

EQUALITY



Respect for and protection of persons belonging to minorities 2008-2010



FRA

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS



This report addresses matters closely related to the principle of non-discrimination (Article 21), and cultural, religious and linguistic diversity (Article 22) falling under Chapter III 'Equality' of the Charter of Fundamental Rights of the European Union.

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Cataloguing data can be found at the end of this publication (if applicable)

Luxembourg: Publications Office of the European Union, 2011

ISBN 978-92-9192-698-5
doi:10.2811/27794

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Printed in Luxembourg

PRINTED ON WHITE CHLORINE-FREE PAPER



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Foreword

In a speech on democracy, the President of the European Commission, José Manuel Barroso, defined it as *“a complex task which can only be achieved if numerous factors are put in place”*. According to Mr Barroso, the *“rights of minorities [and] the fight against discrimination”* are among those factors. With this report, the European Union Agency for Fundamental Rights (FRA) offers an overview of recent developments that crucially affect persons belonging to minorities. In doing so, the Agency is responding to a request from the European Parliament – a request that confirms the Parliament’s role as an advocate for minorities in the European Union.

As the Treaty of Lisbon has entered into force, the Union’s primary law has undergone numerous changes. One of these has been to emphasise that *“rights of persons belonging to minorities”* are a value on which *“the Union is founded”* and that this value is *“common to the Member States”*. Moreover, under the Charter of Fundamental Rights of the European Union, now legally binding, the notion ‘national minorities’ has become a term of EU law. The new treaties as well as the Charter underline the importance of diversity. The Union is proud of this diversity which is not exclusively between Member States but also within them. Europe’s diversity is about the richness of national identities and, also, about the many ethnic minorities of European societies.

This report covers the time period from 2008 to June 2010 and examines what the Treaty of Lisbon means for the protection of minorities, and the policies the EU has recently adopted in this field. It provides evidence of the still persistent phenomenon of discrimination found in many areas of life, including employment, housing, healthcare and education. It highlights recent developments in fields, such as religious freedom, participation in public life and the use of minority languages. When it refers to issues related to the Common Market principles and EU citizenship, it goes beyond the subject of minority protection to touch on the wider topic of how to manage the ethnic diversity of our societies. In this manner, the report deals with a variety of minorities and situations of diversity, while remaining fully respectful of their obvious differences.

Morten Kjærøum
Director

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List of abbreviations

CERD	Committee on the Elimination of Racial Discrimination (United Nations)
CoE	Council of Europe
CoR	Committee of the Regions
ECRML	European Charter for Regional or Minority Languages (Council of Europe)
ECtHR	European Court of Human Rights
CJEU	Court of Justice of the European Union
ECHR	European Convention of Human Rights
ECRI	European Commission against Racism and Intolerance (Council of Europe)
EESC	European Economic and Social Committee
EUMC	European Monitoring Centre on Racism and Xenophobia
EU-MIDIS	European Union Minorities and Discrimination Survey
EUROSTAT	Statistical Office of the European Communities
FCNM	Framework Convention for the Protection of National Minorities (Council of Europe)
FRA	European Union Agency for Fundamental Rights
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Co-operation and Development
OMC	Open Method of Coordination
OSCE	Organization for Security and Co-operation in Europe
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UNHCR	United Nations High Commissioner for Refugees



Executive summary

In the European Union (EU) responsibilities for minority protection are shared and complementary. No governance level – European, national or local – is exclusively responsible for the protection of persons belonging to minorities. Minority protection is a horizontal task and a continuing process that involves a variety of players in different contexts. The EU establishes both legal minimum standards, for example on discrimination and complementary policy measures on matters such as social inclusion and integration. As a result, the intensity of EU involvement is strongly influenced by context. With respect to racism, and the protection of national minorities and their languages, the relevant monitoring bodies of the Council of Europe play an important role.

In line with the European Parliament's request to the FRA for "*information on the situation of minorities vulnerable to ethnic and racial discrimination*" this report adopts a broad understanding of the notion of 'minorities'. Depending on the context, it refers to persons belonging to ethnic minorities as well as those belonging to linguistic or national minorities. In certain instances the report also touches upon the wider question of how to manage the ethnic diversity of our societies, including issues faced by EU citizens moving from one Member State to another Member State and therefore into another social and cultural context. In line with the Parliament's request, which focused on ethnic and racial discrimination, this report does not include an analysis of the situation of persons who are at risk of suffering discrimination because of their sexual orientation.

The Lisbon Treaty: the notion of minorities in EU primary law

The Treaty of Lisbon entered into force on 1 December 2009. It introduced the term 'minorities' into EU primary law, the first explicit reference to minorities in the history of the EU. Article 2 of the revised EU Treaty makes it very clear that "*respect for human rights, including the rights of persons belonging to minorities*" is a value on which "*the Union is founded*". Moreover, the Treaty affirms that this value is "*common to the Member States in a society in which pluralism, non-discrimination, tolerance [...] prevail*". At the same time, however, the new EU treaties, following the approach of international law in this respect, do not define the term 'minorities'.

With the entry into force of the Lisbon Treaty, the Charter of Fundamental Rights acquired the same legal value as the EU treaties. The Charter refers explicitly to national minorities in Article 21, prohibiting any discrimination on grounds of "*membership of a national minority*", in addition to "*race*", "*ethnic or social origin*", "*language*", "*religion or belief*". Consequently, the concept of "*national minority*" became a notion of EU law, which has yet to be defined.

The monitoring cycles organised under the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM) generate information about the treatment of national minorities and how to improve it. Twenty-three of the EU's 27 Member States have ratified the FCNM and over half were monitored by the Advisory Committee in the years 2008-2010.

The Lisbon Treaty: new horizontal obligations for the Union

Although EU primary law includes the terms “minorities” and “membership of a national minority” for the first time, the Treaty of Lisbon does not provide the EU with new legislative competences that would allow formation of an overarching EU policy aimed at minority protection. Rather, the protection of persons belonging to minorities remains a transversal task that the EU can or must pursue in a variety of policy contexts. In fact, the new Treaty on the Functioning of the European Union (TFEU) stipulates that the fight for equality is a transversal duty of the EU. According to the new provision in TFEU’s Article 10, the EU is under an obligation to “combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation” not only in the context of its anti-discrimination policy, but whenever “defining and implementing [any] of its policies and activities”. Article 9 sets out another horizontal obligation that requires the EU to combat social exclusion.

Diversity, including diversity *between* and *within* Member States, is a value that the EU must respect. Article 22 of the Charter of Fundamental Rights underlines this point in general terms, and it is reaffirmed in specific policy areas. The area of services of general economic interest provides an example: such services, including water or energy supply, healthcare, social services or education, are considered essential to social cohesion in Europe.

EU secondary law: fine-tuning the anti-discrimination acquis

During the last decade, discrimination has also been addressed, by secondary law, namely the Racial Equality Directive and the Employment Equality Directive. The FRA has examined the application of the Racial Equality Directive on the ground through several reports and will provide the relevant input to the European Commission, as requested in Article 17 paragraph 2 of the directive. In July 2008, the Commission proposed a new horizontal anti-discrimination directive, which would extend the level of protection offered by the Employment Equality Directive to areas outside employment. However, the Council has not yet concluded negotiations on this new proposal. The Court of Justice of the European Union (CJEU) also further developed equality law. In the *Feryn* case, it delivered a substantial judgment on interpretation of the Racial Equality Directive. The Court held that the directive extends to cases

of ethnic discrimination, even when there is no identifiable victim. Furthermore, in the *Coleman* case, it determined that certain forms of discrimination by association may be illegal.

After years of negotiation the Council of the European Union has also reached agreement on a Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law. The Member States had to implement this new EU legislation by 28 November 2010.

EU policy measures: emphasis on Roma and equality

At EU level, a variety of policy measures and initiatives were undertaken between 2008 and 2010. They included the Commission Communication on Non-discrimination and Equal Opportunities: A Renewed Commitment (July 2008), and 2008 was the European Year for Intercultural Dialogue. Relevant policies and documents have addressed the European Employment Strategy, social inclusion, migration, education and health. The situation of the Roma has been given particular attention. Initiatives include the Parliament resolution on a European strategy on the Roma (January 2008), the Commission’s progress report on *The implementation of European Union Instruments and Policies for Roma Inclusion* (April 2010), the first meetings of the European Roma Platform, the EU Roma Summits, and the adoption of the Council’s Common Basic Principles on the Inclusion of Roma in June 2009. The situation of the Roma population was also a major concern for the FRA: its first Data in focus report (April 2009) focused on the Roma and subsequent reports examined *Housing conditions of Roma and Travellers in the European Union* (October 2009) and *The situation of Roma EU citizens moving to and settling in other EU Member States* (November 2009).

Recent developments on the ground

Discrimination and the need for data

Persons belonging to minorities continue to suffer from serious discrimination. The FRA’s European Union Minorities and Discrimination Survey (EU-MIDIS) interviewed over 23,500 individuals belonging to minorities across the EU. It revealed that half of the Roma who were interviewed experienced discrimination, because of their ethnic origin, at least once in the year preceding the survey. During that period each Roma respondent who suffered discrimination was likely to experience on average 4.6 incidents.

The collection of such data helps to identify and address discrimination against individuals and groups with a minority ethnic origin. However, most Member States collect no such data, some claiming that identification of ethnic origin is not allowed under their data protection regulations. Nevertheless, 65% of the EU-MIDIS respondents said that they would be in favour of revealing their ethnic origin anonymously for a census.

EU-MIDIS also revealed that rights awareness, knowledge of redress mechanisms and reporting of discrimination and racist crime remain extremely low. On average, 82% of those who had suffered discrimination in the previous year because of their minority background did not report their most recent experience. Some 80% of respondents were not aware of any organisation that provides support in cases of discrimination. In certain Member States, specific minorities showed a particularly low level of awareness of anti-discrimination laws. In one instance, nine out of 10 members of a group were unaware of any legal protection. The survey demonstrated that targeted national campaigns to raise awareness are urgently needed.

Employment and housing

The most serious discrimination on the basis of ethnic origin appears to occur in the area of employment. EU-MIDIS and various national surveys have shown that migrants and minorities have fewer employment opportunities, and that this cannot be explained only by factors such as differences in educational attainment. In some Member States, explicitly discriminatory job advertisements were recorded. However, few complaints relating to discrimination ever reach the courts. Forms of discrimination testing, already used in various Member States, can help to reveal the real level of discrimination.

Evidence gathered by means of surveys, qualitative research and investigations by official bodies show that access to housing is another area where migrants, Roma, refugees and asylum seekers suffer discrimination and segregation. Residential segregation can severely limit access to education and healthcare as well as employment.

Healthcare and education sector

Access to health services is a particularly acute problem for Roma and for asylum seekers whose application has been refused. Their difficulties range from cultural insensitivity to discrimination and exclusion. In some Member States, access to health services is compromised because information is not made available in different languages or because employees are not trained in intercultural awareness.

17% of the Roma surveyed by EU-MIDIS in seven Member States indicated that they had experienced discrimination by healthcare staff (medical or other) in the year prior to the survey.

Minorities also face difficulties in accessing quality education. Roma, Sinti, Traveller children and children seeking asylum often face practical barriers to education. Available data suggest that, in many EU Member States, persons belonging to minorities are overrepresented in 'special needs' schools, which diminishes their potential to achieve educational and professional success.

