report stated that the pogrom came about 'after a long period of tension between the villagers and the Gypsy community caused by robberies and aggressive actions taken by the Gypsies'. That was just one example of what Ms Cimpeanu condemns as the one-sided media coverage that has encouraged people to think of Gypsies as fair game.

The pogrom was hardly the first of its kind. Since the overthrow of Nicolae Ceausescu in 1989, there have been at least 30 such incidents nationwide: some have involved deaths, but most have been confined to setting ablaze Gypsy homes.

Romania's legal authorities, have been considerably less forthright. There have been hardly any prosecutions in connection with anti-Gypsy violence, and in the handful of cases where guilty verdicts have been returned, sentences have been very light. Many ordinary Romanians have drawn the conclusion that they commit such acts more or less with impunity.

32. Following the departmental interview, [in] January 2010 the applicants were invited to comment on the following information:

The Treaty of Maastricht made nationals of all European Union (EU) Member States citizens of the EU. The rights attached to this citizenship were confirmed by the EU Charter of Fundamental Rights signed and proclaimed in Nice in 2000, and Council Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely (the 'Free Movement Directive'), which entered into force in April 2006. In 2007 Romania joined the EU.

Information contained in the report by European Union Agency for Fundamental Rights (*The Situation of Roma EU citizens moving to and settling in other EU Member States*) is that Roma from Romania have the right to enter and reside in a number of EU countries, including Finland and Spain. As you have the legal right to enter and reside in a number of EU countries, I consider that according to Migration Regulation 36(3) Australia does not have protection obligations towards you.

33. A response was provided to this request [in] February 2010 in the following terms:

I would like to say that although Romas from Romania may have a right to enter and reside in a number of EU countries, including Finland and Spain we (Romas) are discriminated all over the EU including Finland and Spain. I believe that anyone who has ever been anywhere in Europe would readily accept this statement.

If I were only being regarded as a second class citizen, I would have accepted that and lived with it. The problem is that as Romanian Romas we cannot get a job and we cannot get accommodation for the same reason. We do not belong to the local Romas who do not accept us 'foreigners' either, so we cannot join them in their shantytowns. So Romas from Romania basically have nowhere to go in EU. We may have right to enter and live there but how can one live if one cannot get a job to provide for one's life? I was in Spain and it proved to be impossible to get a job - because I am a Roma from Romania. If I were just a Romanian, I would have got a job as many Romanians do get jobs in Spain And yes, I did go there in hope that they will see me as a Romanian citizen, not a Roma So, I can say that in Spain Romas from Romania cannot get a job or accommodation and we are also verbally and physically abused the too.

It is not possible for me to travel from one country to another to try to enter it and reside there because I have no money to afford it. I also communicate with other Romas who have been in one or the other European country and my sister and brother from Australia read newspapers

about those countries and they all tell me that Romas are in danger everywhere in Europe. It is not possible for me to reside in any European country because I have no money and no prospective to work or to find any accommodation without money. But above all it is not possible for me to go to a country where people are hostile towards me because I am a Roma and I do not even know their language, so that I can understand when it is a good time to escape the danger. That is how it was for me in Spain (and from what I know would be in any other country in Europe). It is scary because I cannot even hide because I do not know the country so I cannot hide if I am attacked. I get all physically and emotionally sick when I think about it.

I have no links to any European country apart from Romania. I tried to reside in Spain and I realise that it is impossible for me to live there as I could not get a job and people were hostile towards me because I was a Roma from Romania. I decided that I wanted to see my family and at least be close to them even if something is to happen to me (which is always one step away for me in Romania). My sister and my brother from Australia financed my trip to Australia and they support me here as much as they can. They would not finance my trips and living costs to other countries first because they know what a Romanian Roma faces there, and second, they cannot afford to finance my life in Europe, it is too expensive for them. In order to live in Europe I would have to get a job there which is impossible for a Romanian Roma. What some Romas do there is begging which I do not consider a normal life and is the consequence of not being able to get employment. Am I supposed to accept that as a country where I can legally enter and reside, if begging is my only option? All I want is a country where I can get a job and not be in constant danger of being attacked or harassed because I am a Romanian Roma. From what I see Australia is such a country.

As I mentioned, it was not possible for me to go to all those other European countries because I knew from others how Romas are treated there. It is a dog's life for a Roma in Europe. It is even worse for a Romanian Roma as the rest of the Europe says they have had enough of 'their Romas' They do not give us jobs and many Romas end up begging and they hate us for that even more. No it is not possible for me to reside in any European country, as I cannot earn a livelihood of any kind there and because of that denial of getting a job there I cannot survive there even if were not to be verbally or physically abused or attacked which is also common in Europe.

34. Enclosed with this response was a statutory declaration executed by the applicant [in] February 2010 and deposing as follows:

I do not personally own any property in Romanian

The title of property of land in Romania in the name of [name] is my father's name the exact same name as my own. There is however no date of birth on the Title of Property to confirm this.

I was the only son living in the house with my mother and I was only working on the land but the property is not mine.

During my interview with an officer of the Department of Immigration and Citizenship I was too embarrassed to explain in details what happened what happened to me in Romania. It was too embarrassing as there was my sister with me and the interpreter was a lady too. In addition, the case officer and my agent are also ladies and I just could not talk about those in details to four ladies.

My memories are very depressing and I often get stressed by them that I get almost literary paralysed. It affects my behaviour as I get very withdrawn and cannot speak up even when I would like to do so.

My sister [name] and my brother [name] are helping to overcome my depression and fear of people, especially my fear of strangers.

Being a Gypsy I suffered a lot from non Gypsy people and authorities in my country and I always feel fear and have difficulties with speaking when I am interaction with authorities or non Gypsy people.

Having my brother [name] and my sister [name] here with me helps me a lot but it is still very difficult for me to open up. I am more open when I talk to her about what happened to me and my mother in Romania.

When I told my sister just few things what happened to me our family in Romania in the last few years my sister started crying and I did not tell her everything. Some of it I realized would be to distressing for her, and some of it to embarrassing for me.

35. The visa application was refused [in] February 2010.
36. The delegate found that as a citizen of a member state of the European Union, the applicant had the right to enter and reside in other EU States for the purposes of s.36(3)(b) of the Act in circumstances where he did not have a well-founded fear of persecution for a Convention reason in those states for the purposes of subsection 36(4), nor was he at risk of *refoulement* to Romania for the purposes of subsection 36(5).
37. The delegate also considered the applicant's claims against Romania. Although the delegate was satisfied that the Roma experience substantial discrimination in Romania which can amount to persecution for some of them, the delegate observed that there were a number of apparent discrepancies in the evidence which cast doubt on the reliability of the applicant's claims. These included the fact that the mistreatment described in the [Service A] report had not been detailed in the protection visa application, and the applicant had been unable to provide that detail either at the departmental interview when requested to do so by the delegate or subsequently. The delegate also noted that the applicant had put forward a property title certificate in his own name in support of the visitor visa application, but had subsequently claimed that he owned no property, and that the name on the certificate referred to his late father.

### **Review Application**

38. [In] April 2010 the Tribunal received an application for review of the delegate's decision, a copy of which was provided to the Tribunal on review.
39. As the claims in the two related applications arise out of essentially the same factual matrix, and give rise to the same legal issues, the Tribunal considered it preferable to conduct a joint hearing. [In] April 2010, the Tribunal contacted the applicants' representative to inquire whether they would consent to have their applications heard jointly, and was informed that they would.

### **Tribunal Hearing**

40. The applicants appeared together before the Tribunal [in] April 2010 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter accredited in the Romanian and English languages. The applicants were represented in relation to the review by their registered migration agent.
41. The Tribunal explained its role and the purpose of the hearing, and took the applicants through the elements of the definition of a refugee, including the meaning of persecution as set out in section 91R of the Act and the nature of Australia's protection obligations as set out in section 36 of the Act, with particular reference to the qualifications at subsections 36(3)(4) and (5).



42. The Tribunal noted that the applicants were claiming persecution on the basis of their Roma ethnicity and queried whether there was any other basis upon which they feared persecution if they returned to Romania. They indicated that there was not.
43. The Tribunal indicated that the matters in issue for it were: firstly; whether the applicants face a real chance of persecution in Romania in the reasonably foreseeable future; and if so, whether they have the right to enter and reside safely elsewhere in Europe.
44. The Tribunal sought confirmation that the applicants agreed to have their applications considered in a joint hearing, and this was provided.
45. The Tribunal also sought clarification about the relationship between the applicants and they confirmed that they are [relationship deleted: s.431(2)].

*Evidence of [the applicant]*

46. The applicant was asked what problems he had experienced in Romania in the past three years. He replied that the situation has actually been getting worse since about 1996 when Romanians had set fire to houses in the neighbouring village of [name deleted: s.431(2)]. Since then the hatred towards them has increased. They were not allowed inside shops and if they did go in they would be hit or made fun of or sworn at and treated in a demeaning way. They seldom manage to get work and if they do they are paid only small amounts of money. They have little choice in the work they get. Over the last few years he has shorn sheep and he became very good at it and farmers would call him to do the work, but this just made the Romanian shearers hate him and insult his family. His mum and sister were forbidden from going from the local store to shop and they were verbally abused if they did go.
47. Last March at the beginning of the shearing season he was beaten and had to run away. He went to the police to complain but the police just abused him saying that gypsies with no country of their own can't do such a thing. He complained to this policeman and said he was going to report him to the regional authorities, but he just got upset then and told the other villagers and he and his family received warnings. [Mr A], the applicant in the review application related to this case, was beaten harshly and had his nose broken. They couldn't continue to live in their village and couldn't get work. He told his brother who suggested applying for a visa to come to Australia. He didn't think he would get a visa because Romanians don't allow them to leave, but he applied to come to Australia and was successful.
48. The Tribunal noted that documents lodged with his Visitor visa application suggested that he had property and employment in Romania. The applicant replied that he held this property together with his father. He had gone to the mayoral office and asked them for a certificate to show that he was working on his father's property. What they in fact issued was a certificate showing that he is the co-owner of the land. He works the land but he is not technically the owner. Asked if he stood to inherit the land, he indicated that he has other siblings and his mother is still alive.
49. The applicant was asked whether his other siblings have experienced similar problems. He replied that one of his brothers got residency in Australia 10 years ago but life for the rest of them has been very difficult. He had to work looking after sheep. In Grade 4 he was already looking after 100 sheep with his brother. That's their lot, they are treated like people who don't have a country, and they are verbally abused and treated badly.