Religious freedom

EU-MIDIS showed that the minority groups surveyed, who are predominantly Muslim, suffer considerable discrimination. However, almost half these respondents could not say if the ground for their discrimination was 'religion or belief' or their 'ethnic or immigrant background'. This indicates the difficulty of distinguishing between these forms of discrimination and confirms their relatedness. With regard to Muslims in particular, fear influences the societal climate and intercultural dialogue is not always easy. During the reporting period some countries witnessed heated debates about the construction of mosques or minarets, and the issue of religious symbols (for example, wearing of the *burqa*) became contentious. However, according to EU-MIDIS respondents, wearing traditional or religious clothing, including a headscarf, affected their experience of discrimination only marginally.

Participation in public life

The issue of political participation is largely beyond the scope of EU law. Political participation is traditionally linked to and made conditional upon national citizenship. Only a minority of EU Member States provide third-country nationals with the right to vote. Less than a fifth of the Member States have ratified the Council of Europe's Convention on the Participation of Foreigners in Public Life at Local Level. However, EU citizenship provides an important space for the participation of EU citizens who move to another Member State in political life, although a number of issues persist.

Language use

In general, language policies fall under the competence of Member States. However, EU law must be observed when exercising these competences. Various international bodies have voiced their concern that strict requirements to have command of a specific language can lead to discrimination. Moreover, certain Member States were criticised for

not including discrimination on grounds of language in their national legislation. At the same time, it has been demonstrated that provision of multilingual services promotes integration. Particularly in the area of healthcare, flexible language solutions and intercultural mediation have been shown to help guarantee equal access to healthcare. Regarding the provision of means of communication between persons belonging to minorities and the authorities, diverging attitudes emerged between Member States in the period under examination. In some Member States, the existing facilities were expanded, while in others they were restricted.





The context of this report

The analysis in this report adopts a broad understanding of the notion of ‘minorities’. Depending on the context, the report refers to persons belonging to ethnic minorities as well as those belonging to linguistic or national minorities. In certain instances the report also touches upon the wider question of how to manage the diversity of our societies, including the situation of EU citizens moving from one Member State to another Member State (and therefore into another societal and cultural context). In line with the Parliament’s request, which focused on ethnic and racial discrimination, this report does not include an analysis of the situation of persons who are at risk of suffering discrimination because of their sexual orientation.¹

Persons belonging to minorities are often at risk of being discriminated against, and with their unique position being distinct from people belonging to the majority population, they are frequently neither respected nor protected. Against this background, the FRA’s founding regulation underlines the fact that the “*work of the Agency should continue to cover the phenomena of racism, xenophobia and anti-Semitism, the protection of rights of persons belonging to minorities [...] as essential elements for the protection of fundamental rights*”.² Furthermore, the Council of the European Union decided to explicitly include in the

areas of the FRA’s Multi-annual Framework (MAF) for the period 2007-2012 discrimination “*against persons belonging to minorities*”.³

With respect to minorities, the FRA built on the work of its predecessor,⁴ the European Monitoring Centre on Racism and Xenophobia (EUMC).⁵ The latter examined between 2000 and 2006, through numerous reports, the unequal treatment of minorities and the fight against discrimination in key areas of social life and racist violence.⁶ It also studied attitudes of majorities vis-à-vis minorities;⁷ the treatment of minorities in the media;⁸ the situation of Muslims in Europe;⁹ manifestations of anti-Semitism;¹⁰ and the situation of Roma.¹¹

1 The FRA examined in depth the issue of discrimination based on sexual orientation in two reports published in 2008 and 2009, and updated in 2010: see *Homophobia and Discrimination on Ground of Sexual Orientation in the EU Member States: Part I – Legal Analysis* (June 2008) and *Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States: Part II – The Social Situation* (March 2009); the update to the first report was published in November 2010. All reports are available at the FRA website at: <http://fra.europa.eu>.

2 See Consideration No. 10 of Council Regulation 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ 2007 L 53, pp. 1-14.

3 See Article 2 lit. b) of the Multi-annual Framework, OJ L 63, pp. 14-15.

4 See, for instance, *Trends and Developments 1997-2005: Combating Ethnic and Racial Discrimination and Promoting Equality in the European Union* (July 2007).

5 All EUMC publications are available on the FRA website.

6 See the reports *Policing Racist Crime and Violence: A Comparative Analysis* (September 2005), *Racist Violence in 15 EU Member States* (April 2005) and *Racism, Football and the Internet* (April 2002).

7 See the report *Majorities’ Attitudes towards Migrants and Minorities: Key Findings from the Eurobarometer and the European Social Survey* (March 2005).

8 See the reports *Racism, Xenophobia and the Media: Towards Respect and Understanding of all Religions and Cultures* (October 2006) or *Racism and Cultural Diversity in the Mass Media* (February 2002).

9 See the reports *Muslim in the European Union: Discrimination and Islamophobia* (December 2006), *Perceptions of Islamophobia* (December 2006), *The impact of 7 July 2005 London bomb attacks on Muslim Communities in the EU* (November 2005), *Reports on Anti-Islamic reactions within the European Union after the acts of terror against the USA* (May 2002).

10 See the reports *Manifestations of Antisemitism in the EU 2002-2003* (May 2004), *Perceptions of Antisemitism in the EU* (May 2004) and *The fight against Antisemitism and Islamophobia: Bringing Communities together* (European Round Table Meetings) (January 2003).

11 See the reports *Roma and Travellers in Public Education* (May 2006) and *Breaking the Barriers – Romani Women and Access to Public Health Care* (January 2003).

The FRA continues to report annually on developments regarding racism, anti-Semitism and related intolerances in the EU. *Community Cohesion at Local Level: Addressing the needs of Muslim Communities* (March 2008) surveyed local authority initiatives to achieve cohesive communities. The *Incident Report on Violent Attacks against Roma in Italy* (August 2008) reacted swiftly to the Ponticelli events in Italy. In 2009, the Agency published two reports on Roma, *Housing conditions of Roma and Travellers in the European Union* (October 2009) and *The Situation of Roma EU citizens moving to and settling in other EU Member States* (November 2009). The latter report noted a worrying trend in some Member States that risk restricting the rights of freedom of movement and residence of Roma EU citizens or implemented them in a manner that may discriminate on the basis of ethnicity. However, in its 24-page 'good practice' report *Selected positive initiatives – The situation of Roma EU citizens moving to and settling in other EU Member States* (November 2009), the Agency also finds examples of good practice, particularly at local level.

In December 2009, the FRA published the *Main Results Report* of its European Union Minorities and Discrimination Survey (EU-MIDIS). This is the first EU-wide survey of migrants' and minorities' experiences of discriminatory treatment, racist crime victimisation and policing, as well as of awareness of their rights and available remedies. The survey interviewed 23,500 people with an ethnic minority background across the 27 EU Member States in 2008. Drawing on the vast data collected, the FRA published a series of thematic *Data in Focus Reports* in 2009 and 2010.¹² Through this work, the FRA responds to the European Parliament's recent call "*for the collection and compilation by the FRA of reliable, comparable statistics on all grounds of discrimination, including discrimination against national minorities*".¹³ In fact, the Parliament had already emphasised in 2005 that "*the Roma issue and minority rights and respect for cultural, religious and linguistic diversity*" should be part of FRA's work, since "*protecting national minorities in an enlarged EU is a major issue [...] that [...] will not be achieved simply by fighting against xenophobia and discrimination*". This is related to the fact that the issue of minority protection is "*a complex problem that has to be addressed from other angles*".¹⁴

12 For detailed information on EU-MIDIS and related publications, see <http://fra.europa.eu/eu-midis>. All hyperlinks in this report were accessed on 1 June 2011.

13 See paragraph 29 of the *European Parliament resolution of 25 November 2009 on the communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen – Stockholm programme*.

14 European Parliament resolution of 26 May 2005 on promotion and protection of fundamental rights: the role of national and European institutions, including the Fundamental Rights Agency, paragraph 40.

Taken together, the FRA reports constitute a comprehensive body of evidence, giving the FRA a level of expertise that enables it to provide EU institutions and Member States with robust advice on the management of diversity in the EU. The richness of its data is complemented by the crucial work undertaken by the Council of Europe and this report will refer to judgments of the European Court of Human Rights (ECtHR), findings by the European Commission against Racism and Intolerance (ECRI), and opinions of the Advisory Committee established under the Framework Convention for the Protection of National Minorities (FCNM), as well as the Expert Committee established under the European Charter for Regional and Minority Languages (CRML).¹⁵ The Agency thus seeks to develop synergy between its own research and data with the work of the Council of Europe bodies.¹⁶

Against this background, in August 2008 the European Parliament asked the FRA "*to provide the Parliament with information on the situation of minorities – within the Member States – which are vulnerable to ethnic and racial discrimination*".¹⁷ In response the FRA presents this report, which updates the Agency's 2007 *Report on Racism and Xenophobia in the Member States of the EU*,¹⁸ making use of data and information collected mainly in 2008 and 2009.

In Chapter 1 the report reviews the relationship between the legal system of the EU and protection of persons belonging to minorities, discusses the impact of the Lisbon Treaty on persons belonging to minorities and highlights EU developments in 2008 and 2009. In Chapter 2 the report looks at national developments examining racism and discrimination in various areas of social life, and other issues relevant to persons belonging to minorities, notably the right to religious freedom, to participate in public life and the use of minority languages.

The Agency's work provides evidence-based advice in the field of fundamental rights. According to the Commission, FRA reports "*were*" and "*will be*" used as input "*in the preparation and follow-up of important*

15 See in this context also the Annexes.

16 On cooperation between the FRA and the Council of Europe in the area of minorities, see *The need to avoid duplication of the work of the Council of Europe*. This report was drafted by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council in May 2010 and is available online at: <http://assembly.coe.int/Documents/WorkingDocs/Doc10/EDOC12272.pdf>.

17 Letter No. 313585 to the FRA of 11 August 2008. The letter also refers to a request "*sent to Vice-President Barrot of the Commission to carry out an evaluation of the situation of national minorities in the European Union*".

18 FRA (2007) *Annual Report 2007 – Report on Racism and Xenophobia in the Member States of the EU*, Budapest: FRA.

*Commission initiatives*¹⁹. Moreover, the newly created Working Party on fundamental rights, citizen's rights and free movement of persons of the Council of the European Union has been specifically tasked with *"the follow-up of reports from the EU Agency for Fundamental Rights"*.²⁰ In its conclusions on advancing Roma inclusion on 7 June 2010, the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council acknowledged that the Agency is *"performing valuable work by collecting data, reporting on racist incidents and raising awareness"*.²¹ Evidence provided by the FRA has already been referred to by judicial bodies such as the European Court of Human Rights (ECtHR)²² and the European Committee of Social Rights.²³ Many European Parliament resolutions have also referred to FRA reports.²⁴ This report provides the Parliament with additional information to further substantiate the Parliament's crucial contribution to the protection of persons belonging to minorities in Europe.

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- 19 See reply of the Commission to written question E-5406/09, 18 December 2009, available online at: <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2009-5406&language=EN>.
- 20 See the list of Council preparatory bodies including their mandate, at: <http://register.consilium.europa.eu/pdf/en/10/st05/st05869-re01.en10.pdf>.
- 21 See point 8 of Council conclusions (EPSCO, 2010).
- 22 See the ECtHR landmark case of D.H. and others v. the Czech Republic (No. 57325/00), Judgment of 13 November 2007 (Ostrava case).
- 23 See the decision on the merits of 11 December 2009 in the case International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece, complaint No. 49/2008, paragraph 39, www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp.
- 24 See, for instance, European Parliament resolutions of: 13 December 2007 on combating the rise of extremism in Europe; 10 July 2008 on the census of the Roma on the basis of ethnicity in Italy; 20 November 2008 on the proposal for a Council framework decision on the use of Passenger Name Record (PNR) for law enforcement purposes; 14 January 2009 on the situation of fundamental rights in the European Union 2004-2008; 11 March 2009 on the social situation of the Roma and their improved access to the labour market in the EU; 17 September 2009 on the Lithuanian Law on the Protection of Minors against the Detrimental Effects of Public Information; 25 November 2009 on the Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen – Stockholm programme; 10 February 2010 on preventing trafficking in human beings; and 25 March 2010 on the Second European Roma Summit.

1

The EU and persons belonging to minorities: recent developments



This chapter describes in general terms the European Union's role *vis-à-vis* persons belonging to minorities, including national minorities, and diversity issues (Section 1.1.). It then discusses in more detail: the innovations introduced by the Treaty of Lisbon (Section 1.2.); selected developments in EU secondary law (Section 1.3.); and selected policy initiatives at EU level (Section 1.4.), including policies in relation to the Roma, social inclusion and education.

1.1. The overall picture

1.1.1. The multi-faceted nature of minority protection

All EU Member States have persons living on their territory, who may consider that they belong to an ethnic, linguistic, religious or other type of minority. The very different contexts of belonging to a minority pose specific challenges and call for different legal and political responses, as underlined by the European Parliament resolution of 8 June 2005 on the protection of minorities and anti-discrimination policies in an enlarged Europe.²⁵ Since the European Union lacks the legal competence to develop a single overarching 'minority protection' policy, its capacity to deal with 'minority issues' is restricted.²⁶ Nonetheless, the Union's policies on anti-discrimination, regional development, immigration and integration are of direct relevance to persons belonging to minorities

and complement the Member States' efforts to address minority issues effectively.

The absence of an overarching policy on minority protection at EU level also reflects two other realities. First, the variety of different issues that concern minorities, such as social inclusion, employment, education and language, migration and integration, and regional policies making minority protection a cross-cutting task. Second, the diversity of situations, needs and aspirations of the many different minorities makes it difficult to address their protection as a single policy field. Experts increasingly acknowledge that minority protection is better understood in terms of a "*polycentric diffusion which characterizes an increasingly large share of public tasks and functions*".²⁷

The EU touches on many different situations of persons belonging to minorities. Persons belonging to linguistic, ethnic or national minorities, third-country nationals who immigrate to the EU, or immigrants who are long-term residents, may all perceive that they belong to a minority group. They all contribute to the diversity of European societies, but the way in which EU law and policies engage with them varies substantially. Their different situations, needs and entitlements contribute to a complex policy mix that tries to manage the diversity of issues faced by persons belonging to minorities across the EU. For instance, if EU citizens, who belong to a national minority in country 'A', are moving to country 'B', where there are members of the same minority group, their situation is determined both by the Common Market Rules and by national laws on minority protection. Increasingly, the protection of minorities

²⁵ OJ 2006 C 124 E, pp. 405-414.

²⁶ Answer by European Commission Vice-President Barrot to written question E-3788/2009 of 2 September 2009: "*Néanmoins, selon les dispositions du Traité instituant la Communauté européenne et du Traité sur l'Union européenne, l'Union n'a pas de compétence générale en matière de protection des minorités*". Available online at: <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2009-3788&language=DE>.

²⁷ See F. Palermo and J. Woelk (2005), 'From Minority Protection to a Law of Diversity? Reflections on the Evolution of Minority Rights', *European Yearbook of Minority Issues*, Vol. 3, 2003-2004, pp. 5-13.

is also viewed through the lens of EU law, which has led to a widening of the traditional understanding of “minority protection”.

The malleability of this concept is also evident at international level, where the protection of national minorities appears to be a more encompassing notion. Over the years it has become clear that minority protection primarily focuses on *persons* facing specific difficulties rather than on certain population *groups*. Traditionally, moreover, in order to qualify as a member of a national minority, one had to prove citizenship of that State; yet this is no longer applied in a rigid manner. This rather pragmatic approach is evident in opinions of the Council of Europe’s Advisory Committee as established under the FCNM. The latter recommends, for instance that national governments should include, on an article-by-article basis, non-citizens among the persons who are protected by the FCNM.²⁸ An open approach to the various minorities to be protected (no strict citizenship requirement) is therefore combined with flexibility regarding the protection granted (article-by-article approach).²⁹ This rather functional approach can also be observed at the level of the Organization of Security and Co-operation in Europe (OSCE). The OSCE High Commissioner on National Minorities (HCNM), Kurt Vollebaek, recently stated that in certain contexts “national minorities” encompass all “*religious, linguistic and cultural as well as ethnic minorities, regardless of whether these groups are recognized as such by the States where they reside and irrespective of the denomination under which they are recognized*” because the specific policy issues at stake are “*relevant for all these groups*”.³⁰ In this sense one might argue that at international level the protection of minorities is becoming a more fluid notion.³¹

In the Union context, the fight against discrimination on the basis of ethnic origin is not limited to EU citizens. Rather, the Union *acquis* in the field of anti-discrimination is a good example of a transversal legal intervention which does not distinguish between citizens and non-citizens. In this context, a broad range of persons belonging to different types of minorities are protected by EU law. In fact, the situation of third-country nationals is increasingly addressed by means of EU law. This is true at the point of entry into EU territory – a field of law where EU law is rapidly expanding, for instance on asylum and immigration the example of family reunification.³² It applies also to the rights that third-country citizens are entitled to claim once they have lived for a period in EU territory becoming ‘long-term residents’.³³ This *legal* engagement of the Union is accompanied by a softer, more policy-oriented approach to migrant integration.³⁴ In regard to migrants EU policies openly refer to the concept of ‘integration’, as in the *Common Basic Principles of Integration* adopted by the Justice and Home Affairs Council of 19 November 2004 or the reports on *Migration and Integration* produced by the Commission. The concept of ‘integration’ is not used in this manner when the Union is dealing with EU-citizens, though this does not mean that the Union has nothing to say in relation to this issue (Section 1.1.3.).

1.1.2. The EU and national minorities

The rights of national minorities are beyond the scope of EU law. The Union holds no competence with regard to what is generally referred to as ‘group rights’ of ‘traditional minorities’. The recognition of the status of minorities as national minorities falls solely under the competence of the Member States. However, the recognition of this status is not a condition for the application of the principle of non-discrimination and this is also the case for other rights granted by the EU treaties and secondary law.³⁵ Many of these rights are of special relevance to persons belonging to national minorities.

28 See opinion on Austria adopted 16 May 2002 (first monitoring cycle), paragraph 20; opinion on Slovenia adopted on 14 March 2005 (first monitoring cycle), paragraph 25; opinion on Spain adopted on 27 November 2003 (first monitoring cycle), paragraph 24; opinion on the Czech Republic, adopted on 6 April 2001 (first monitoring cycle), paragraph 23.

29 In its 2001 opinion on the FCNM on Parliamentary Assembly Recommendation on the rights of national minorities, the Advisory Committee argues that the FCNM “is not an instrument that operates on an ‘all-or-nothing’ basis. Even if a group is covered by the Framework Convention, it does not necessarily follow that all of the Convention’s articles apply to the persons belonging to that minority” (paragraph 17).

30 See the HCNM in his introduction to the Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations presented in June 2008.

31 This overall tendency has also been well observed in the academic literature. See, for instance, J. Ringelheim, ‘Minority Rights in a time of Multiculturalism – The evolving scope of the Framework Convention of National Minorities’, *Human Rights Law Review*, No. 1, 2010, pp. 99-128.

32 See Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ 2003 L 251, pp. 12-18.

33 See Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ 2004 L16, p. 44. Compare also Council Regulation 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No. 1408/71 and Regulation (EEC) No. 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality, OJ 2003 L124, p. 1.

34 See the Communication from the Commission on immigration, integration and employment, COM (2003) 336 final; the Commission Communication, ‘A Common Agenda for Integration: Framework for the Integration of Third-Country Nationals in the European Union’, COM (2005) 389 final; or, more recently, the Third Annual Report on Migration and Integration, COM (2007) 512 final, as of 11 September 2007.

35 See answer by Vice President Reding on behalf of the Commission to written question E-1560/2010 of 26 April 2010, available online at: www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2010-1560&language=EN.

In some cases the EU explicitly provides for the needs of persons belonging to national minorities or even indigenous peoples. For instance, the so-called Saami Protocol, attached to the 1994 accession treaty³⁶ and therefore part of EU primary law, underlined that “*notwithstanding the provisions of the EC Treaty, exclusive rights to reindeer husbandry within traditional Saami areas may be granted to the Saami people*”.³⁷ A more recent example is provided by the 2009 EU regulation on trade in seal products, which, while imposing a general ban on the marketing of all products made from seals, includes derogation for products that have been made from raw materials derived from traditional hunts of Inuit and other indigenous communities. In this case, the preamble of the EU regulation refers to the UN Declaration on the Rights of Indigenous Peoples.³⁸

The protection of national minorities is most visible in the context of the EU enlargement. Since 1993, 16 years before the Treaty of Lisbon entered into force, the EU has laid down the requirement that States may only accede to the Union on condition that they guarantee “respect for and the protection of minorities”, also known as the “Copenhagen criterion”.³⁹ In the context of EU enlargement, the Council of the European Union issued *Conclusions on the application of conditionality* which states that financial assistance from the EU requires “respect for human and minority rights” and the offer of “real opportunities to displaced persons”.⁴⁰ Moreover, negotiation of contractual relations is only possible where the country concerned shows “a credible commitment” to “generally recognized standards of human and minority rights”. The Council of the EU further defines these standards in terms of three elements, namely the “[r]ight to establish and maintain ... [their] own educational, cultural and religious institutions, organisations or associations”, “[a]dequate opportunities for ... minorities to use their own language before courts and public authorities” and “[a]dequate protection of refugees and displaced persons returning to areas where they represent an ethnic minority”.⁴¹

The fact that national minorities are mostly referred to by the Union in the context of its enlargement policy does not imply that persons belonging to national minorities within the EU would fall outside

the protection offered by EU law. The Charter of Fundamental Rights provides for such protection by explicitly prohibiting any discrimination based on “*membership of a national minority*” (Section 1.2.). Article 1 of the FCNM states that the rights of persons belonging to national minorities form an “*integral part*” of human rights. The European Commission stated that “*minority rights ... include the right to non-discrimination of a person belonging to a national minority; the freedom of association, to assembly, of expression; the freedom of religion; the right to use one’s language; and the effective participation in public affairs.*”⁴²

All Member States are under international as well as national human rights obligations to guarantee basic fundamental rights that are of particular relevance to persons belonging to minorities, including national minorities, such as the freedom of association.⁴³ The European Union adds an EU law requirement to the human rights obligations of its Member States, namely to respect Article 21 of the Charter “*when they are implementing Union law*”.⁴⁴ Where “*national legislation falls within the field of application of Community law*”, the European Court of Justice (CJEU) can assess whether Member States respect fundamental rights that “*form an integral part of the general principles of Community law*”.⁴⁵ Accordingly, if the right to free movement, as laid down in the Citizens Directive, would be implemented in a manner that discriminates on the basis of ethnic origin, this would clearly violate the Charter.⁴⁶ However, the changes introduced by the Treaty of Lisbon provide little guidance on how, for instance, discrimination based on “*membership of a national minority*” should be understood (see Section 1.2.).

36 Concluded with Austria, Finland and Sweden.

37 See OJ 1994 C 241.

38 See Regulation of the European Parliament and of the Council of 16 September 2009 on trade in seal products, OJ 2009 L 286, p. 36 in recital 14.