50. Asked whether the family farm actually supported him, the applicant replied that the family has a house plus 10 hectares of land but they don't have equipment. He worked for other people who did have equipment and he had to do other work in order to support the family as the land did not produce enough to support them.
51. The applicant was asked whether he had ever tried to work elsewhere within Romania. He replied that many years ago he had tried to get work in a mine but he was rejected from the start because he was gypsy. He experienced the same problems in the building and construction industry. If he did get a start he would be hired for a number of weeks on probation and then he would just be sent away at the end. Asked whether he felt that some areas in Romania were better than others he said that they were not welcome anywhere.
52. The applicant was asked whether he had ever tried to relocate elsewhere within Europe. He replied that in 2007 he had tried to escape the inferno where he was living. He asked his brother in Australia to send money so he could go to Spain in the hope of finding a job there. He thought if he found a job he could bring his family there. He went to [location deleted: s.431(2)] to try and find work as an olive picker. Noticing his skin was darker they asked if he was a Moroccan, but he said he was a Romanian and they immediately called him a gypsy and refused him work. If he went into a shop people would look askance at him and sometimes he ate only once every few days. He was there for six months but he got hardly any work. Then he went to [location deleted: s.431(2)] and it was the same there; he was never given a chance. He had to contact his brother in Australia and get him to send more money. It's like this everywhere, including in Italy.

*Evidence of [Mr A]*

53. The Tribunal noted that in the primary decision the delegate had observed that the applicant [Mr A] had failed to provide evidence of the birth of his child. Asked whether he had any such evidence, the applicant produced a copy of the child's birth certificate, showing the applicant and [name deleted: s.431(2)] as the parents of a son [name deleted: s.431(2)] born [in] 2009.
54. The applicant then indicated that the problems started in the UK and the northern countries of Europe and it's like an Aryan movement. He has heard that gypsies have been attacked in Ireland and the UK. It's not possible for them to just go to another country and live in suburbia; they end up being forced to live in destitute areas. When they do so they endure attacks all the time, but it's just not talked about.

*Evidence of Both Applicants*

55. [The applicant] then queried how it's possible for them to go and live in those countries.
56. The applicants' representative observed that in Spain they don't keep a register of the racially incited claims, and there's no real information about such racial crimes, although some of the violence has been recorded. In some European countries there's not such a large population of gypsies so there are no reports.
57. [The applicant] indicated that they need money from other people. They need financial support from other people to survive in such situations. [Mr A] then stated that whatever the reports might say they are just reports. Nobody looks at what is really happening in those countries. When you can be beaten with impunity there is nothing you can do. It has been very hard for them to come all this way as their family is back home and their family situation has worsened since their departure, but they feel they have no choice.

58. The applicants' representative indicated that the applicants had problems finding work in other European countries both because they are gypsies and foreigners.
59. [Mr A] indicated that you can't even get food or accommodation because as a gypsy no-one will give you any work. They are not allowed in churches and it doesn't matter who they vote for as democracy is for other people but not for them. The situation is very hard and getting harder by the day.
60. [The applicant] then added that this was his experience in Spain where many times he had to sleep in parks. The rest of Europe treats them the same. He may not have been beaten up in Spain but that was about the only difference.
61. The applicants were asked whether they think they would be denied employment anywhere they go. [The applicant] replied that on arrival in another country they would have nowhere to go, no shelter, and he fears he would have the same experiences he had in Spain. He was only helped to come to visit Australia by his sister and his brother.
62. [Mr A] added that many gypsies who have left Romania for Europe live in cardboard shelters and are often attacked by youngsters. This is what he has heard from other gypsies who have returned from Europe. Independent reports suggest that there would be discrimination in employment.
63. The Tribunal asked whether this was simply discrimination and not persecution.
64. [The applicant] replied that if they can't find work and they are treated badly in the streets, and wherever they go they are classified as gypsies then it is persecution.
65. [Mr A] said that it was because [the applicant] was a good shearer that led to him being beaten up and having his collarbone broken.
66. [The applicant] added that as a shearer he was not paid the normal rates. The going rate was 20 leks per sheep but he only got 15.
67. [Mr A] stated that he was a good student but he couldn't pay the fees so he had to stop after Year 9. In any event he was beaten up and discriminated against in school.
68. The applicant's representative explained that the limited educational opportunities lead to low paid jobs for the Roma.
69. [The applicant] said it was the same for him; that he had liked studying but he was repressed at school. He was beaten during the breaks and became very withdrawn. That is still happening today. His daughter in Grade 4 is having similar problems at school and she comes home in tears all the time. He is actually married to a Romanian and his daughter is a brunette, but they still call her a gypsy. [In] March at the spring festival everyone except his daughter got a spring broach. When kids are treated differently like this, it hurts a lot. With respect to the possibility of residing elsewhere in Europe, [the applicant] acknowledged that now that Romania is part of the EU that a Romanian citizen can go to those other countries, but you can't work and you can't get money, therefore you can't support your family.
70. [Mr A] observed that Europe is a racist continent. It's not just the disadvantage of not speaking a language and lacking local support, it's also the fact that they have darker skin and are of gypsy ethnicity. In some parts of Europe you would just be working for food.

71. [The applicant] was asked why in that case he had gone to Spain. He replied that he had a friend there and his friend knew about his circumstances in Romania and invited him there, but had also warned him that it would be very difficult because of the colour of his skin.
72. [Mr A] observed that there are racist websites on the internet with hundreds of thousands of young people participating. He's been with his girlfriend for three years, but when she had his child her own parents rejected her. Their windows were broken and she had to leave their house. She is from Oltenia in Southern Romania. It was not possible for them ever to go and do something like going to a restaurant or a disco together. Their relationship was hidden until the baby was born. It's very hard for her living alone there with the baby. She has received threats all the time, especially once they found out that he had applied to stay in Australia. He had to request a certificate in respect of the birth of the child in connection with the Visitor Visa application and word has spread that he is trying to stay here. Gypsies living in Canada, the US or Australia don't have to put up with the treatment that gypsies have to put up with in Europe.
73. [The applicant] observed that for the first time in Australia he has realised what it is not to be discriminated against.
74. [Mr A] echoed that sentiment saying that he doesn't feel different here. Even when they were intercepted by immigration in Mudgee when they were living in a caravan, and they were raided at 2am, the officers still behaved in a very civilised manner. In Spain by contrast they first of all hit you and then they ask you what you are doing there.
75. Asked whether they had intended to claim asylum once they got to Australia, [Mr A] replied that they had, especially when the situation had escalated after the shearing incident.
76. Asked why then they had delayed in lodging their application, [Mr A] replied that they only first got any advice in about August. The Tribunal noted that his baby was due and queried whether this hadn't made this situation urgent for them. He replied that he thinks it was in about August, but it was difficult for them to find an interpreter. They came to Australia because this was their last chance and they can't go back to Romania.
77. [The applicant] added that if he does go back to Romania he knows that he will end up either in gaol or dead. He asked the Tribunal please to think of his daughters.
78. [Mr A] added that life is very hard in Romania and that's why he is here.
79. The Tribunal invited further submissions on the question of relocation within Europe, and agreed to allow three weeks for the submissions to be provided.

### **Post hearing**

In her decision to refuse the visa applicant the decision maker found that the applicant has legally enforceable right to enter and to continue to reside in a number of EU countries within the meaning of s36(3) including Finland and Spain. She further concludes that there is discrimination in both countries and across Europe but she is not satisfied that this discrimination amounts to persecution in all the EU countries in which the applicant has the right to enter and reside.

In my opinion based on the overwhelming country information reports and a huge number of various independent reports and articles regarding the situation of Romas in the EU it is open to the decision maker to approve these visa applications just as recently some other departmental officers approved several visa applications for Romas from Romania (CLF2009/167323 - granted on 09/03/2010; CLF2009/114985 granted on 09/11/2009;

CLF2009/114974 granted on 09/11/2009 or CLF2009/21447 granted on 20/07/2009). Similarly, in 2008 in the RRT decisions regarding cases 0800663 and 0800711 the Tribunal was satisfied that the applicants were persons to whom Australia has protection obligations under the Refugees Convention.

It is submitted that despite European Union legislation on the subject, Europe's Roma remain the victim of discrimination and abuse. There are laws and regulations against discrimination but they are not being enforced and as long as there is discrimination against Romas in education, employment, health and housing their discrimination would amount to persecution. They are being locked in this vicious circle of being undereducated, unemployed without a proper place to live and with a life span of up to 65 years.

"Despite outcries, protests and charges of prejudice, the life of Europe's 12 million so-called Gypsies, the Roma, just keeps getting worse and won't be improved without more laws and awareness about their lifestyle" European Justice Commissioner Viviane Reding has warned.

"The situation faced by numerous European gypsy citizens is scandalous. They are victims of a high degree of discrimination and racism," said Belen Sanchez Rubio, spokeswoman for the rights group Fundacion Secretariado Gitano.

The situation of Roma was "far more difficult" than that of other ethnic minorities in Europe, the EU Commission said in its progress report, describing Roma as being "highly vulnerable to far-reaching social exclusion and widespread discrimination." Roma have also become "scapegoats" for the ongoing economic crisis, the Council of Europe parliamentary assembly said in a recent report. Not only had Roma settlements suffered attacks in Italy, but heavily discriminatory practices persisted also in other countries, according to the report.

There are reports that "the protective provisions of the "Free Movement Directive" are breached much more easily in respect of Roma than any other identifiable group. Expulsions of Roma have been carried out in contravention of EU law. In other cases destruction of Roma dwellings has been used as a method to persuade Roma to leave "voluntarily".

Discrimination of Roma in migration policies has met with little or no opposition in almost every country. This may not be surprising in view of the lingering anti-Gypsyism in large parts of Europe.

Expulsions between EU countries have also failed in a great number of cases as the Roma have used their right as EU citizens to move within the European Union area.

States now spending considerable amounts to return Roma to their countries of origin, would make better use of this money by investing in measures to facilitate these persons' social inclusion in their own societies. (IDN-InDepthNews/27.02.2010)

In a letter sent to Prime Minister Matti Vanhanen (Centre), Amnesty notes that the Roma are increasingly becoming targets of racism and racist attacks, and that Finnish government officials are doing nothing to stop it.

"The lack of action on the part of the EU is shocking", Amnesty writes to the Prime Minister.

About 30 Roma have applied for asylum in Finland. EU citizens cannot be granted political asylum, but they get room and board while their asylum applications are being processed.

Previously, the Roma have tended to avoid contact with officials, because repeatedly burdening a country's social welfare system can be grounds for expulsion.

Amnesty is calling on officials and the EU to take stronger measures to improve the human rights situation of the Roma. "The Roma suffer serious human rights violations", says Tiina Valonen, head of human rights work at Amnesty Finland.

"The EU has legal, economic, and political power, which it is not using, although its own office of fundamental rights is constantly reporting wrongdoings", she says.

<http://www.hs.fi/english/article/Amnesty+EU+violates+human+rights+of+Roma+beggars/1135256783287>

The European Roma Policy Coalition argues that, to date, there is no integrated and comprehensive EU policy that specifically targets Roma discrimination/integration. Where anti-discrimination laws have been adopted, implementation is either slow, inefficient or inexistent. The socio-economic gap between Roma and majority populations has caused social exclusion and unrest.