39 See Presidency Conclusions, Copenhagen European Council, 21-22 June 1993, Para. 7(A iii).

40 See Annex III to Council Conclusions of 29-30 April 1997, EU Bulletin, No. 4, 1997, point 2.2.1.

41 See Annex III to Council Conclusions of 29-30 April 1997, EU Bulletin, No. 4, 1997.

42 European Commission, Screening report Croatia, Chapter 23 (Judiciary and fundamental rights), June 2007, p. 3, available online at: http://ec.europa.eu/enlargement/pdf/croatia/screening_reports/screening_report_23_hr_internet_en.pdf.

43 With regard to Greece, for instance, CERD expressed concern in 2009 about the obstacles that some members of ethnic groups encountered when they exercised their right to freedom of association. CERD recommends that the State party “adopts measures to ensure the effective enjoyment by persons belonging to every community or group of their right to freedom of association and of their cultural rights, including the use of mother languages”. See Committee on the Elimination of Racial Discrimination, Concluding observations on Greece (CERD/C/GRC/CO/19), 28 August 2009, p. 5, available online at: www2.ohchr.org/english/bodies/cerd/docs/CERD.C.GRC.19EN.doc.

44 See Article 51, paragraph 1 of the Charter of Fundamental Rights.

45 See CJEU, case C-299/96 Kremzow, judgment of 29 May 1997, paragraph 15.

46 See Directive 2004/58/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, in OJ L 229 as of 29 June 2004, pp. 35-48.

In the future, the CJEU, the institution having competence to interpret the EU treaties, might provide some guidance in this regard. As the notion of 'national minority' has become a term of EU primary law through Article 21 of the Charter of Fundamental Rights (see Section 1.2), certain principles of the Council of Europe's Framework Convention on the protection of National Minorities (FCNM) may provide inspiration for EU policies. Given that the FCNM has been ratified by 23 out of 27 EU Member States, the CJEU would be free to use this instrument as a source if it is called upon to interpret the concrete implications or scope of the rather general statement that the "*rights of persons belonging to minorities*" is a value "*the Union is founded on*" (Article 2 TEU as amended by the Treaty of Lisbon). CJEU case law⁴⁷ and academic literature⁴⁸ acknowledge that common principles of EU law can also be drawn from international conventions that have not been ratified by all the Member States.

As noted already, the Union does not have legislative competence to rule on the protection of national minorities as such, but may rule on a variety of issues that affect persons belonging to national minorities. For example, the 2005 European Parliament resolution on the protection of minorities and anti-discrimination proposed various points of competence in the EU treaties – including provisions on anti-discrimination, culture, education, research, employment, judicial cooperation, free movement, and the Common Market. Legislative initiatives based on these and including minority-related elements could thereby strengthen indirectly the provisions of the FCNM.⁴⁹ The idea of such enhanced 'inter-organisational' cooperation between the EU and the Council of Europe has been advanced at expert level⁵⁰ but also corresponds to the agreement which the Heads of

States of the Council of Europe reached in Warsaw in 2005. Guideline 5 on legal cooperation explicitly states that greater complementarities between legal texts of the European Union and the Council of Europe can be achieved by striving to transpose aspects of Council of Europe Conventions into European Union Law where the Union has competence.⁵¹

In any event, it is for Member States to recognise a minority as a 'national minority'; EU law has nothing to say on that matter.⁵² Reflecting this, situations and status differ, even within Member States.⁵³ As already mentioned, four fifths of the EU Member States have ratified the FCNM and this central document provides forms of recognition and protection that are flexible enough⁵⁴ to accommodate differences of historical and political context. Since the FCNM adopts an individual rights approach, it remains at the discretion of the States whether they introduce group rights for certain minorities or make use of 'constitutional engineering', for example by granting degrees of autonomy to regions inhabited by minority populations. The European Union neither prescribes nor prevents Member States from taking such steps.

It should be noted that, long before 'minorities' became a term of EU primary law, the CJEU recognised that protection of (national) minorities was a "*legitimate aim*" of the Member States and their

online at: <http://cridho.cpd.ucl.ac.be/documents/Working.Papers/CRIDHO.WP.2006.011.pdf>.

47 The Court "draws inspiration from... the guidelines supplied by international treaties for protection on which member states have collaborated or to which they are signatories". See CJEU, Opinion 2/94, Accession to the European Convention on Human Rights, ECR I-1759 (1979), paragraph 33. For a more recent example, see the Court's judgment of 18 December 2007 in C-341/05, paragraph 90.

48 See in detail F. Hoffmeister, 'Monitoring Minority Rights in the enlarged European Union', in G. N. Toggenburg (ed.), *Minority protection and the enlarged European Union: the way forward*, Budapest 2004, pp. 85-106, at 90-93, available online at: <http://lgi.osi.hu/publications/2004/261/Minority-Protection-and-the-Enlarged-EU.pdf>.

49 See the European Parliament resolution on the protection of minorities and anti-discrimination policies in an enlarged Europe, OJ 2006 C 124, p. 405, in particular paragraph 49 (lit. a) – h), available online at: www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2005-0228.

50 See G. N. Toggenburg, *A Remaining Share or a New Part? The Union's Role vis-à-vis Minorities After the Enlargement Decade*, European University Institute (EUI) Working Paper 2006/5, pp. 23-25, available online at: <http://cadmus.eui.eu/dspace/bitstream/1814/4428/1/LAWpercent202006.15.pdf>. With regard to the FCNM, see O. de Schutter, *The Framework Convention on the Protection of National Minorities and the Law of the European Union*, CRIDHO Working Paper 2006/1, available

51 See the 10 Guidelines on the relations between the Council of Europe and the European Union, adopted as part of an Action Plan in the Third Summit of the Council of Europe in Warsaw, 16-17 May 2005, available online at: www.coe.int/t/dcr/summit/20050517_plan_action_en.asp.

52 This does not imply that certain restrictive practices would not be criticised in the international arena. So for instance, on 19 February 2009, the Commissioner for Human Rights of the Council of Europe published a report on Greece regarding human rights of minorities, in which he criticised the Greek authorities for refusing to recognise the existence of any kind of minority other than the 'Muslim' one. See CommDH(2009)9, *Human rights of minorities*, Strasbourg, 19 February 2009, available online at: <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1409353>. See also the most recent ECRJ Report on Greece (fourth monitoring cycle), 15 September 2009, available online at: www.coe.int/t/dghl/monitoring/ecrj/Country-by-country/Greece/GRC-Cbc-IV-2009-031-ENG.pdf. The Advisory Committee's critique of the Dutch definition of "national minority" provides another example. The Committee expressed concern that the definition contains a territorial dimension which in practice leads to the exclusion of certain groups. In particular, it notes that Roma and Sinti groups have been historically present in the Netherlands. However, persons belonging to these groups reside in different areas of the Netherlands and therefore do not necessarily live in an "ancestral settlement". See the Opinion of the Advisory Committee on the Netherlands adopted on 25 June 2009 (first monitoring cycle).

53 This can be the case even within the same group of persons belonging to a minority. For instance, Slovenia was criticised because certain Roma have access to more protections than others. See the 2005 comments of the UN Human Rights Committee on the implementation of the International Covenant on Civil and Political Rights in Slovenia, p. 4.

54 See Parliamentary Assembly of the Council of Europe, *Minority Protection in Europe: Best Practices and Deficiencies in Implementation of Common Standards*, 20 January 2010, paragraph 9.



policies.⁵⁵ Eventually, such a legitimate aim might provide justification for national systems of minority protection that restrict the application of EU-law, as long as such restrictions are proportional. In the area of language policies the Court made clear that EU law does not prohibit the adoption of a policy for the “*protection and promotion of a language*”. However, the implementation of such a policy (in the specific case, the Irish language Gaeilge) “*must not encroach upon a fundamental freedom such as that of the free movement of workers. Therefore, the requirements deriving from measures intended to implement such a policy must not in any circumstance be disproportionate in relation to the aim pursued, and the manner in which they are applied must not bring about discrimination against nationals of other member states*”.⁵⁶ This confirms the overall picture that in a supranational system of multi-level governance the issue of minority protection is an integral part of policymaking where the various layers and players interact.

1.1.3. Beyond minority protection: managing diversity in EU Member States

Equal treatment and non-discrimination in EU law and policy are rights for persons belonging to minorities, “*rather than a set of rights recognized to certain groups recognized as ‘(national) minorities’*”.⁵⁷ Even if not belonging to ‘minorities’ in the traditional sense of the word, it is worth considering the situation of EU citizens who move and settle in another EU Member State. They will have to adapt to a new social environment and integrate. EU-MIDIS indicated that EU citizens who had settled in another Member State were not treated significantly better than third-country immigrants. For example, 23% of Turkish respondents in Austria, Belgium, Bulgaria, Denmark, Germany and the Netherlands experienced discrimination in the year preceding the survey. Exactly the same proportion of respondents, who were EU citizens, experienced discrimination in Ireland or the United Kingdom, where they had moved and settled.

This issue is of particular relevance for Roma EU citizens making use of their “*right of free movement and residence within the territory of the Member States*”, as guaranteed in the Citizens Directive. The FRA has examined this issue in its report on *The situation of Roma EU citizen moving to and Settling in Other Member States*, released in November 2009.

The EU has given attention to the ‘integration’⁵⁸ of EU citizens into their host societies for some time. This is evident from the fact that the EU’s commitments to fundamental freedoms and to the common market in general require citizens of receiving EU Member States and citizens of EU Member States of origin to be treated equally. EU citizens who move from their country of origin to another EU country will generally be different in certain respects from the majority population. For instance, their first language or culture may be different and as a result they may perceive themselves as distinct from the majority population. The need to assist their integration into the host society and at the same time preserve the language and culture of origin was recognised early in EU law. The case of Directive 77/486/EEC illustrates this: it foresaw that the children of migrant workers should be educated in the language of their country of origin as well as the language of the host country.⁵⁹ The purpose of this was to contribute to the “*integration of such children [namely children of EU citizens who moved from one EU Member State to another] into the educational environment and the school system of the host State*” and, at the same time, to facilitate “*their possible reintegration into the Member State of origin*”.⁶⁰ However, the directive was poorly implemented (see Section 1.4.4.).

The fact that EU law grants every EU citizen the right to participate in local and European elections, wherever they decide to reside in the EU, shows that the EU actively seeks to promote the political participation of EU citizens living in Member States other than their own. However, this right does not extend to regional or national elections.⁶¹

55 See CJEU, case C-274/96, Bickel and Franz, judgment of 24 November 1998, paragraph 29, available online at: http://curia.europa.eu/en/content/juris/index_form.htm.

56 See CJEU, case C-379/87, Groener, judgment of 28 November 1989, paragraph 19, available online at: http://curia.europa.eu/en/content/juris/index_form.htm.

57 See the EU Network of Independent Experts on Fundamental Rights (CFR-CDF), Thematic Comment No. 3: The Protection of Minorities in the European Union, April 2005, p. 7, available online at: http://ec.europa.eu/justice_home/cfr_cdf/doc/thematic_comments_2005_en.pdf. Compare also the report of the High Level Advisory Group of Experts on the Social Integration of Ethnic Minorities and Their Full Access to the Labour Market, entitled Ethnic Minorities in the labour market. An urgent call for better social inclusion, which does not draw a line either between citizens and non-citizens, or between ethnic minority citizens who are of immigrant and non-immigrant origin (p. 27).

58 Please note that this term is usually not used when referring to EU citizens.

59 See this report, p. 38.

60 See the Preamble of the Directive 77/486/EEC.

61 This might lead to situations where certain EU citizens have no right to vote either in their country of residence or their country of origin. See, for instance, D. Kochenov, ‘Free Movement and Participation in the Parliamentary Elections in the Member State of Nationality: An Ignored Link?’, in *Maastricht Journal of European and Comparative Law*, Vol. 16, 2009, pp. 197-223.