"Structural discrimination has been blatant in crucial areas such as access to housing (e.g, evictions), education and property rights. There is an unprecedented rise in anti-gypsyism in Europe, including in official speech. Roma communities migrate within Europe prompted, in many cases, by discrimination and other violations of their rights only to find themselves subject to the same problems in a new host countries", the Coalition has said.

[http://www.crin.org/email/crinmail\\_detail.asp?crinmailID=2886](http://www.crin.org/email/crinmail_detail.asp?crinmailID=2886)

Despite European Union legislation on the subject, Europe's Roma remain the victim of discrimination and abuse, as much in the media as in society at large.

Within the EU, "equality of opportunity" is often used to justify the profound inequality of outcomes for Roma. Financing programmes focused on rapid and often low-quality employment for Roma is a cheap but unsuccessful method of dealing with social exclusion. The EU and its member states invest small amounts in comparison to the size and complexity of the problem, amounts that are supposed to be returned through taxes paid from the wages of those employed.

This approach does not take into account existing exclusionary forces faced by Roma, and pays no attention to structures and policies that create deprivation, or to institutions and individuals responsible for exclusion or inclusion. Despite being well intentioned, in the long term these types of programmes enforce prejudice and accentuate exclusion. Employing Roma in menial jobs strengthens anti-gypsyism.

The existing legal framework focused on identical treatment not only has serious problems with implementation, but does not address the much more important issue of reducing existing gaps and preventing discrimination. As long as social inclusion policies do not specifically and distinctly address indirect discrimination and the existing gaps in accessing opportunities, these policies cannot lead to inclusion but rather to assimilation. Often, identical treatment in the case of Roma and non-Roma results in inequality or fosters disadvantage.

Besides being a distinct form of racism, anti-gypsyism means unequal access to rights and to opportunities. It translates into incomplete citizenship, participation and recognition, and into lower self-esteem. Roma face a system of social opportunities mediated by an extreme social stigma linked to being a Roma. This results in high discrepancies related to much lower opportunities available for Roma compared to non-Roma citizens: because of the prevailing social exclusion, similarly educated

Roma and non-Roma citizens have different opportunities to climb up the social and professional ladder. This is clearly visible within the Romanian media. A minimum precondition of an inclusive policy or inclusive society is that attaining equality should rest on the principle of addressing differences differently,

[http://www.eurozine.com/articles/articles\\_e\\_2009-03-2\\_0-nicolae-en.html](http://www.eurozine.com/articles/articles_e_2009-03-2_0-nicolae-en.html) ERRC Country Report: Always Somewhere Else: Anti-Gypsyism in France

France is known as a country of human rights. "Freedom, Equality and Brotherhood" - these declarations remain at the heart of the French Republic. Despite these commitments, hundreds of thousands of Gypsies and Travellers in France are denied the very basic right of equal treatment and experience regular denial and interference with almost all fundamental civil, political, social, economic and cultural rights. They have long been subjected to laws, policies and practices aimed at their control, repression, exclusion and assimilation, that affect almost all aspects of their daily life. Recently, a number of new laws have severely constricted possibilities for the expression of key elements of Gypsy and Traveller identity, while simultaneously providing racist local officials with legal justification for repressive and

draconian measures aimed at -- and succeeding in achieving-- the exclusion of Gypsies and Travellers from nearly all elements of French public life and services.

Many Gypsies and Travellers are driven from municipality to municipality, unable to halt for more than very short periods at a time, before being subjected to the next forced eviction. Most of French territory seems, in fact, to be off limits for Gypsies and Travellers, Those areas available for settlement are often unhealthy, polluted and segregated areas well-hidden from the view of other residents. A great number of Gypsies and Travellers believe that the full apparatus of the state is being brought against them, possibly to end key elements of their culture, or more likely for no reason other than to try to force them away from French society altogether. Likewise, the few thousand Romani migrants on French territory are subjected to policies the basic aim of which is to make them leave France. They live in indecent slum conditions and find themselves repeatedly evicted from their precarious camps and squats, chased to the next municipality - from which they are in turn evicted. In addition, they are subjected to various forms of violence, abuse, harassment and neglect that, result in extreme violations of their rights in almost all fields of life.

<http://www.errc.org/cikk/php?cikk=2421> FRA: Roma and Travellers face social exclusion and discrimination in housing, Oct 21, 2009 11:18 CEST

A new report by the European Union Agency for Fundamental Rights (FRA) gives evidence that Roma and Travellers are strongly disadvantaged in private and social housing throughout the European Union. This includes discrimination in access to housing, poor housing conditions, segregation, and forced evictions. The FRA report highlights shortcomings and good practices across the EU. The FRA is of the opinion that Member States should pay higher attention to the issue of residential segregation and poor housing conditions. Member States and local authorities should implement existing anti-discrimination legislation and policies for Roma inclusion, and intensify their efforts to better inform the Roma of their rights, and involve them in the planning and implementation of housing policies.

F RA Director Morten Kjaeram: "Our report on housing shows that many regional and local authorities in the EU are reluctant to adopt and implement adequate Roma housing policies. Authorities need to act urgently, as poor housing conditions mid residential segregation also have a negative impact on education, employment and health for the Roma. For example, living in segregated sites makes it difficult for Roma children to have access to schools, and for Roma and Travellers to find work and to get to work. "

#### *Unacceptable housing conditions*

Many Roma and Travellers in the EU have to live in informal settlements without basic infrastructure, often in hardly habitable dwellings, without prospects of legalising their homes and improving the quality of their housing. Very often Roma housing areas have poor access to public services, employment and schools, as well as an inadequate supply of water, electricity or gas.

#### *High segregation rates*

Segregation exists in many Member States, sometimes as a result of deliberate policy choices made by local authorities and/or national governments.

#### *Forced evictions*

The report highlights forced evictions from municipal accommodation, even of Roma who are regular rent payers. These evictions often happen without prior notice, and may involve police violence and destruction of personal property. There are many cases where authorities fail to provide alternative housing and/or adequate compensation for expropriation.

#### *Discrimination*

Discrimination on grounds of race or ethnic origin in access to housing is legally forbidden. However, an FRA survey shows that many Roma experience discrimination which varies considerably between Member States. In one Member State, 34% of Roma reported discrimination in access to housing. EU citizens have the right to move and live anywhere in

the European Union, provided that they meet certain conditions. This is an important right to achieve European integration and is included in the European Union Charter of Fundamental Rights (Article 45). However, FRA research shows that many Roma EU citizens settling in another Member State in search of better conditions continue to experience racism, discrimination and exclusion,

The new report released by the Agency highlights the case often Roma and their particular challenges in exercising these rights. Based on the evidence of its report, the FRA advises the EU and its Member States to adopt targeted policies promoting social cohesion to ensure that all citizens can exercise their right to freedom of movement effectively.

The FRA report "Housing conditions of Roma and Travellers in the European Union" gives evidence that Roma and Travellers are strongly disadvantaged in private and social housing throughout the European Union. This includes discrimination in access to housing, poor housing conditions, segregation, and forced evictions. The report highlights shortcomings and good practices across the E.U. The FRA is of the opinion that Member States should pay higher attention to the issue of residential segregation and poor housing conditions. Member States and local authorities should implement existing anti-discrimination legislation and policies for Roma inclusion, and intensify their efforts to better inform the Roma of their rights, and involve them in the planning and implementation of housing policies.

Amnesty International Report 2009: Spain, Racism

Racist attacks by private individuals and cases of torture and other ill-treatment with a racist component committed by law enforcement officials continued to be reported. According to the EU's Fundamental Rights Agency, Spain is one of just five member states that do not publish official data on complaints and criminal proceedings related to racist offences.

Sweden, Minority Rights Group report 2009

According to Swedish members of the European Network Against Racism, individuals originally coming from Middle East and Africa are subject to greater levels of racism and discrimination. Roma also face widespread discrimination.

According to Swedish Government's Human Rights Website, "The Roma still occupy a highly vulnerable position in Swedish society and are exposed to discrimination although this is prohibited by law. Generally speaking, many Roma encounter great difficulties in virtually all spheres of society. This applies to education, the labour market, housing and health care and to possibility of participating in the community on the same terms as the majority population."

Despite extensive legislation against ethnic discrimination, additional funding for Roma related prejudice/discrimination issues with Ombudsman, formation of various agencies to improve their living conditions, Roma still reportedly faced political social, and economic exclusion. Can't the about 9.2 million people of Sweden properly integrate and include their about 60, 000 Roma brothers/sisters, Rajan Zed asked.

[http://www.thaindian.com/newsportal/entertainment/hindus-urge-sweden-to-bring-its-roma-in-mainstream-who-face-apartheid-like-conditions\\_I00170871.html](http://www.thaindian.com/newsportal/entertainment/hindus-urge-sweden-to-bring-its-roma-in-mainstream-who-face-apartheid-like-conditions_I00170871.html)

About 10 million Roma live in the EU - and the European Commission says they face deeply embedded discrimination.

<http://news.bbc.co.uk/2/hi/europe/7619703.stm>

The most recent US State Department reports on human rights for Finland says "According to the minority ombudsman, discrimination against the approximately 10,000 Roma in the country extended to all areas of life, resulting in their de facto exclusion from society. The Romani minority was the most frequent target of racially motivated crimes, According to government figures, 60 percent of discrimination cases involved Roma, followed by Russian-speakers, Somalis, Turks, Iraqis, and ethnic Thai.

The most recent US State Department report on human rights for Spain says that the Romani population continued to face discrimination. According to the domestic NGO Fundacion



Secretariado Gitano (FSG), Roma continued to face discrimination in access to employment, housing, and education. The Romani community, which the FSG estimated to have a population of 600,000, experienced substantially higher rates of unemployment, poverty, and illiteracy than the general population. In 2008 the FSG received 90 complaints of social discrimination from the Roma population. In April the president of the Asociación Nacional Presencia Gitana reported that 70 percent of Roma over the age of 16 were illiterate and that only 30 percent of Roma children regularly attended school.

In October the EU Directorate for Health and Consumer Affairs reported that 12.6 percent of Roma in the country suffered some kind of chronic disease. The study further stated that life expectancy was much lower for the Roma community compared with the general European population. The percentage of Roma age 75 or older was 25.7 percent, while 51 percent of the remaining EU population fell into this category.

Acceder, a program aimed at expanding social inclusion through labor market integration, promoted equal opportunity for the Roma population. The program promoted labor-contract employment as an alternative to self-employment and as a vehicle for building social inclusion. Approximately 71 percent of the 44,591 persons served at the 48 employment centers since 2000 were Roma and 55 percent were woman. More than 32,351 work contracts had been signed.

In April 2008 the Council of Europe's Commission against Racism and Intolerance adopted a resolution which stated that Roma, and in particular Romani women still faced particular difficulties and discrimination in their access to employment, housing and social services and, reportedly, in the treatment they received within the criminal justice system. The resolution also noted continued difficulties in ensuring equal access to education for Roma, with Romani students exhibiting higher levels of absenteeism, drop-out rates, and poor performance than non-Romani children, especially at the secondary school level.

In 2008 a Romani association in Madrid (Hierbabucna) accused the PSOE of discriminating against Roma when the government fired a high-level Romani advisor to the Department of Ethnic Minorities within the Women's Institute. The advisor was terminated after filing a harassment suit, dismissed in June, against the PSOE's secretary for social movement.

In July 2008 the UN special rapporteur against racism asserted before the Catalanian parliament that political parties in the country attempted to exploit racism to gain electoral advantage. After visiting Sikh, Roma, evangelical Christian, and Muslim communities in Catalonia, the special rapporteur noted that these communities were excluded from mainstream society and experienced difficulty practicing their religions due to the small size of their places of worship.

Discrimination alone will not necessarily amount to persecution, but if the discrimination makes it very difficult, or even impossible for one to earn a living or access normally available benefits such as education, then it may amount to persecution.

## Conclusion

It is submitted that, in this case there is 'serious harm' as required under s.91R(1) of the Act as well as systematic and discriminatory conduct (s.91R(1)(c)). Although the expression "serious harm" includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment it also includes significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, and where such hardship or denial threatens the applicant's capacity to subsist: s.91 R(2) of the Act.

The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

In this light persecution can be the result of a series of less serious elements which taken together form a pattern of treatment which amounts to persecution. Discrimination alone will not necessarily amount to persecution, but if the discrimination makes it very difficult or even impossible for one to earn a living as in the case of the Roma in the EU then in my opinion it amounts to persecution.

I submit that based on the current situation all over the EU the Roma face discrimination in all countries in education, housing and employment and this cumulatively makes it impossible to earn a living and access normally available benefits and in this way discrimination amounts to persecution.

## Country Information

80. On 7 November 2007, Human Rights watch published a report entitled *Italy: Expulsion Decree Targets Romanians*. The report includes the following, available at <http://www.hrw.org/en/news/2007/11/07/italy-expulsion-decree-targets-romanians>:

The Italian government's targeting of Romanians, and particularly those of Roma origin, for expulsion violates Italy's international human rights obligations, Human Rights Watch said today.

On October 31, the Italian government adopted an emergency decree for the immediate expulsion of citizens of other European Union countries. The decree followed a brutal crime allegedly committed by a Roma man from Romania (an EU member since January). The temporary decree, which came into force on November 2, needs parliamentary confirmation within 60 days.

"Romanians are the real target of this expulsion decree, not EU nationals in general," said Judith Sunderland, EU researcher at Human Rights Watch. "The Italian authorities should not punish a community for the alleged crimes of one member. Parliament should move quickly to ensure in-country appeals against these rapid expulsions."

The move comes amid a wave of police action and public violence in Italy targeting Romanians, particularly those of Roma origin. In the days following the October 30 robbery and murder of an Italian woman, Giovanna Reggiani, in Rome, authorities forcibly evacuated and bulldozed the Roma camp where the alleged murderer, a Romanian Roma man, was living. Police have conducted similar raids on Roma camps in Bologna, Florence and Genoa.

On November 2, a group of hooded men armed with metal bars and knives attacked a crowd of Romanians in the parking lot of a supermarket in Rome. Three men remain in hospital as a result of their injuries. On the night of November 4, a bomb exploded outside a Romanian-owned store in a town just outside Rome, causing property damage. Last weekend, a Romanian football player was subjected to racist taunts during a match.

Interior Minister Giuliano Amato has justified the emergency decree as an attempt to "prevent the terrible tiger of xenophobia, the racist beast, from breaking out of the cage." Four Roma men were expelled to Romania on November 2, the day the decree entered into effect. Since then, prefects in Rome, Turin, Genoa and Milan have issued expulsion orders for at least 24 other Romanians.

"If the government is serious about curbing xenophobia, it needs to lead by example," said Sunderland. "Police raids and expulsions send the message that discriminating against Roma and Romanians

81. In addition to the information set out above, the Tribunal has had regard to the EU law and practice as explained in the EU website at <http://europa.eu/>. With respect to residence rights, the EU website provides the following information at [http://ec.europa.eu/youreurope/nav/en/citizens/living/right-residence-up-3-moths/for-union-citizens/index\\_en.html](http://ec.europa.eu/youreurope/nav/en/citizens/living/right-residence-up-3-moths/for-union-citizens/index_en.html):

Every person holding the nationality of a Member State is a citizen of the Union.

This status confers on you a primary and individual right to move and reside freely within the territory of the Member States, subject to certain limitations and conditions laid down in Community legislation.

Community legislation provides that every Union citizen has the right to reside in the host Member State for a period of up to three months with the only requirement to hold a valid identity card or passport.

The right of residence in the host Member State there is granted to you on grounds of your Union citizenship and these documents confirm that you are indeed a Union citizen.

It is irrelevant whether you intend to reside there for professional or private reasons, whether you are going to work in an employed or self-employed capacity, be a family member of such person or whether you are simply a tourist.

Beside the requirement to hold a valid identity card or passport, there are no other conditions or formalities.

82. With respect to work rights in the EU, the EU website explains that various restrictions currently apply with respect to EU citizens from former Eastern Bloc countries: [http://ec.europa.eu/youreurope/citizens/work/jobseeker/work-permits/index\\_en.htm?profile=0](http://ec.europa.eu/youreurope/citizens/work/jobseeker/work-permits/index_en.htm?profile=0) For example, one set of restrictions applied to citizens of the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia. As far as nationals of Romania and Bulgaria are concerned, the situation is as follows:

You have the right to work without a work permit in: Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Hungary, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden. You can also transfer unemployment benefits to these countries.

Until 31 December 2013, your ability to work might be restricted in:

- Austria
- Belgium
- France
- Germany
- Ireland
- Italy
- Luxembourg
- Malta
- The Netherlands
- United Kingdom.

To work in these countries, you will need a work permit. Some countries have simplified their procedures or reduced restrictions in some sectors or for some professions.

Norway, Iceland, Liechtenstein and Switzerland also impose full restrictions. Switzerland can impose restrictions until 31 May 2016.

#### *Transferring unemployment benefits*

Exporting unemployment benefits to the countries that still impose restrictions on labour market access may also be restricted.

83. With respect to the EU countries in which Romanian citizens may work without limitation (Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Hungary, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden), the Tribunal has had regard to information in the most recent United States State Department (USSD) country reports on human rights practices (published on 11 March 2010 and available at

<http://www.state.gov/g/drl/rls/hrrpt/2009/index.htm>) which appears relevant to the applicant's claims. The information, listed by country in alphabetical order, is as follows:

**Bulgaria** <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136024.htm>

Societal discrimination against Roma and other minority groups remained a problem, occasionally resulting in incidents of violence between members of different ethnic groups.

Roma were estimated to constitute between 6 and 10 percent of the population, and according to a 2002 Council of Europe report, there were 600,000 to 800,000 Roma in the country. According to the 2001 census, ethnic Turks made up 9 percent of the population. Ethnic Bulgarian Muslims, often termed Pomaks, are a distinct group of Slavic descent, whose ancestors converted from Orthodox Christianity to Islam; they constitute 2 to 3 percent of the population.

Workplace discrimination against minorities, especially Roma, continued to be a problem. The unemployment rate among Roma was nearly 65 percent, reaching 80 percent in some regions. The generally unfavorable attitudes towards Roma, coupled with their poor education level, made Roma less able to find jobs. Many observers noted the quality of education offered to Romani children was inferior to that afforded to most other students.

Popular prejudice against Roma remained widespread. There were isolated cases of police harassment, arbitrary arrests, and violence against Roma. However, NGOs reported that while more Roma were willing to launch complaints against the authorities, the number of complaints had dropped in recent years.

On September 16, 50 members of the Ilinden activist group protested in front of the ECHR in Strasbourg and called for the recognition of a Macedonian minority in the country.

In September the Burgas municipality destroyed 46 Romani homes, leaving at least 200 persons homeless. There were reports that municipal police used disproportionate force against the Romani inhabitants during the demolitions. Since Romani residents lacked legal titles to this land, the Burgas municipality did not provide any alternative housing for the evicted residents. Local NGOs estimated that 50 to 70 percent of Romani housing was illegally constructed and were concerned that more municipalities would initiate legal proceedings to demolish illegally built houses.

In July 2008 the ECHR, acting on a complaint filed by the BHC, issued an interim injunction to halt the planned demolition of Romani housing in Sofia. The ECHR requested that the local authorities provide information regarding their plans to relocate the residents, especially children and persons with disabilities.

There were no developments in the 2007 beating death of a 17-year-old Roma, Asparuh Atanasov, by a group of four teenagers. The prosecution against them was ongoing at year's end.

On August 6, the European Committee of Social Rights unanimously found the country to be in violation of the European Social Charter by failing to meet its obligations to ensure that any person who is without adequate resources has access to social assistance provided by the state. The committee issued the ruling in response to 2006 and 2008 amendments to the Social Assistance Act, which limited the time citizens were eligible for assistance. The court found that these restrictions had a disproportionate effect on Roma, women, and other marginalized groups and that access to social assistance cannot be subject to time limits if the persons affected continue to meet the basic condition for eligibility for assistance.

**Cyprus** <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136026.htm>

National/Racial/Ethnic Minorities

There were reported incidents of government and societal discrimination against members of minority national and ethnic groups, particularly Turkish Cypriots, Roma, Filipinos, Pontian Greeks, and Sri Lankans...

In January the ombudsman complained through the media that foreigners were being subjected to humiliating and discriminatory treatment by authorities at passport control at Larnaca Airport. The ombudsman reported that she was not aware of any changes to these practices by year's end.

In October the European Network Against Racism Cyprus issued its 2008 "shadow report" on racism in Cyprus. The report noted a significant rise in racist violence and called for the government to adopt and implement an action plan covering all areas where discrimination and racism persist. It also called on the government to develop and enact a comprehensive migration policy that would include an integration policy for migrants.

In March a Cypriot citizen of Lebanese origin accused the Limassol Hospital of denying him treatment unless he spoke to doctors and staff in Greek.

During a police operation in the early morning hours of September 25, police took 150 individuals to police stations, reportedly to confirm their immigration status. Authorities arrested 36 for "illegal residence" and 12 for involvement in violence that took place earlier at Nicosia's only functioning mosque. The minister of interior was critical of the operation, noting that his ministry was responsible for implementation of immigration policy; the minister of justice defended the operation, stating that police were simply doing their job. Ombudsman Iliana Nicolaou, acting as head of the Authority against Racism and Discrimination, said such practices fed xenophobic attitudes and racist stereotypes and had nothing to do with the country's immigration policy. She expressed her deep concern over the police action and opened an investigation that was still in progress at year's end.