To some extent it can be argued that EU law has implications on the cultural dimensions of being an EU migrant. In a case concerning the spelling of family names, for example, the Court of Justice of the European Union (CJEU) ruled that Member States of residence may not refuse the request of an EU citizen to change the surname of her or his children if they would ordinarily have been entitled to make such a change in the Member State of origin. Interestingly, the Court underlined that formal equality (that is the equal treatment of all children irrespective of divergences of tradition between Member countries) would not be an appropriate way to foster the integration of EU citizens in their host states.⁶² In another case, the Court underlined that the economic right of establishment prevents Member States from obliging an EU citizen to modify the spelling of his or her name if doing so would distort the name and thereby expose the citizen concerned to the risk of being confused with other persons.⁶³ At the end of 2010, a case having potential implications for the spelling of names in minority languages was pending before the CJEU.⁶⁴

Furthermore, in the *Bickel and Franz* case (1998), the CJEU held that, where certain privileges have been granted in the context of a regional system of minority protection, they must be extended to all EU citizens who move into that area from another EU Member State, provided their individual situation is comparable.⁶⁵ The limits of the 'Bickel/Franz effect' are not yet clear, while the new emphasis given to minorities under the Treaty of Lisbon might indicate that such an extension should not lead to a *de facto* dissolution of local systems of minority protection. Nevertheless, the case is a reminder that protection of minorities, including national minorities, should be viewed through the wider lens of the EU's system of multilevel governance. The issue of minority protection can no longer be seen in isolation but should be perceived as a policy space in which national, international and EU law interact.

1.1.4. Conclusion

In conclusion, it can be said broadly that EU law looks at the management of different cultures, languages and traditions. The rather complex picture described above provides a mix of national and supranational policy interventions. The character of the interaction between different layers of governance depends

62 See CJEU, Case C-148/02, *Carlos Garcia Avelo*, judgment of 2 October 2003, esp. at paragraph 43.

63 See CJEU, Case C-168/91, *Christos Konstantinidis*, judgment of 30 March 1993.

64 See CJEU, Case C-391/09, *Malgozata Runevič-Vardyn, Łukasz Paweł Wardyn* (pending at the time of writing).

65 See CJEU, Case 274/96, *Bickel and Franz*, judgment of 24 November 1998.

on whether the question concerns issues of "entry" (like immigration or asylum), "integration" in a wider sense (like anti-discrimination, intra-Community movement, social inclusion), or "preservation" (for instance collective minority rights, political representation, forms of territorial or cultural autonomy, language policy). "Entry" and "integration" are policy areas in which supranational and national players interact intensively, whereas "identity preservation" matters are more or less the preserve of Member States policies.⁶⁶

1.2. Primary law: innovations introduced by the Treaty of Lisbon

1.2.1. 'Minorities' enter the treaty text

When the Treaty of Lisbon entered into force on 1 December 2009 it fixed in law previous acknowledgments⁶⁷ that "respect for human rights, including the rights of persons belonging to minorities" is a value on which "the Union is founded". Article 2 of the Treaty on European Union (TEU) affirms that this value is "common to the Member States in a society in which pluralism, non-discrimination, tolerance [...] prevail".⁶⁸ Moreover, the Charter of Fundamental Rights of the European Union (hereafter 'the Charter') became a legally binding document that has "the same legal value as the Treaties".⁶⁹ Article 21 of the Charter provides that discrimination on the grounds of "membership of a national minority" is prohibited. As a result, the notion of "national minority" became a term of EU Primary law. Moreover, Article 22 of the Charter emphasises that the "Union shall respect cultural, religious and linguistic diversity". The treaty also stresses the value of diversity in the context of the general objectives of the Union: the latter shall "respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced" (Article 3 paragraph 3 TEU).

66 See G.N. Toggenburg, 'Who is managing ethnic and cultural diversity within the European Condominium? The moments of entry, integration and preservation', in *Journal for Common Market Studies*, Vol. 4, 2005, pp. 717-737.

67 On various occasions, the Commission underlined that "the rights of minorities are among the principles which are common to the Member States, as listed in Article 6(1) of the Treaty on European Union (TEU)". See reply to the written question E-1227/02, in OJ 2002 C 309, p. 100. The Council stated, for instance, that protection of persons belonging to minorities is covered by the non-discrimination clause in Article 13 EC (see Council of the European Union, EU Annual Report on Human Rights 2003, Brussels, 3 January 2004, p. 22).

68 See Article 2 TEU.

69 See Article 6 paragraph 1 TEU.

The term ‘diversity’, as used in EU law and EU policies, refers to diversity *between* and *within* Member States and applies therefore not only to the protection of national identities, but also to the protection of minority cultures.⁷⁰ At a more symbolic level, primary law explicitly mentions, for the first time, the ability of Member States to translate the Treaties into additional (regional or minority) languages “that enjoy official status in all or part of their territory” and register a certified copy in these languages with the archives of the Council.⁷¹

These recent innovations confirm and formalise the EU’s long standing commitment to minorities.⁷² They are far from establishing a legislative competence that would allow the formation of a fully-fledged ‘minority policy’ at EU level.⁷³ Nevertheless, they clearly show that the EU is equipped with “constitutional resources” that allow EU secondary law to develop in a way that respects and protects persons belonging to minorities.⁷⁴ In fact, the Treaty of Lisbon can be seen as introducing a legal obligation to do so.

1.2.2. New obligations for the legislator

This becomes evident in the context of anti-discrimination – an area in which the Treaty of Lisbon has played an instrumental role in giving effect to a ‘revamped’ diversity commitment. According to Article 10 of the Treaty on the Functioning of the European Union (the former EC Treaty; hereafter TFEU), the EU is under an obligation to “combat discrimination

based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”, not only in the context of its anti-discrimination policy, but whenever “defining and implementing [any] of its policies and activities”.⁷⁵ This new horizontal obligation goes further than Article 21 of the Charter, which merely “prohibits” the Union from discriminating on grounds of “ethnic origin”, “language”, “religion”, “membership of a national minority”, “disability”, or “sexual orientation”. The new horizontal clause *enables* and *obliges* the Union to actively “combat” discrimination in all circumstances and it could be argued that this clause calls for more than mere avoidance of discrimination. This is evidenced by the fact that the new horizontal clause is based on the wording of the enabling competence base, as now enshrined in Article 19 TFEU (the former Article 13 TEC) and not on the merely prohibitive clause in Article 21 of the Charter of Fundamental Rights.

Nevertheless, whether or to what extent the new horizontal clause enshrines an “*embryonic positive duty*” to introduce measures of affirmative action that have the purpose of providing substantive equality is open to interpretation.⁷⁶ What can be said is that the new horizontal obligation has the potential to play an important role in influencing the direction, content and creativity of Union legislation (and consequently national legislation when implementing Union legislation). Most importantly, the clause provides a normative backbone for a mainstreaming approach across different policy areas, as advocated recently by the Spanish, Belgium and Hungarian Trio-Presidency regarding the Roma (see 1.4.2).

However, since the new obligation builds on the enabling provision in Article 19 TFEU and not the prohibitive provision in Article 21 of the Charter, it does not cover discrimination on grounds of language or membership of a national minority.⁷⁷ As a result, despite the fact that these two forms of discrimination are explicitly prohibited by EU law under the Charter, the EU does not seem to have the competence to develop specific anti-discrimination legislation targeting them. Nor is the EU obliged to actively combat these two forms of discrimination when defining and implementing other policies.

70 In this context, see also Article 4 paragraph 2 TEU and Article 167 TFEU (the former Article 151 EC Treaty). For a discussion of the notion of ‘diversity’ see G. N. Toggenburg, *The Debate on European Values and the Case of Cultural Diversity*, European Diversity and Autonomy Papers (EDAP), No. 1, 2004, available at: http://webfolder.eurac.edu/EURAC/Publications/edap/2004_edap01.pdf; and A. von Bogdandy, *The European Union as Situation, Executive, and Promoter of the International Law of Cultural Diversity – Elements of a Beautiful Friendship*, The Jean Monnet Working Papers, No. 13, 2007, available at: <http://centers.law.nyu.edu/jeanmonnet/papers/07/071301.html>.

71 See Article 55 paragraph 2 TEU. Despite the restrictive wording of paragraph 2 in the Declaration on Article 55(2) of the TEU, no legal argument seems to prevent a Member State from translating the Treaties and registering the translation at any time, should it wish to do so.

72 An overview including detailed references can be found in G. N. Toggenburg, ‘The European Union vis-à-vis minorities: a play in three parts and an open end’, in Csaba Tabajdi (ed.), *Pro Minoritate Europae – Minorities of Europe Unite*, 2009 (Study book for the 25th Anniversary of the Minorities-Intergroup of the European Parliament), pp. 162-205.

73 It is recalled that according to the principle of conferral, competences not conferred upon the Union in the Treaties remain with the Member States (Article 5 paragraph 2 TEU).

74 This is well established among legal scholars. See, for instance, B. de Witte, ‘The constitutional resources for an EU minority policies’, in G. N. Toggenburg, *Minority Protection and the enlarged European Union: the way forward*, Budapest 2004, pp. 109-124, at p. 111. It is also established politically. See, for instance, the European Parliament Resolution on the protection of minorities and anti-discrimination policies in an enlarged Europe, in OJ 2006 C 124, p. 405, esp. at paragraph 49, available online at www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2005-0228.

75 The EU’s anti-discrimination policy is enshrined in Article 19 TFEU (the former Article 13 TEC).

76 Compare J. Shaw, ‘Mainstreaming Equality and Diversity in the European Union’, *Current Legal Problems*, Vol. 58, 2005, pp. 255-312.

77 This asymmetry is, however, not new but rather inherited from the pre-Lisbon era: linguistic discrimination and discrimination on the grounds of membership of a national minority were supposedly already prohibited by the general principle of equality; yet, the EU had no explicit competence to actively combat these forms of discrimination via Article 13 TEC.

Another new horizontal provision is to be found in Article 9 TFEU. It obliges the Union to take various 'requirements' into account when "*defining and implementing its policies and activities*", including "*the fight against social exclusion*". Also in the context of the Union's overall objectives, Article 3 TEU declares that the Union "*shall combat social exclusion and discrimination, and shall promote social justice and protection*", "*promote [...] social cohesion*" and "*respect its rich cultural and linguistic diversity*".

These general commitments are of particular relevance where EU policies and activities might affect persons belonging to minorities, for example through legislation relating to third-country nationals. In this context, it is interesting to note that the Treaty of Lisbon provides the Union with an explicit competence in matters of immigrant integration. EU legislation defining "*the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States*",⁷⁸ or EU measures providing "*incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories*"⁷⁹ are to be adopted under the ordinary legislative procedure. This means that the Parliament has powers of co-decision and the Council takes decisions by qualified majority voting.⁸⁰ This said, qualified majority voting is not permitted in all areas. Most prominently, Article 19 paragraph 1 TFEU (the former Article 13 TEC) calls on the Council to act unanimously when introducing legislative action to combat discrimination.⁸¹

In this context, it is also interesting to note that the Treaties emphasise services of general economic interest. According to Article 16 TFEU, both the Parliament and Council are invited to define the principles and conditions under which such services should be provided. The Protocol on Services of General Interest underlines that the shared values of the European Union in respect of services of general economic interest include in particular acknowledging "*the differences in the needs and preferences of users that may result from different geographical, social or cultural situations*" as well as "*equal treatment and the promotion of universal access and user of rights*".⁸²

These values can provide points of reference when policies are designed to address the specific needs of persons belonging to minorities, including linguistic minorities, without imposing a disproportionate burden on public or private service providers. Such an approach could enhance social cohesion and help to prevent discrimination in the organisation of services of general economic interest.⁸³ In the context of reforming the Equality Directives, in fact, the Parliament has stipulated that "*service providers [should] make adjustments and provide special treatment to ensure that members of minority groups that are experiencing inequality can access and benefit from the services provided*".⁸⁴

1.2.3. Conclusion

To summarise, the Treaty of Lisbon puts a new emphasis on persons belonging to minorities and on diversity in general. EU law, the EU institutions – and the Member States "*when they are implementing Union law*"⁸⁵ – are now also explicitly precluded from discriminating against persons belonging to national, linguistic, ethnic and religious minorities". Moreover, in all its policies and activities, the Union is explicitly obliged to actively combat social exclusion and discrimination against individuals because of their ethnic origin or religion or on other grounds.

By using the term 'persons belonging to' minorities (Article 2 TEU), including persons belonging to national minorities (Article 21 of the Charter), rather than 'minorities' as such, the new provisions of EU primary law address individual rights and not group rights. The wording of the Lisbon Treaty shows clearly that the EU is concerned about the individual right to equality of all persons, taking account of their individual situation: factors such as their age and disability, their membership of an ethnic, national, linguistic or religious minority, and other special threats or needs they may have as a result.

In addition, the fact that persons belonging to national minorities are now referred to in the Charter signifies that the Union is concerned with persons belonging to minorities not only in the context of the Copenhagen criteria (i.e., in regards to enlargement), but across the range of its internal policies. This will help to eradicate the impression that, within the EU, the protection of

⁷⁸ See Article 79 paragraph 2 lit b) TFEU.

⁷⁹ See Article 79 paragraph 4 TFEU (no harmonisation is possible under this article). See also Article 153 Paragraph 1 lit. g) TFEU.

⁸⁰ See Article 294 TFEU.

⁸¹ As with the former Article 13 paragraph 2 TEC, the new Article 19 paragraph 2 TFEU does permit co-decision and qualified majority voting when the Union is not issuing harmonising legislation but supporting action taken by Member States.

⁸² See Article 1 of Protocol No 26 (protocols have the same legal value as the Treaties). Compare also Article 36 Charter of Fundamental Rights.

⁸³ Compare the EU Network of Independent Experts on Fundamental Rights (CFR-CDF), Thematic Comment No. 3: The Protection of Minorities in the European Union, April 2005, p. 44, available at: http://ec.europa.eu/justice_home/cfr_cdf/doc/thematic_comments_2005_en.pdf.

⁸⁴ See European Parliament resolution of 20 May 2008 on progress made in equal opportunities and non-discrimination in the EU (the transposition of Directives 2000/43/EC and 2000/78/EC), OJ 2009 C 279 E, paragraph 43, pp. 23-30).

⁸⁵ Article 41 paragraph 1 Charter of Fundamental Rights.



persons belonging to minorities is “an export article and not one for domestic consumption”.⁸⁶

1.3. Secondary law: a short overview

1.3.1. The Equality Directives

The two Equality Directives – Directive EC/43/2000 and Directive EC/78/2000 – were adopted on the basis of former Article 13 TEC (now Article 19 TFEU) and played a vital role in combating discrimination and implementing “the principle of equal treatment”⁸⁷ in the EU. The Racial Equality Directive in particular represents a milestone in the development of a European understanding of equality. The Directive was gradually transposed in national legislations with some delays and other issues. In 2007 the Commission sent letters of formal notice to more than half of the EU Member States calling on them to implement fully EU rules banning discrimination on grounds of race or ethnic origin.⁸⁸ Examples of delayed transposition of the Racial Equality Directive include the Czech Republic which only passed the legislation transposing the Directive in 2009, with a mechanism in place as of 1 December 2009.⁸⁹ In Luxembourg, the Equality Body only became operational in late 2008.⁹⁰ Nonetheless, some progress has been made: in October 2009 the Court of Justice of the European Union closed infringement proceedings against Austria and Italy after national legislation was changed.⁹¹

One of the most important innovations of the Racial Equality Directive was the provision for national equality bodies mandated to providing independent assistance to victims of discrimination. Evidence collected by FRA through EU-MIDIS showed that 36% of those who suffered discrimination in the past year to the survey did not report incidents of discrimination, because they “didn’t know how to go about reporting or where to report”. It appears, therefore, that there is a need for greater visibility of equality bodies and any other reporting and redress mechanisms. NGOs also play a key role in assisting victims of discrimination. However, EU-MIDIS revealed

that 80% of respondents were unable to identify a single organisation (including NGOs) that offered support to victims of discrimination. Against this background, and given the role such organisations can have according to Article 7 of the Racial Equality Directive, it is advisable for Member States to further “encourage dialogue with appropriate nongovernmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on grounds of racial and ethnic origin with a view to promoting the principle of equal treatment”, as required by Article 12 of the Racial Equality Directive.

In 2012, the European Commission will issue a report on the Racial Equality Directive.⁹² It will assess this central piece of secondary law, including “if necessary, proposals to amend and update this Directive”.⁹³ The Commission’s report will draw on the findings of reports from the 27 Member States which are due in 2010. It will further take into account the views of social partners and relevant NGOs. The directive explicitly mentions the input of the FRA in this context. This will be delivered in 2011 based partly on its report on the views and perspectives of social partners on the impact of the directive published in May 2010.⁹⁴

In July 2008, the European Commission published a proposal for a “horizontal directive” Council Directive⁹⁵ that would extend protection against discrimination on grounds of religion, belief, disability, age, and sexual orientation to areas covered by the Racial Equality Directive, which include social security, healthcare, education, and access to (and supply of) goods and services. The proposed Directive is intended to raise the protection offered by the remarkably wide coverage of the Racial Equality Directive to all grounds of discrimination. If the Directive were to be adopted, it would be possible to challenge discrimination on a range of grounds, including religion, also outside the workplace, which currently cannot be done. Such a development would be of obvious relevance to persons belonging to religious minorities. In April 2009, the Parliament voted in favour of the Directive. It proposed various amendments – to prevent multiple discrimination, prohibit discrimination by association (see Section 1.3.3.), and bar discrimination based on assumptions (such as a person’s religion) – and stressed the importance of promoting equality at

86 B. de Witte, *Politics versus Law in the EU’s Approach to Ethnic Minorities*, EUI Working Paper, RSC No. 2000/4, p. 3.

87 See Article 1 in each of the two Directives.

88 The countries included the Czech Republic, Estonia, Greece, Spain, France, Ireland, Italy, Latvia, Poland, Portugal, Slovenia, Slovakia, Sweden and the United Kingdom. For a summary of the points raised, see the European Commission’s Press Memo/07/263, 27 June 2007.

89 See www.psp.cz/sqw/hlasy.sqw?G=50202&o=5.

90 Law of 28 November 2006.

91 In Austria, the case concerned the definition of harassment, lack of appropriate sanctions in cases of discriminatory dismissals, and failure to transpose rules on victimisation; in Italy harassment and victimisation, and the burden of proof.

92 Compare already European Commission, *The application of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*, COM(2006) 643 final, 30 October 2006.

93 See Article 17 paragraph 2 of Directive 2000/43.

94 FRA (2010) *The impact of the Racial Equality Directive – Views of trade unions and employers in the European Union*, Luxembourg: Publications Office.

95 COM(2008)426 final, 2 July 2008.

national level.⁹⁶ However, agreement has not yet been reached in the Council of the European Union. The latest Progress Report delivered by the Council on 17 May 2010 stated that significant progress had been made under the Spanish Presidency but that, at the same time, *“there is a clear need for extensive further work on the proposal”*.⁹⁷

1.3.2. The Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law

In November 2008, the Council adopted a Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law. This instrument, which was under political discussion for many years, aims at approximating criminal legislation in the EU to ensure that racist and xenophobic behaviour constitute an offence in all Member States and that effective, proportionate and dissuasive penalties are imposed consistently across the Union on natural and legal persons who commit such offences.⁹⁸ The Framework Decision requires punishment of a series of offences 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”*. They include publicly inciting violence and hatred against such a group, or a member of such a group, as well as publicly condoning, denying or grossly trivialising genocide, crimes against humanity or war crimes directed against such a group or one of its members.

Member States are required to implement the Framework Decision by 28 November 2010. A first assessment of its implementation will be completed by 28 November 2013. The decision sends a clear message to perpetrators and victims of racist and xenophobic ‘hate speech’ and ‘hate crimes’, as well as criminal justice officials, Member States and EU citizens, that such crimes are not to be tolerated in Member States and will be dealt with seriously. Having secured adoption of the legislation, action needs to be taken at Member State level to ensure that victims are encouraged to report racist crimes; that mechanisms are in place to accurately record racist crimes; and that data collected on racist crimes

are sufficiently comprehensive and useful for crime prevention purposes.

This development was particularly welcomed by the FRA, which has for years reported on the lack of criminal justice data:

*“Across the EU the collection and public availability of official criminal justice data on racist crime continues to vary significantly between Member States, with some publishing no data and only a select few collecting and publishing comprehensive data on a regular basis (Finland, Sweden and the UK).”*⁹⁹

In the run up to the implementation of the Framework Decision, encouraging developments can be noted in some Member States that have already started taking measures designed to give effect to this legislation at the national level; for example, the Czech Republic, Denmark, Malta and Slovakia.¹⁰⁰ The FRA is conducting in 2011 a thorough mapping of existing criminal justice and civil society data collection on racist crime and other hate crimes in the EU.

1.3.3. Recent case law

Recently, EU case law has provided interesting interpretations in the field of anti-discrimination. The following two examples are illustrative. The *Coleman* case was the first major discussion on disability discrimination under the Employment Framework Directive.¹⁰¹ The applicant, Ms Coleman, had given birth to a child with a disability. She alleged constructive dismissal from her job on the grounds that her employer had refused to reinstate her to her former post after maternity leave and she had received less favourable treatment than her colleagues. The claim of difference of treatment was based on Ms Coleman having a disabled child. Applying a wide interpretation of discrimination on grounds of disability, the CJEU found that discrimination could be said to occur if a person was subject to different treatment because she was the primary carer of a disabled child. It found, likewise, that harassment on the basis of disability could include situations where the direct victim was not herself disabled, but where treatment was based on the victim’s association with a disabled person. In this way, the notion of discrimination by association entered the field of EU law.

⁹⁶ European Parliament legislative resolution of 2 April 2009 on the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)0426 – C6-0291/2008 – 2008/0140(CNS)).

⁹⁷ Progress Report, doc. Nr. 9535/10, inter-institutional file 2008/0140(CNS), 17 May 2010.

⁹⁸ Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law. OJ L 328, 6 December 2008, p. 55.

⁹⁹ FRA, 2010, Annual Report, p. 35.

¹⁰⁰ FRA, 2010, Annual Report, p. 44.

¹⁰¹ CJEU, Case C-303/06, *Coleman v. Attridge Law and Steve Law*, 17 July 2008.



In the *Feryn* case, the CJEU delivered its first substantial judgment regarding interpretation of the Racial Equality Directive.¹⁰² The Agency had reported on the case of a Belgian company that announced it would recruit only white employees on the grounds that “customers would prefer this”.¹⁰³ At national level, the Belgian national equality body claimed that the company had acted in breach of legislation by publicly adopting a recruitment statement that excluded from possible employment individuals from certain racial or ethnic backgrounds. The case was referred to the CJEU after the Labour Court of Brussels ruled that such statements were not discriminatory since no individual person had suffered. Asked to give a preliminary ruling, the CJEU found that, while no individual victim could be identified, the company’s statements amounted to direct discrimination in the area of employment because they were “likely to strongly dissuade certain candidates from submitting their candidature”. The CJEU also found that the burden of proof in such a situation created a presumption of discrimination which it was for the employer to rebut. This judgment has clarified the concept of direct discrimination under Article 2 (2) (a) of the Racial Equality Directive and sets an international precedent in anti-discrimination law.