In December 2008 the press reported that a large group of schoolchildren beat a 15-year-old Cypriot girl of African descent after a school volleyball game. The attackers shouted racist slogans and did not stop the beating until police arrived. The girl was treated for severe injuries at the hospital. The girl's father and KISA complained that police did not take the girl to the hospital but kept her in a room at the school until her father arrived. Police subsequently turned the father away three times when he attempted to file a complaint and made no arrests in connection with the attack. A number of senior government officials publicly criticized the attack. The teachers' union, OELMEK, denied that there was any racism in the schools, however. The ombudsman opened an investigation into the incident. In May the ombudsman publicly criticized some Ministry of Education officials for presenting the attack as an incident of school violence rather than of racism. The ombudsman's investigation found that the police neglected to act efficiently in this case and failed to file criminal charges against the offenders within the antidiscrimination law. The attorney general reviewed the case and decided that there were no grounds for criminal court proceedings.

Many foreign workers reported that they almost always faced delays in the renewal of work visas despite the fact that they followed proper and timely procedures. In many cases, this left them vulnerable to detention and deportation by immigration police.

**Czech Republic** <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136027.htm>

European authorities reported that the government castrated some convicted sex offenders without their free and informed consent. Other notable human rights problems included official corruption, trafficking of persons for commercial sexual exploitation and labor, neo-Nazi and nationalist extremism directed at Roma and other minorities, and societal discrimination against Roma.

According to a 2005 report by the National Defender of Rights (ombudsman), there were many allegations that doctors at state hospitals forcibly sterilized mainly Romani women in the 1973-91 period. In 2008 the nongovernmental organization (NGO) Group of Women Harmed by Sterilization (WHS) reported that its field research uncovered two cases of coerced sterilization in November 2008 and in 2007. The alleged instance in 2008 involved a 19-year-old Romani woman from Karvina; at year's end authorities had not opened an investigation into the allegation. In the 2007 case, a social worker allegedly told the victim that if she did not undergo sterilization two of her children would be placed in state care. In August police began investigating the case. In August the Budapest-based European Roma

Rights Center provided and funded legal representation for the victim. At year's end the case was pending at the Prosecutor's Office in Frydek-Mistek. The WHS also identified 18 new cases of women, both Roma and non-Roma, who alleged they had been sterilized without their informed consent, some before 1989 and others in the 1990s. At year's end authorities had not opened investigations into the cases.

The Ostrava Regional Court ruled in October 2008 that a local hospital was liable for a wrongful sterilization performed on a Romani woman, Iveta Cervenakova, 11 years prior and recognized her right to compensation of 500,000 thousand korunas (\$27,600) and an apology. The hospital appealed to the Olomouc High Court, which ruled in November 2008 that Cervenakova was not entitled to financial damages because the deadline for making such claims had passed. However, the High Court upheld the requirement that the hospital apologize, which it did. In April Cervenakova appealed the decision to the Supreme Court in Brno. At year's end there were no further developments in this case. On October 23, the Supreme Court dismissed a claim by another Romani woman, Helena Ferencikova, who demanded financial compensation from a hospital that performed an unwanted sterilization on her. In 2005 Ferencikova's case was the first involuntary sterilization case to reach the courts. On November 23, the interim government officially expressed regret over unauthorized sterilization of (mostly) Romani women, but interim prime minister Fisher stated that the issue of possible financial compensation should be left to the government formed after 2010 parliamentary elections.

The law prohibits discrimination based on sex, age, disability, race, ethnic origin, nationality, sexual orientation, religious faith, or personal belief. However, the government did not effectively enforce these provisions, and significant societal discrimination against Roma and women persisted. Trafficking in persons also remained a problem.

**Denmark** <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136028.htm> (no mention of problems for Roma)

**Estonia** <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136029.htm> (no mention of problems for Roma)

**Finland** <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136030.htm>

Human rights problems included police failure to provide detainees timely access to legal counsel, questionable contributions to political campaigns, violence against women, trafficking in persons, and societal discrimination against foreign-born residents and Roma

Courts can fine persons found guilty of inciting racial hatred on the Internet, and there were reports of court decisions in 2008 against persons for publishing and distributing hate material via the Internet. On March 17, the Helsinki District Court found a municipal politician in Turku guilty of circulating hate material and fined him 615 euros (approximately \$920). The court found the defendant's remarks during the 2007 election campaign to be derogatory and slanderous toward immigrants. The Helsinki District Court also found an independent member of the Helsinki City Council guilty of writing hate material on his blog and fined him 330 euros (approximately \$470). During the year the Kouvola Court of Appeals upheld the conviction of a man for posting anti-Roma hate material on the Internet.

The law prohibits discrimination based on race, gender, disability, language, or social status, and the government effectively enforced these prohibitions. However, there were reports of violence against women and children, trafficking in persons, and societal discrimination against foreign-born residents and Roma.

According to the minority ombudsman, discrimination against the approximately 10,000 Roma in the country extended to all areas of life, resulting in their de facto exclusion from society. The Romani minority was the most frequent target of racially motivated crimes. According to government figures, 60 percent of discrimination cases involved Roma, followed by Russian-speakers, Somalis, Turks, Iraqis, and ethnic Thai. Ethnic Finns were also occasionally victims of racially motivated crimes for associating with members of minority communities.

The government strongly encouraged tolerance and respect for minority groups and sought to address racial discrimination. All government ministries included antiracism provisions in their educational information, personnel policy, and training programs. The government also monitored the treatment of national, racial, and ethnic minorities by the police, the border guards, and teachers. The government's minority ombudsman monitored and assisted victims of discrimination. The ombudsman for minorities supervises compliance with the prohibition of ethnic discrimination.

**Greece** <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136034.htm>

Human rights abuses reported during the year included: abuse by security forces, particularly of undocumented immigrants and Roma; overcrowding and harsh conditions in some prisons; detention of undocumented migrants in squalid and overcrowded conditions; some legal restrictions on freedom of speech; restrictions on religious freedom; detention and deportation of unaccompanied or separated immigrant minors, including asylum seekers; a lack of adequate reception capacity or legal aid for asylum seekers and refugees; domestic violence; discrimination against and exploitation of Romani children; trafficking in persons; limits on the freedom of some ethnic minority groups to self-identify; and discrimination against, and social exclusion of, ethnic minorities, particularly Roma.

Police mistreated Roma. For example, in May Amnesty International reported that police allegedly beat a Romani man for several hours at Aharon police station in June 2008.

On August 28, the UN Committee for the Elimination of Racial Discrimination (CERD) expressed concern over excessive use of force by police against persons belonging to vulnerable groups, in particular Roma.

In March 2008 the Albanian secretary of the Foreign Immigrants Union of Larisa alleged he was beaten on his fingers, punched, and kicked by Thessaloniki police. His criminal complaint was pending in court at year's end.

In June 2008 media reported that seven police officers and the director of the Corinth police station tortured, abused, and then abandoned a mentally ill Romanian national. The officers were suspended, and a prosecutor's inquiry was pending at year's end.

CERD and such NGOs as the Greek Helsinki Monitor (GHM) continued to report police mistreatment of Roma, and human rights advocates accused the court system of failing to prosecute abusive police officers effectively.

In October media reported the case of five police officers who allegedly covered up for an officer who abused a citizen in 2004. The officer, whose abuse resulted in the victim's losing an eye, was shown to have submitted a false alibi. A trial date for the five officers had been set, but it had not occurred by year's end. The trial of the police officer who abused the citizen was pending at year's end.

The case of Theodoros Stefanou, a Rom allegedly beaten by a police officer in 2001 on the island of Kefalonia, was pending with the ECHR at year's end. Stefanou took his case to the ECHR in 2007 with help from the GHM, alleging mistreatment, excessive length of court proceedings, and the failure of the authorities to investigate his case promptly due to his ethnicity. The case was pending at year's end.

In July 2008 the UN Human Rights Committee found that the country had violated an international covenant prohibiting torture in the case of Andreas Kalamiotis, a Romani man who was allegedly the victim of police brutality in 2001. The government was given six months to provide the victim with appropriate reparation and to report to the committee on measures taken to prevent similar violations in the future. The government had not taken any such measures as of year's end.

**Hungary** <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136035.htm>

Human rights problems included police use of excessive force against suspects, particularly Roma; government corruption; societal violence against women and children; sexual harassment of women; and trafficking in persons. Other problems worsened, such as

extremist violence and harsh rhetoric against ethnic and religious minority groups. Extremists increasingly targeted Roma, resulting in the deaths of four Roma and multiple injuries to others. Discrimination against Roma in education, housing, employment, and access to social services continued....

#### National/Racial/Ethnic Minorities

The Organization for Security and Cooperation in Europe Hate Crimes Report for the year stated that 12 violent attacks against members of national, ethnic, racial, or religious groups occurred in 2008.

According to the Central Statistics Office, in 2007 the Romani community was the largest ethnic minority, accounting for 2 percent of the population, or about 200,000 persons. However, unofficial estimates, which vary widely, suggested the actual figure was much higher, ranging between 500,000 and 800,000 persons.

Violent attacks against Roma continued and generated strong public concern and intense disputes as to the existence of racially motivated crimes in the country. On February 23, a Romani home in the town of Tatarszentgyorgy was attacked with Molotov cocktails and gunfire, and a man and his five-year-old son were shot and killed as they ran from their burning home. On April 22, a 54-year-old Romani man died from a gunshot wound in Tiszalok. On August 3, in Kisleta a Romani woman was shot and killed in her home, and her 13-year-old daughter was seriously injured.

Between June 2008 and August 3, a series of physical attacks against Roma resulted in the killing of nine persons and injuries to many others. In response, the national police chief doubled the number of detectives in the special unit assigned to the case to 100. On August 21, police arrested four suspects. No additional attacks of this nature occurred after the arrests. The case was pending at year's end. Human rights NGOs criticized authorities for mistakes made during on-site investigations, particularly in Tatarszentgyorgy. The police ordered an internal disciplinary proceeding to identify the alleged mistakes, and these resulted in disciplinary measures against two police officers.

On October 9, five Roma were charged with a racist assault after allegedly beating an ethnic Hungarian on September 23. The four men and a woman were placed in pretrial detention. According to a police spokesman, this was the country's first racist incident in which the victim was not a member of a minority.

On January 30, Albert Pasztor, the head of the Miskolc police headquarters, stated in a press conference, "Hungarians appear to rob banks or gas stations, but all the other robberies are committed by Gypsies." He also stated that Hungarians should refrain from patronizing bars in certain parts of the city, since they may become victims of Romani criminals. He added that the problem was that "cute Gypsy children often become rude and cruel perpetrators." Upon the instruction of the minister of justice and law enforcement, the HNP initiated an inquiry into the incident, and Pasztor was suspended from his position. However, two days later the investigation concluded that Pasztor did not break any law, and the HNP terminated his suspension; the decision to reinstate Pasztor was approved by the minister of justice and law enforcement.