1.4. Selected policy initiatives

1.4.1. Diversity and equal opportunities

The European Union designated 2007 as the ‘European Year of Equal Opportunities for All’. Focusing on equality, it aimed at helping to achieve “a more socially inclusive society” and to highlight that “all people are entitled to equal treatment, irrespective of their sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”. The Year also aimed at stimulating a debate on ways to “increase the participation in society” of disadvantaged population groups, and underline the positive contribution that such people can make to society as a whole, in particular by “accentuating the benefits of diversity”.¹⁰⁴

In the context of the ‘European Year of Equal Opportunities for All’ 434 actions were implemented across the EU, ranging from three in Belgium to 49 in France. They generated around 1,600 outputs – more than 1,000 meetings and events, around 440 national-level campaigns, and over 120 studies and surveys.

¹⁰² CJEU, Case C-54/07 *Centrum voor gelijkheid van kansen en voor racismebestrijding v. Firma Feryn NV*, 10 July 2008.

¹⁰³ EUMC, Annual Report of 2006.

¹⁰⁴ Decision No. 771/2006/EC of the European Parliament and the Council of 17 May 2006, establishing the European Year of Equal Opportunities for All (2007)—Towards a Just Society, in OJ 2006 L 146, pp. 1-7.

The grounds of discrimination most frequently addressed were race/ethnicity (61% of all actions) and gender (62%). In assessing the results of the European Year the Commission found that Member States had not only allocated considerable resources to practical implementation, but “were also prepared – sometimes for the first time – to discuss the situation openly regarding the six discrimination grounds in their countries and subsequently to draw up public strategies for tackling the challenges identified”.¹⁰⁵

Observers witnessed a further step towards a more substantial understanding of equality at EU level in this European Year.¹⁰⁶ In the 2005 Framework Strategy on Non-discrimination and Equal Opportunities for All, the Commission had underlined “a need to go beyond anti-discrimination policies designed to prevent unequal treatment of individuals. The EU should reinforce its efforts to promote equal opportunities for all, in order to tackle the structural barriers faced by migrants, ethnic minorities, the disabled, older and younger workers and other vulnerable groups”.¹⁰⁷

This thinking continued to gain ground and in July 2008 the European Commission presented its ‘renewed commitment’ to non-discrimination and equal opportunities.¹⁰⁸ The chapter on positive action states: “Identical treatment may result in formal equality, but cannot suffice to bring about equality in practice. EU non-discrimination legislation does not prevent any Member State from maintaining or adopting specific measures to prevent, or compensate for, disadvantages linked to discrimination on grounds where there is provision for protection. There is a rapidly growing appreciation of the role positive action can play to redress the lack of substantive equality in societies.¹⁰⁹ Some Member States¹¹⁰ have introduced provisions making it a duty for public authorities to promote equality as a core objective of all their activities. The Commission will use the permanent dialogue with Member States to promote the full utilisation of the possibilities for positive action, in particular in access to education, employment, housing and health care.”¹¹¹

¹⁰⁵ European Commission, Implementation, results and overall assessment of the 2007 European Year of Equal Opportunities for All, COM(2009) 269 final, 19 June 2009, p. 12.

¹⁰⁶ See, for example, E. Howard, The European Year of Equal Opportunities for All – 2007: ‘Is the EU moving away from a formal idea of equality?’, *European Law Journal*, Vol. 14, No. 2, March 2008, pp. 168-185.

¹⁰⁷ European Commission, “Non-discrimination and Equal Opportunities for All—A Framework Strategy”, COM(2005) 224 final, 1 June 2005, at p. 2 and p. 10.

¹⁰⁸ European Commission, Non-discrimination and equal opportunities: A renewed commitment, COM(2008) 420 final, 2 July 2008.

¹⁰⁹ European Commission, Beyond Formal Equality: Positive Action under Directives 2000/43/EC and 2000/78/EC, October 2007.

¹¹⁰ UK and Finland.

¹¹¹ COM(2008) 420 final, p. 7 and p. 8.

Following up to this the European Union designated 2008 as the European Year for Intercultural Dialogue.¹¹² An important purpose of this initiative was to highlight “the contribution of different cultures and expressions of cultural diversity to the heritage and ways of life of the Member States”¹¹³ and some of the activities addressed national minorities, as well as migration and xenophobia.¹¹⁴

1.4.2. The Roma in the work of the EU bodies

1.4.2.1. The situation of the Roma

Roma are in an especially vulnerable situation in the European Union (see also 2.3.2.4. and 2.3.3.3). This was confirmed by a recent joint statement of the 2010 – 2011 ‘Trio Presidency’ (Spain, Belgium, Hungary), which stressed that “a significant number of them experience exclusion in essential areas of daily life, such as access to education, unemployment and job insecurity, poor housing conditions and inequalities in the field of health”.¹¹⁵ This situation was also a motivation for the FRA to dedicate a detailed ‘focus’ section in its report ‘Fundamental rights: challenges and achievements in 2010’.¹¹⁶

EU-MIDIS revealed that, taking all minorities across the European Union, the Roma suffer the highest discrimination. They were the most likely of all groups surveyed to avoid certain locations in their area for fear of being discriminated against (23%), or harassed, threatened or attacked (31%). The majority of the Roma in the Czech Republic (64%), Hungary (62%), Poland (59%) and Greece (55%) believed they had suffered discrimination because of their ethnicity at least once in the past 12 months. A similar pattern emerged with regard to rates of criminal victimisation across the five crime types tested. About half of those interviewed in the Czech Republic (46%) and Greece (54%) were victims of at least one of these crimes in the last 12 months. The FRA published these results separately in its “Data in Focus Report: The Roma”.¹¹⁷

In October 2009 the FRA published its report on the *Housing conditions of Roma and Travellers in the European Union*, and a number of relevant case studies in the Czech Republic, Hungary, Ireland, Slovakia, Spain and the United Kingdom. The report documents problems on the ground and provides examples of good practice in order to foster an exchange of knowledge within and between the Member States that have significant Roma populations.

On many occasions in recent years Roma have been victims of aggression. In the Czech Republic a regional court in the city of Ostrava sentenced in October 2010 four neo-Nazis, who threw Molotov cocktails into a house seriously injuring three people, including a two-year old girl, to prison sentences of up to 22 years. The court ruled that they had planned their attack intending to kill their victims and also ordered them to pay damages of almost € 693,000. In Hungary, the Pest County Court announced that in March 2011 the trial of four men charged with a series of attacks against Roma that left six dead will begin. The crimes include the murder on 2 August 2009 of a Romani woman in her own home, and the serious injury of her daughter with a shotgun, the killing in February 2009 of a Roma father and his four-year-old son, who were fleeing from their home that had been set ablaze, and other incidents. The violent attacks against Roma that took place in the Ponticelli district of Naples in May 2008 provide another example. The FRA reacted with an ‘incident report’, which provided an objective assessment of the events and their impact based on data provided by its own national focal point and the government, and called for reflection on the wider problems facing Roma communities across Europe.¹¹⁸ The European Parliament reacted to the situation in July 2008 with a resolution on the census of the Roma on the basis of ethnicity in Italy that urged the Italian authorities to refrain from collecting fingerprints from Roma, including minors, and using fingerprints already collected. The resolution also expressed concern about the declaration of a “state of emergency” – a step which it considered to be neither appropriate nor proportionate.¹¹⁹

The case law of the Council of Europe’s European Court of Human Rights (ECtHR) confirms the worrying level of discrimination against Roma. In the period this report reviews, the Court handed down several relevant judgments and communicated a number of new cases that have a Roma dimension.

112 Decision No 1983/2006/EC of the European Parliament and the Council concerning the European Year of Intercultural Dialogue (2008), in OJ 2006 L 412, p. 44.

113 A list of financed projects can be found online at: www.interculturaldialogue2008.eu/339.o.html.

114 See ECOTEC, Final Report - Evaluation of the European Year of Intercultural Dialogue 2008 (Contract 2008-0541/001-001EYI-ACICCS), July 2009, online at: http://ec.europa.eu/dgs/education_culture/evalreports/culture/2009/eydreport_en.pdf.

115 Joint Statement by the Trio Presidency on the occasion of the second Roma Summit, Cordoba 9 April 2010, available at <http://ec.europa.eu/social/BlobServlet?docId=4846&langId=en>

116 FRA (2011) *Fundamental rights: challenges and achievements in 2010*, Annual Report. Please refer to the focus section ‘The Roma in the EU - a question of fundamental rights implementation’. It covers the period January 2010 until December 2010.

117 The report was released in April 2009 and is available in 10 languages at: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2009/pub_eu-midis_en.htm.

118 The incident report is available at: http://fra.europa.eu/fraWebsite/attachments/Incid-report-Italy-o8_en.pdf.

119 European Parliament resolution of 10 July 2008 on the census of the Roma on the basis of ethnicity in Italy, OJ 2009 C 294.

In the case of *Petropoulou-Tsakiris v. Greece*,¹²⁰ for instance, the Court examined the complaint made by a woman of Roma origin who stated that she had been kicked by the police while she was pregnant and that, as a result, she had suffered a miscarriage. In the case of *Stoica v. Romania*,¹²¹ a boy of Roma origin sustained severe injuries in a dispute with police officers. In April 2009, the Court found a violation of the ECHR in the case of *K.H. and others v. Slovakia*.¹²² This case concerned eight Roma women who had delivered children via caesarean section in hospitals in eastern Slovakia and who remained effectively infertile afterwards but had been refused access to the documentation of their medical treatment. Various cases concerning forced eviction and the demolition of Roma settlements have also been brought before the Court.¹²³ Other cases have concerned the issue of education. For instance, in the case of *Sampanis and others v. Greece*,¹²⁴ the Court addressed a situation where Greek authorities' failed to provide adequate schooling for Greek nationals of Roma origin. The Court concluded that putting the children concerned in special classes, located in an annex adjacent to the main primary school building violated the ECHR.