On April 2, Parliamentary Commissioner for Civil Rights Szabo stated in an interview that "Gypsy crime" existed and defined it as a type of crime performed to earn a living. He also referred to Roma as being a "collectivist, almost tribal-level social group, in contrast to the highly individualist Hungarian society." He also presented himself as the parliamentary commissioner of the "majority" rather than the parliamentary commissioner for the rights of national and ethnic minorities. Although he withdrew his statement the next day following strong criticism by human rights groups, Szabo's professional acceptance greatly weakened following this incident.

On September 3, Oszkar Molnar, the mayor of Edeleny and a FIDESZ parliamentarian, stated during a press conference that pregnant Romani women hit their bellies with rubber hammers and took harmful medicines to increase the chance their child would be born with disabilities in order to receive increased state financial aid. Responding to the statement, FIDESZ party



leaders initially labeled it as a "local issue." However, in December the center-right FIDESZ party dropped Molnar from its slate for the April 2010 parliamentary elections.

On November 24, parliament's Committee on Human Rights, Minorities, and Civil and Religious Affairs published an open letter calling on all Hungarian public personalities to speak out against hate speech. The letter was initiated by the committee's chairman, Zoltan Balog; the former president of the Supreme Court, Zoltan Lomniczi; and the director of international relations of the FIDESZ Hungarian Civic Union, Dan Karoly. The leaders of the four historic churches signed the letters as supporters.

Human rights NGOs reported that Roma were discriminated against in almost all fields of life, particularly in employment, education, housing, penal institutions, and access to public places, such as restaurants and bars.

According to statistics of the Hungarian Institute for Educational Research and Development, Roma were significantly less educated than other citizens, and their incomes and life expectancy were well below average.

A 2007 International Labor Organization report estimated the unemployment rate among Roma to be 40 percent. However, in many underdeveloped regions of the country, it exceeded 90 percent. Romani unemployment was estimated to be three to five times higher than among the non-Romani population.

Inadequate housing continued to be a problem for Roma; their overall living conditions remained significantly worse than the general population's. According to Romani interest groups, municipalities used a variety of techniques to prevent Roma from living in more desirable urban neighborhoods. According to a survey by the Ministry of Social Affairs and Labor, approximately 100,000 seriously disadvantaged persons, mostly Roma, lived in approximately 500 settlements lacking basic infrastructure and often located on the outskirts of cities. The government continued its program to eliminate these settlements and to help residents move to more desirable communities.

Most ministries and county labor affairs centers had special officers for Romani affairs focused on the needs of the Romani community. The Ministry of Education and Culture continued to offer financial incentives to encourage schools to integrate Romani and non-Romani children in the same classrooms and to reintegrate Roma inappropriately placed in remedial programs. The Ministry of Social Affairs and Labor operated a program to finance infrastructure development in Romani communities.

The Ministry of Justice and Law Enforcement operated an antidiscrimination legal service network that provided free legal aid to Roma in cases where they encountered discrimination based on their ethnicity.

**Latvia** <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136040.htm>

In February the Riga Regional Court convicted four young men of a racially motivated crime in the beating of two Romani girls in 2007. The attackers were ordered to pay 20,000 lats (\$40,000) to the victims and given suspended sentences and probation.

The Romani community faced widespread societal discrimination as well as high levels of unemployment and illiteracy. In 2007 the government began implementing a national action plan to address problems affecting the country's estimated 8,000 Roma with respect to employment, education, and human rights. However, the plan was criticized for lacking adequate funding to substantially improve conditions for Roma. In 2008 28 members of the Romani community were trained as teacher's assistants to improve access and participation in the educational system. During the 2009-10 school year, eight of these assistants were working in schools.

**Lithuania** <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136042.htm>

The small Romani community (approximately 3,000 persons) continued to experience problems, including discrimination in access to services such as education, housing, and healthcare; in employment (the unemployment rate was 50 percent); and in relations with

police, although there were no official charges of police abuse. Minority advocates continued to criticize the Vilnius city government for focusing on law enforcement in the Romani community but doing little to integrate Roma into the broader community.

At year's end the Vilnius Regional Court had not reached a decision on its reconsideration of claims for compensation by the residents of a Romani neighborhood for the destruction of their housing in 2004. The court initially awarded 100,000 litas (\$41,700) to the inhabitants, but following appeals, the Supreme Administrative Court ordered the case to be reheard.

**Poland** <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136051.htm>

Societal discrimination against Roma continued. There were reports that some local officials discriminated against Roma by not providing adequate social services. Romani leaders complained of widespread discrimination in employment, housing, banking, the justice system, the media, and education.

In its November 20 report, the UN Committee on Economic, Social, and Cultural Rights expressed concern about continued widespread discrimination against Roma in the country in areas such as employment, education, land tenure, access to welfare benefits, housing, and health care.

On September 9, an appeals court in Wroclaw upheld the conviction and sentencing of a streetcar driver for insulting and threatening a Romani man with violence on the Internet. The driver had used abusive language and said he would kill the man were he to visit Wroclaw.

The government allocated approximately 10 million zloty (\$3.5 million) annually to a special program for Roma that included educational and other projects to improve health and living conditions and reduce unemployment. The program also focused on civic education and provided grants for university and high school students.

According to the Roma Association, more than 50 percent of Romani children did not attend public school out of fear that teachers would encourage assimilation and uproot them from their traditions. In 2008 according to the MOI, there were approximately 3,100 Roma under the age of 18 years living in the country. Of that number 2,700 (87 percent) were enrolled during the 2007-08 school year.

The Roma Association stated that gaps in Romani children's education made it impossible for Roma to end their poverty. Approximately 90 percent of Roma were unemployed. A 2002 national census recorded approximately 12,700 Roma living in the country.

According to the Ministry of Education, the number of segregated classes for Romani children has been substantially reduced. In August 2008 the news daily *Dziennik* reported that in six cities with a large Roma population, Romani children were taught in segregated classes, ostensibly because they did not speak fluent Polish. The education level in such classes was reportedly lower than in mainstream classes. Following the reports the education minister inspected all district offices with oversight of separate classes for Roma and ordered that Romani children be fully integrated with other children.

On October 1, a separate class for Romani children was started in a Poznan preschool. The idea originated with a local Roma foundation to improve education for Romani children and to ease their transition to public schools. Opponents of the project asserted that any type of segregation of Romani children would be detrimental; however, proponents claimed that many Romani children did not feel comfortable attending integrated schools.

**Portugal** <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136052.htm>

(No references to abuses of Roma rights other than a reference to Romani children being coerced into street begging by Roma adults.)

**Slovakia** <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136057.htm>

The government generally respected the human rights of its citizens; however, there were problems in some areas. Notable human rights problems included some continuing reports of police mistreatment of Romani suspects and lengthy pretrial detention; restrictions on

freedom of religion; concerns about the integrity of the judiciary, corruption in national government, local government, and government health services; violence against women and children; trafficking in women and children; and societal discrimination and violence against Roma and other minorities.

Nongovernmental organizations (NGOs) and members of the Romani community cited a continuing trend of mistreatment of Romani suspects by police officers during arrest and while in custody. The Council of Europe's Committee for the Prevention of Torture (CPT) released an inspection report in 2006 that noted significant allegations of mistreatment of detainees by law enforcement agencies, including slaps, punches, kicks, or blows with hard objects such as batons. In a "notable proportion" of cases the victims were Roma. The CPT conducted a follow-up visit from March 24 to April 2. In general the CPT noted that the situation in Slovakia had improved, despite recurring complaints from detainees about excessive force. The CPT recommended that the government reassess police training methods pertaining to detention and include independent experts in the process. The CPT also urged the government to investigate all allegations of sterilization of Romani women promptly and thoroughly, to enforce the 2004 Healthcare Act effectively, and train doctors about their criminal liability for performing sterilization without consent.

On March 21, police officers abused six Romani boys (ranging in age from 11 to 16 years old) detained in Kosice following alleged theft of a purse. Videotapes of the incident, leaked to the media on April 7, showed the officers forcing the boys to strip naked, kiss, and hit each other. Police authorities immediately suspended nine officers, seven of whom subsequently lost their jobs, accused them of abuse of office and intimidation, and faced criminal charges; the trial was pending at year's end. Authorities also dismissed four of the officers' superiors.

Police continued to provide special training on Romani culture and language to officers working in districts with Romani communities in the Kosice and Presov regions. The Bratislava branch of postsecondary schooling for police also offered an elective course in Romani language and culture....

The national police has sole responsibility for internal and border security and reports to the Ministry of Interior. The head of the police force reports directly to the minister of interior, who has the authority to recall any member of the police. Human rights observers believed that police were occasionally reluctant to accept the testimony of certain witnesses, particularly Roma, women, and homeless persons and often failed to investigate cases involving Roma and other minorities promptly and thoroughly...

Organized neo-Nazi groups, estimated to have 500 active members and several thousand additional sympathizers, promoted anti-Semitism and harassed and attacked other minorities, including Roma.

#### National/Racial/Ethnic Minorities

Government and societal discrimination against Roma and individuals of non-European ethnicity was a common problem. Roma are the second largest ethnic minority with a population of 90,000 according to the 2001 census. Experts estimated that the Romani population is actually between 350,000 and 500,000. The discrepancy was attributed to Roma identifying themselves as Hungarians or Slovaks.

Racially motivated attacks on minorities (Roma and others) were widely reported throughout the year, but investigation of attacks and law enforcement varied by jurisdiction. Of the 213 cases of racially motivated crimes during 2008, two cases of racially motivated assault involving serious injury resulted in convictions; 33 cases of violence against a racial or ethnic group resulted in convictions; and 178 cases of promoting and supporting extremist groups resulted in convictions. There were no prosecutions for racially motivated murder in 2008.

Roma were particularly singled out for violence, and police detained numerous individuals for attacks against Roma motivated by racial hatred. There were also reports that police mistreated Roma. On March 21, police officers in Kosice abused six Romani boys in detention (see section 1.c.).

Skinhead and neo-Nazi violence against Roma and other minorities continued to be a serious problem. The League of Human Rights Activists (LPR) reported that, although police were increasingly responsive in their efforts to monitor and control the skinhead movement, the problem persisted. The LPR also reported receiving e-mail and telephone threats from skinheads.

**Slovenia** <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136058.htm>

The government generally respected the human rights of its citizens; however, there were problems in some areas. There were reports of trial delays and cursory procedures for review of asylum applications. Societal violence against women, trafficking in women and girls, discrimination against Roma, violence against gays and lesbians, and discrimination against former Yugoslav residents without legal status were also problems...

Many Roma lived apart from other communities in settlements that lacked such basic utilities as electricity, running water, sanitation, and access to transportation. According to Roma Association officials, 68 percent of Romani settlements were illegal. Organizations monitoring conditions in the Romani community have noted in recent years that Roma exclusion from the housing market was a problem and that the unemployment rate among Roma reached 98 percent.

**Spain** <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136059.htm>

The Romani population continued to face discrimination. According to the domestic NGO Fundacion Secretariado Gitano (FSG), Roma continued to face discrimination in access to employment, housing, and education. The Romani community, which the FSG estimated to have a population of 600,000, experienced substantially higher rates of unemployment, poverty, and illiteracy than the general population. In 2008 the FSG received 90 complaints of social discrimination from the Roma population. In April the president of the Asociación Nacional Presencia Gitana reported that 70 percent of Roma over the age of 16 were illiterate and that only 30 percent of Roma children regularly attended school.

In October the EU Directorate for Health and Consumer Affairs reported that 12.6 percent of Roma in the country suffered some kind of chronic disease. The study further stated that life expectancy was much lower for the Roma community compared with the general European population. The percentage of Roma age 75 or older was 25.7 percent, while 51 percent of the remaining EU population fell into this category.

Acceder, a program aimed at expanding social inclusion through labor market integration, promoted equal opportunity for the Roma population. The program promoted labor-contract employment as an alternative to self-employment and as a vehicle for building social inclusion. Approximately 71 percent of the 44,591 persons served at the 48 employment centers since 2000 were Roma and 55 percent were women. More than 32,351 work contracts had been signed.

In April 2008 the Council of Europe's Commission against Racism and Intolerance adopted a resolution which stated that Roma, and in particular Romani women, still faced particular difficulties and discrimination in their access to employment, housing and social services and, reportedly, in the treatment they received within the criminal justice system. The resolution also noted continued difficulties in ensuring equal access to education for Roma, with Romani students exhibiting higher levels of absenteeism, drop-out rates, and poor performance than non-Romani children, especially at the secondary school level.

In 2008 a Romani association in Madrid (Hierbabuena) accused the PSOE of discriminating against Roma when the government fired a high-level Romani advisor to the Department of Ethnic Minorities within the Women's Institute. The advisor was terminated after filing a harassment suit, dismissed in June, against the PSOE's secretary for social movement.

In July 2008 the UN special rapporteur against racism asserted before the Catalanian parliament that political parties in the country attempted to exploit racism to gain electoral advantage. After visiting Sikh, Roma, evangelical Christian, and Muslim communities in Catalonia, the special rapporteur noted that these communities were excluded from

mainstream society and experienced difficulty practicing their religions due to the small size of their places of worship.

**Sweden** <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136060.htm>

The government estimated the population of Roma to be 40,000 to 60,000. There is a special delegation for Romani issues consisting of representatives of Romani origin, experts on Romani problems, and representatives from Romani associations. The delegation worked to improve the situation of Roma in society and addressed such problems as social, political, and economic discrimination. During the year Roma filed a few complaints of discrimination related to housing and employment. On November 18, the court decided that a storeowner in Orebro should pay 20,000 kronor (\$2,790) to four Romani women for denying them access to his clothing store.

The law recognizes Sami (formerly known as Lapps), Swedish Finns, Tornedal-Finns, Roma, and Jews as national minorities. The government supported and protected minority languages by law.

## **FINDINGS AND REASONS**

### **Nationality**

84. The applicant has claimed to be a national of Romania. He entered Australia as the holder of a Romanian passport issued by the Romanian authorities, expressed to be valid until [a date in] November 2017, and indicating that the applicant is a national of that country. In the absence of any evidence suggesting he is a national of any other country, the Tribunal finds that the applicant is a national of Romania, and therefore a citizen of the EU.

### **Convention Nexus**

85. The applicant claims to be at risk of persecution because he is a Rom. The Tribunal finds that his claims, if made out, bring the applicant within the scope of the Convention ground of race (Roma ethnicity) and/or membership of a particular social group comprising Roma people.

### **Assessment of Protection Claims**

86. The applicant has applied for a Protection visa, seeking to invoke Australia's obligations under the Convention.
87. However, a preliminary question arises from the fact that the applicant's country of nationality, Romania, is a member of the European Union (EU). Consequently, s.36(3) may operate to relieve Australia of any protection obligations it might otherwise have had towards the applicant as his EU citizenship gives him the right to enter and reside in other EU countries, for the reasons identified in the Department's letter to the applicant dated 28 January 2010 and extracted above at [32].
88. While it will usually be convenient to approach an applicant's claims by first considering Article 1 of the Convention pursuant to s.36(2)(a) of the Act, there is no requirement for a decision-maker to be satisfied as to whether or not Australia has "protection obligations" pursuant to s.36(2)(a) before considering the qualification in s.36(3). In an appropriate case, it may be proper for a decision-maker to consider first whether or not Australia is taken not to have protection obligations to an applicant by reason of the operation of s.36(3): *NBGM v MIMIA* (2006) 150 FCR 522 per Black CJ at [20].
89. On the other hand, the genuineness of the applicant's claims was in issue at the primary stage, as a consequence of which the Tribunal considers it appropriate to deal with those claims.

90. The Tribunal notes that the claims as set out in the protection visa application are not particularly detailed, and that the applicant did not elaborate on the incidents described in the [Service A] report at the departmental interview when asked to do so. The applicant's explanation for this, namely that he was uncomfortable elaborating about those events to women, was discounted by the delegate who observed that at [Service A] he had spoken to a female counsellor. The Tribunal observes that the [Service A] assessment is co-signed by [name deleted: s.431(2)], a male professor of psychiatry, and [name deleted: s.431(2)], the [Service A] intake and assessment co-ordinator ([information deleted: s.431(2)]).
91. At the Tribunal hearing the Tribunal found the applicant to be a credible witness. He presented his claims in a plausible manner. The applicant's claims are entirely consistent with the country information about the evidently persecutory treatment of Roma in Romania, and also with the country information about the problems Roma experience in other parts of Europe such as Spain. In addition, the [Service A] assessment submitted in support of the ASA application indicates that his psychiatric symptomology is also consistent with the traumatic events the applicant claims to have experienced.
92. The Tribunal therefore accepts that the applicant's claims are true, and finds both that he has been persecuted in the past and that he faces a real chance of persecution in the reasonably foreseeable future in the event that he returns to Romania, for the Convention reason of his race (Roma ethnicity) and/or member of a particular social group (Roma).
93. In determining whether subsection 36(3) of the Act applies to the applicant, relevant considerations will be: whether the applicant has a legally enforceable right to enter and reside in a third country either temporarily or permanently, and however that right arose or is expressed; whether he has taken all possible steps to avail himself or herself of that right; whether he has a well-founded fear of being persecuted for a Convention reason in the third country itself; and whether there is a risk that the third country will return the applicant to another country where he has a well-founded fear of being persecuted for a Convention reason.
94. On the basis of the evidence before the Tribunal, including the copy of the applicant's current Romanian passport on the departmental file, the information put to the applicant by the Department and reproduced above concerning the Maastricht Treaty, the Free Movement Directive, and Romania's recently acquired membership of the EU, and the information reproduced from the EU website, the Tribunal finds that the applicant has the right to enter and reside, at least temporarily, in all other EU countries.
95. The applicant does not claim to have taken all possible steps to avail himself of that right for the purposes of s.36(3). Rather, he says that he has a well founded fear, in the event that he does take such steps, of experiencing further persecution.
96. This claim might appear surprising at face value, as the legal position within the EU is that citizens of member states have the right to enter and reside in other EU states, at least temporarily, and also to work in at least some of those countries without restriction.
97. However, the applicant says that as a Roma he risks serious harm including not only significant physical harassment and ill-treatment, but also significant economic hardship and/or the denial of access to basic services and/or the denial of his capacity to earn a livelihood of any kind, threatening his capacity to subsist. The applicant says that although much of this threat comes from private individuals, it is often reflected in the attitude of European officialdom which, if not actually engaged in the persecution of the Roma, is indifferent to it.

98. The applicant says that in much of the EU, the Roma face systematic and discriminatory exclusion from the labor and housing markets and are vulnerable to violent attacks from gangs. Despite their human rights rhetoric, the authorities of the EU member states are in practice unwilling or unable to protect the Roma from such problems.
99. The applicant's apprehension about the risks he might face elsewhere in the EU is largely borne out by the country information before the Tribunal. The persecution of the Roma historically is well documented, and the USSD and other reports above suggests that in many European countries, particularly former Eastern Bloc countries such as Romania itself, the Czech and Slovak republics, Hungary and Bulgaria, but also in other EU states such as Greece, Cyprus and even Italy, this persecution persists both at the hands of private individuals in circumstances where the state authorities appear unwilling or unable to take the necessary steps to provide protection against persecution in accordance with international standards, or, in some case, at the hands of state agencies themselves.
100. It is apparent from the country information before the Tribunal that although many EU citizens enjoy the freedom to live and work throughout the EU, there are second and third class EU citizens in respect of whom those rights are qualified, and that in any case, even where human rights are enshrined in law, this does not have the practical effect of precluding the pronounced anti-Roma discrimination which, sadly, is the norm across much of Europe. This was the applicant's experience in Spain, where says he traveled in an attempt to find work but was unable to do so. Instead, he experienced instead prejudice and hostility, and was often reduced to sleeping in a park.
101. The laws of the EU do not provide unrestricted access by all EU citizens to all EU countries. It is clear from the EU website information concerning labour market rights that many Western European countries have imposed limitations on the citizens of some EU countries accessing work rights. Bearing in mind that serious harm for the purposes of s.91R(2) includes: significant economic hardship; the denial of access to basic services; and the denial of a person's capacity to earn a livelihood of any kind, in circumstances where those infringements threatening his capacity to subsist, the Tribunal considers that s.36(3) does not apply to those countries imposing labour market access limitations on the basis of a person's nationality, because of a well-founded fear of persecution for reason of nationality as provided for in s.36(4).
102. The Tribunal has considered the country information with respect to the countries where there is no such legal limitation, namely Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Hungary, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.
103. It is apparent to the Tribunal from the USSD reports that there is a real chance that the applicant will, in the reasonably foreseeable future, encounter serious harm capable of amounting to persecution in the form of serious physical harrassment or ill-treatment as well as significant economic hardship, the denial of access to basic services, and the denial of his capacity to earn a livelihood of any kind, in circumstances where those infringements threatening his capacity to subsist, in at least some of those countries including:
  - the Czech republic (*forced sterilization, significant societal discrimination against Roma coupled with no effective enforcement of anti-discrimination measures*);
  - Slovakia (*police mistreatment of Romani suspects, government and societal discrimination, violence, racially motivated attacks*);

- Hungary (*police use of excessive force against suspects, particularly Roma, [e]xtremists increasingly target[ing] Roma, resulting in the deaths of four Roma and multiple injuries to others, [d]iscrimination against Roma in education, housing, employment, and access to social services*);
- Bulgaria (*police harassment, arbitrary arrests, and violence*); and
- Greece (*abuse by security forces*).

104. In a number of the other countries on the list, although there is evidence of greater state involvement in and commitment to the protection of Roma rights, the USSD reports indicate that the Roma nevertheless experience:

- *government and societal discrimination* (Cyprus);
- *de facto exclusion from society* (Finland);
- *widespread societal discrimination as well as high levels of unemployment and illiteracy* (Latvia);
- *problems, including discrimination in access to services such as education, housing, and healthcare; in employment (the unemployment rate was 50 percent); and in relations with police* (Lithuania);
- *reports that some local officials discriminated against Roma by not providing adequate social services. Romani leaders complained of widespread discrimination in employment, housing, banking, the justice system, the media, and education* (Poland);
- *discrimination, exclusion from the housing market, [an] unemployment rate [of] 98 percent* (Slovenia); and
- *discrimination in access to employment, housing, and education, substantially higher rates of unemployment, poverty, and illiteracy than the general population* (Spain).

105. In the countries referred to in [104] – [105], it is the view of the Tribunal based on the country information before it, that s.36(3) does not apply to the applicant because of a well-founded fear of persecution for reason of his race (Roma) as provided for in s.36(4), as there is a real chance that he will, in the reasonably foreseeable future, experience serious harm capable of amounting to persecution in the form of significant economic hardship, the denial of access to basic services, or the denial of his capacity to earn a livelihood of any kind, in circumstances where those infringements threaten his capacity to subsist. It is apparent from the evidence relating to Roma labour market participation and access to housing in these countries that although it may be unlawful to discriminate against Roma in employment and housing, the respective state authorities are unwilling or at least unable to effectively protect Roma against such discrimination.

106. However, there remain a number of EU states where the applicant has the right to enter and reside, at least temporarily, and in respect of which the country information does not suggest that the discrimination against Roma is a problem of such seriousness that if he were to travel there the applicant would face a real chance of experiencing serious harm capable of amounting to persecution, whether for reason of his Roma ethnicity or his membership of a particular social group comprising Roma people. In particular, the USSD reports on Denmark, Estonia, Portugal and Sweden extracted above contain no suggestion that the applicant would face a real chance of experiencing serious harm capable of amounting to persecution in the reasonably foreseeable future in those countries, and based on this information the Tribunal finds that he does not. In reaching this finding, the Tribunal has taken into consideration the fact that the Amnesty report on Sweden referred to in the



applicant's post-hearing submissions describes Roma being subjected to discrimination in that country, but observes that this report also acknowledges that such discrimination is unlawful, and that considerable government measures have been taken to protect Roma rights, and that the USSD report gives an example of those rights being protected with an order for compensation being imposed on a clothing store owner for denying four Romani women access to his store.

107. The information from the EU website extracted above at [82] with respect to the right to reside freely within the territory of member states that this right is subject to the restrictions laid down in the Community legislation, but goes on to explain that every EU citizen has the right to reside in the host member state for a period of up to three months subject only to the requirement that the citizen have a valid identity card or passport. In the present case, the Tribunal has found that the applicant holds a valid EU passport, from which it follows that he is entitled to reside in other EU states for at least three months.
108. Section 36(3) requires a right to enter and reside in another country. That right may be temporary or permanent, and there is no restriction on the manner in which the right arises or is expressed.
109. This raises the question of what will qualify as a right to "reside" temporarily for the purposes of s.36(3). There is no minimum period specified as being sufficient, but the term 'right ... to reside' suggests more than a right to a mere transitory presence. Justice Hill observed in *WAGH v MIMIA* (2003) 131 FCR 269 at [64] that while a transit visa, for example, would be a right to enter, it would clearly not be a right to enter and reside. Whether a tourist visa is a visa which authorises both entry and (temporary) residence was, in his Honour's opinion, a more difficult question. The applicants in that case held US visas "for the purpose of business and tourism". Referring to the usual dictionary sense of "reside", "*To dwell permanently or for a considerable time; have one's abode for a time*" (*The Macquarie Dictionary* (revised 3<sup>rd</sup> ed)) his Honour stated that it would be an unusual, but not impossible, use of the word to refer to a tourist: while a tourist may stay for a time in a country, that country would not be his or her place of abode, even temporarily (at [65]).
110. In the same case, Lee J took a narrower approach. Justice Lee held that the right to enter and reside in s.36(3) is a right which a person may exercise pursuant to a prior acceptance or acknowledgement by the relevant country, to enter and reside and, implicitly, to receive protection equivalent to that to be provided to that person by a contracting state under the Convention. While the right to reside may not be permanent, it must be co-extensive with the period in which protection equivalent to that to be provided by Australia as a contracting state would be required (at [34]). Justice Lee observed that the applicant wife's right to enter and reside in the United States "would be a right to enter and to reside for the purpose of tourism or business, not a right to enter and reside in the United States for the purpose of receiving protection or some equivalence to that to be provided by a Contracting State under the Convention" (at [42], with Carr J agreeing at [75]). His Honour held that a temporary six month visa issued "for the purpose of business and tourism" would not be sufficient to provide the holder with a legally enforceable right to enter the United States for purposes outside of business or tourism. Their Honours noted that in the circumstances of the case, the appellants would not be travelling to the United States for the purposes of tourism or business and would thus obtain no entitlement to be admitted into that country upon arrival (at [43], with Carr J agreeing at [75]).
111. On the other hand, in *Applicants in V722 of 2000 v MIMA* [2002] FCA 1059 Ryan J held, at [48] that where the applicants had current temporary residence permits under Italian law and therefore needed only notify the border control of their intention to re-enter, it was open to

the Tribunal to conclude that they had a right to enter and reside, at least temporarily, in Italy. The Court observed that the Tribunal's understanding of the particular law in question, and the effect of the current entry permit, were questions of fact which the Tribunal was entitled to resolve in the way it did.

112. While the scope of the concept of "reside" in s.36(3) remains unsettled, the cases make it clear that whether an applicant's right in a particular case would amount to a right to enter and reside in the relevant sense will involve questions of fact and degree, but that not every visa would activate s.36(3).
113. In the present case, the Tribunal is dealing not simply with a visa arguably entitling the holder to enter and reside in a third country, but a legally enshrined right which has been established pursuant to international agreements as summarised above at [32], and derives from the applicant's citizenship of an EU member state, Romania. The EU Free Movement Directive specifically refers to the right of EU citizens to enter and *reside* freely, and the EU website extracted above specifies that:

...every Union citizen has the right to *reside* in the host Member State for a period of up to three months. [emphasis added]
114. The Tribunal therefore finds that the applicant's right to reside in Denmark, Estonia, Portugal and Sweden is a presently existing, legally enforceable right to reside temporarily in those countries, albeit only temporarily, for the purposes of s.36(4).
115. It follows from this that the Tribunal finds that s.36(4) does not apply to modify the operation of s.36(3) with respect to these countries.
116. Unlike in the case of Italy, which the country information indicates has in recent years expelled Romanians (including Roma) and sent them back to their country of nationality, the evidence before the Tribunal does not suggest that there is a real chance that Denmark, Estonia, Portugal or Sweden would arbitrarily *refouler* the applicant to Romania should he enter their jurisdiction. Consequently the Tribunal also finds that 36(5) does not apply to modify the operation of s.36(3) these countries.
117. The applicant does not claim to have taken all possible steps to avail himself of his right to enter and reside in Denmark, Estonia, Portugal or Sweden, and there is no evidence before the Tribunal to suggest that he has done so. On the contrary, he states in his visa application that he has never traveled to any other country prior to his trip to Australia.
118. The Tribunal notes that the applicant claims he lacks the money, language skills and social support network with which to re-establish himself elsewhere in Europe, and the Tribunal observes that it has no reason to doubt this claim, and that it may well as a matter of fact be practically difficult for the applicant to do so. However, somewhat paradoxically there is no reasonableness standard operating to ameliorate the severity of s.36(3), unlike that which applies to the in-country relocation test at common law (See, for example, *SZATV v MIAC* (2007) 233 CLR 18, where the High Court confirmed as a general proposition that, depending on the circumstances of the particular case, it may be reasonable for applicants to relocate in their country to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution.). By contrast, the provisions of s.36(3) are expressed in absolute terms, and the courts have construed them accordingly. Thus in *NBLC v MIMIA*, *NBLB v MIMIA* (2005) 149 FCR 151, Graham J (Wilcox J and Bennett J agreeing) observed at [64] that the phrase "all possible steps" means what it says and should not be construed, for example, as "all steps reasonably practicable in the circumstances", "all reasonably available steps" or "all reasonably possible steps".

119. The Tribunal therefore finds that as a Romanian, and therefore an EU citizen, holding a current and valid EU passport, the applicant has a presently existing, legally enforceable right to enter and reside temporarily in other EU countries including the nations of Denmark, Estonia, Portugal or Sweden where, the Tribunal has found, he does not face a real chance of persecution or risk *refoulement* to another country where he would face such a threat.
120. Consequently, the Tribunal finds that s.36(3) applies to the applicant as a person who has not taken all possible steps to avail himself of right to enter and reside in a country other than Australia, and that Australia therefore does not owe protection obligations to the applicant.

#### **MINISTERIAL INTERVENTION PURSUANT TO S 417 OF THE ACT**

121. The Tribunal accepts that the applicant risks persecution for the Convention reason of his race if he returns to Romania.
122. Although there some countries in the EU where the Tribunal has found that the applicant does not risk persecution, he is likely, in the view of the Tribunal, to face considerable practical difficulty establishing himself in any of those countries, as the evidence indicates that he is suffering from trauma as a consequence of his past persecutory experiences in Romania, lacks funds, and speaks only Romanian. Furthermore, his wife and children remain in Romania in an apparently very vulnerable state.
123. In Australia, by contrast, the applicant does have an established family network, in that his brother and sister both reside here as an Australian citizens, the brother having been granted a protection visa in his own right in 2001. The present case arguably therefore raises:
- particular circumstances or personal characteristics of the applicant which provide a sound basis for believing that there is a significant threat to his personal security, human rights or human dignity should he return to his country of origin;
  - circumstances that may bring Australia's obligations as a party to the Convention on the Rights of the Child (CROC) into consideration, with respect to the applicant's child; or
  - circumstances where the application of relevant legislation leads to unfair or unreasonable results in a particular case.
124. In light of the above, it may be appropriate for the Minister to consider intervening in this matter on public interest grounds pursuant to s 417 of the Act, by responding to the applicant's predicament in a compassionate manner and making a more favourable decision than that which the Tribunal is making.
125. Any intervention remains, however, a matter entirely at the Minister's discretion.

#### **CONCLUSIONS**

126. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

## **DECISION**

127. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.