Roma frequently encounter major discrimination or obstacles over whether and under what conditions they can exercise their right to move freely and reside within the territory of the European Union as EU citizens. In November 2009, the FRA released its report on *The situation of Roma EU citizens moving to and Settling in Other Member States*, which found that Roma are subject to strong pull and push factors that influence their movement to other Member States and this movement is likely to continue. Push factors include a combination of poverty and racism; unemployment is a defining feature of Roma poverty in sending countries. Pull factors include aspirations to improve living standards, particularly the prospect of formal or informal employment. The research identified negative responses to the arrival of Roma EU citizens in some Member States, as well as policies and practices that (not necessarily intentionally) obstruct the ability of Roma to exercise their right to freedom of movement.¹²⁵

The European Parliament has emphasised the right of all EU citizens and their families to free movement and residence throughout the EU and expressed "deep concern at the measures taken by the French authorities and by other Member States' authorities targeting Roma and Travellers and providing for their expulsion". It has underlined that mass expulsions are prohibited by the Charter of Fundamental Rights and the European Convention of Human Rights (ECHR) and that it was "deeply concerned, in particular, at the inflammatory and openly discriminatory rhetoric that has characterised political discourse during the repatriations of Roma, lending credibility to racist statements and the actions of extreme right-wing groups". In accordance with the Free Movement Directive, the Parliament also recalled that lack of economic means cannot justify the automatic expulsion of EU citizens under any circumstances. Moreover, restrictions on freedom of movement and residence on grounds of public policy, public security and public health can be imposed solely on the basis of personal conduct, and are not justified by general considerations of prevention or ethnic or national origin. It stated that taking the fingerprints of expelled Roma is illegal and amounts to discrimination on the basis of ethnic or national origin.¹²⁶

On 29 September 2010 Vice-President of the European Commission Viviane Reding stated at the European Parliament in regard to relevant measures taken by Member States that "...it is of utmost importance that the procedural and substantive safeguards included in the 2004 Directive on Free Movement are fully and correctly transposed by and in the Member States. At this stage, the Commission considers that France has not yet transposed the Directive on Free Movement into national legislation that makes these rights fully effective and transparent. Therefore, the Commission decided today that it will issue a letter of formal notice to France requesting the full transposition of the directive, unless draft transposition measures and a detailed transposition schedule are provided by 15 October 2010."¹²⁷

1.4.2.2. The use of EU financial instruments

EU institutions have made available substantial funding under EU Funds to support and complement Member States' actions on Roma integration: twelve Member States (Bulgaria, the Czech Republic, Spain, Finland, Greece, Hungary, Ireland, Italy, Poland, Romania, Slovenia and Slovakia) have support programmes in place targeting Roma

120 ECtHR, *Petropoulou-Tsakiris v. Greece*, 6 December 2007.

121 ECtHR, *Stoica v. Romania*, 4 March 2008.

122 ECtHR, *K.H. v. Slovakia*, 28 April 2009.

123 For instance, the court gave notice in June 2008 of the case *Tzamalīs and others v. Greece*, 5469/07; in September 2008 of the case *Winterstein and others v. France*; and in February 2009 of the case *Ibishi and others v. Greece*, 47236/07.

124 ECtHR, *Sampanis and others v. Greece*, 5 June 2008.

125 These deplorable findings were taken up by the Parliament in its recent resolution on the Second Roma Summit. See European Parliament resolution of 25 March 2010 on the Second European Roma Summit.

126 See European Parliament resolution of 9 September 2010 on the situation of Roma and on freedom of movement in the European Union.

127 Press release, available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1207&format=HTML&age=d=0&language=EN&guiLanguage=en>.

(among other vulnerable groups) for a total budget of €17.5 billion (including €13.3 billion from the European Social Fund).¹²⁸

In mid-2008, in line with its “renewed commitment” to non-discrimination and equal opportunities, referred to above, the Commission underlined that boosting the fight against discrimination using both legislative and policy tools will benefit all potential stakeholder groups: *“it remains important to address particular concerns of specific groups. The situation of the Roma is of particular concern at the present time characterised by persisting individual and institutional discrimination and far-reaching social exclusion. The marginalisation of millions of people is unacceptable above all from the perspective of equality and effective enjoyment of human rights. It is indefensible too from the perspective of social cohesion. Last but not least, the widespread unemployment and poverty of such a large group of people is a waste in economic terms”*.¹²⁹

The “renewed commitment” was accompanied by a working document entitled Community Instruments and Policies for Roma Inclusion, as requested by the European Council. It provides an overview of all the different legislative and policy tools available at EU level that can be used to protect Roma interests.¹³⁰ In conclusion, the inventory calls on all players to make full use of the “enormous potential” the Structural Funds and pre-accession instruments offer, not least to create synergies with other processes such as the Roma Decade.

To combat negative stereotypes of Roma at all levels, the Commission has called for increased use of programmes such as PROGRESS and initiatives such as the 2010 European Year for Combating Poverty and Social Exclusion. The Commission advocates “close and sustainable support for and involvement of Roma civil society” in both the design and implementation of policies and projects.¹³¹ In addition, it has stressed the need to raise awareness of EU rights and establish well-functioning Equality Bodies that will work closely with Roma civil society. Finally, it urges continued research and monitoring of the situation of Roma and measures to address it. In this context the Commission has referred specifically to the FRA, which has recommended enhanced use of structural funds and provided relevant data.

On 26 April 2010, the Council decided to amend the current ERDF regulation, as had frequently been suggested by the FRA extending the conditions under which housing interventions are eligible for ERDF support: the renovation of houses in rural areas and the replacement of urban or rural houses may now be funded.¹³² This is a remarkable step, which addresses the specific situation of Roma communities.

The European Commission’s first stock-taking exercise was followed in April 2010 by a Communication on *The social and economic integration of the Roma in Europe*,¹³³ which was accompanied by a Progress Report 2008-2010,¹³⁴ where some core challenges, which the Member States and EU need to address are identified.

However, the situation of Roma living within and outside their countries of residence continued to raise concern, as the situation of many Roma people is an affront to the fundamental rights commonly agreed at EU level and has also a high economic and social cost. In this regard on 7 September 2010, the Commission decided to establish an internal Roma Task Force to *“[...] examine the action taken by the Member States on the Communication on the social and economic integration of the Roma in Europe, evaluate the use made by the Member States of the European Fund for the integration of the Roma, and identify ways of improving the effectiveness of the fund”*.¹³⁵ The FRA was invited to participate in the work of the Task Force and provided evidence based advice.

On December 21, 2010 the first preliminary findings of the Roma Task Force were released, which indicate that *“[...] Member States do not yet properly use EU money for the purpose of an effective social and economic integration of Roma. Weaknesses exist in the development of appropriate strategies and specific measures to address problems faced by Roma. Implementation at national level is problematic because of a lack of know-how and administrative capacity to absorb EU funds. The report also identifies problems in providing national co-financing as well as a lack of involvement by civil society and Roma communities themselves.”*¹³⁶ As a next step the Commission’s Roma Task Force will identify concrete ways to improve the effectiveness of EU funds in the Member States, which will feed into an EU-level framework for national Roma inclusion strategies which will be presented in spring 2011.

128 See <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1097>.

129 COM(2008) 420 final, at p. 9.

130 European Commission, Staff Working Document accompanying COM(2008) 420 final.

131 For 30 best practice projects for Roma inclusion that the EU has supported financially, see European Commission, ‘EU projects in favour of the Roma community’ (2010).

132 Council Press release 9000/10 (Presse 91) as of 26 April 2010.

133 COM (2010) 133 final as of 7 April 2010.

134 SEC(2010) 400 final as of 7 April 2010.

135 Minutes of the 1928th meeting of the Commission, Strasbourg, 7 September 2010, available at <http://ec.europa.eu/transparency/regdoc/rep/10061/2010/EN/10061-2010-1928-EN-F-o.Pdf>.

136 See <http://europa.eu/rapid/pressReleasesAction.do?reference=M.EMO/10/701&format=HTML&aged=0&language=EN&guiLanguage=en>



1.4.2.3. EU Roma Summits and the Platform for Roma inclusion

On 16 September 2008, the first EU Roma Summit took place in Brussels under the joint patronage of the Commission President and the French EU Presidency. The Summit brought together EU institutions, national governments, and a large number of civil society organisations representing Roma communities. One outcome of the Summit was to establish an exchange of good practice and experience between the Member States on Roma inclusion. The second EU Summit on Roma inclusion took place in Córdoba in Spain on 8 and 9 April 2010. It generated a joint statement by the Trio EU Presidency (Spain, Belgium and Hungary) which affirmed the EU's political commitment to include Roma issues in a wide range of fields, including fundamental rights, gender issues, personal safety, regional cohesion, anti-discrimination, poverty, social exclusion, economic development, and access to education, housing, health, employment, social services, justice, sports and culture. In addition, Roma issues will be considered in relation with third countries in which the Roma population "reaches a significant number".¹³⁷

The first meeting of the European Platform for Roma Inclusion took place under the Czech EU Presidency in Prague on 24 April 2009 identifying the 10 common basic principles to effectively address the inclusion of Roma. The second European Roma Platform took place in Brussels on 28 September 2009 and focused on the issue of an integrated approach to Roma education. The third meeting of the Platform for Roma inclusion took place in Brussels on 17 June 2010 and was co-organised by the Spanish EU Presidency and the European Commission. It focused on a roadmap proposed by the Presidency, providing a mid-term framework of stakeholder actions and expected outputs for the Platform.¹³⁸

1.4.3. Social inclusion and employment: the Open Method of Coordination

The Open Method of Coordination (OMC) is a soft law mechanism which makes use of guidelines, indicators, benchmarks and best practices. As opposed to hard law, it sets no legal standards and does not require a solid legislative EU competence. Its flexibility makes it a desirable tool in the field of social inclusion¹³⁹ and the European Economic and Social Committee (EESC) has proposed to apply the OMC to "minority issues,

especially the integration of Roma". This would be "a first step".¹⁴⁰ The OMC is applied in various policy fields such as employment and social inclusion. To put emphasis on the situation of persons belonging to minorities makes sense already from an economic perspective since the exclusion, for instance of Roma, produces costs, as a World Bank study entitled *Economic losses from the exclusion of Roma* recently underlined.¹⁴¹

In March 2009, the Council adopted the *Joint Employment Report 2008-2009* which underlined that a high proportion of ethnic minorities, including Roma and immigrants, remain outside the labour market. It stated that "the integration of the Roma is an emerging issue (BG, CZ, HU, RO, ES and SK). Measures to encourage access and integration into the labour market include anti-discrimination policies, for example in the form of legal proceedings combating school segregation and the refusal to hire Roma (BG, HU). Labour market policies also include subsidised employment programmes (BG), pre-employment training, career guidance and supervision to help Roma integrate into the labour market (ES), focus on PES to increase the motivation of Roma to start working (SK) and the appointment of mediators assisting their job search (BG)".¹⁴²

1.4.4. Migration and mobility: the role of education

In the Green Paper *Migration and Mobility: Challenges and Opportunities for EU Education Systems (2008)*, the European Commission stressed that schools "must play a leading role in creating an inclusive society, as they represent the main opportunity for young people of migrant and host communities to get to know and respect each other". This is of particular relevance since the EU is facing an influx of third-country nationals into its territory as well as increased internal movement in the wake of the two most recent enlargements. This has caused a steep rise in the number of migrant children (EU citizens and third-country nationals) attending school in a number of EU countries. PISA (2006) data (covering the 15 EU Member States) indicate that, prior to enlargement in 2004 and 2007, at least one in every 10 schoolchildren at age 15 had been born abroad or had parents born in another country; the figure approached 15% at the fourth grade of primary school. Migration flows tend

¹³⁷ The statement is available online at: <http://ec.europa.eu/social/main.jsp?catId=88&langId=en&eventsId=234&furtherEvents=yes>.

¹³⁸ The Roadmap is available online at: <http://ec.europa.eu/social/main.jsp?langId=en&catId=518&newsId=849&furtherNews=yes>.

¹³⁹ European Parliament resolution of 11 March 2009 on the social situation of the Roma and their improved access to the labour market in the EU, paragraph 58.

¹⁴⁰ Opinion of the EESC on the Integration of minorities – Roma, OJ 2009 C 27, pp. 88-94.

¹⁴¹ This study used demographic and economic data to calculate annual losses of productivity due to Roma exclusion. In Bulgaria, for example, it amounts to 526 million euro a year. Each Bulgarian child at school costs the taxpayer 861 Euro annually. By contrast 6,667 Euro in tax revenue is forfeited annually (7.74 times more) per Roma child because of their poor access to education.

¹⁴² EPSCO, Joint Employment Report 2008-2009, 11 March 2009, p. 13.

to produce concentrations of migrant pupils in urban areas and particular cities. In Rotterdam, Birmingham and Brussels, for example, approximately half the school population has an immigrant background. In Madrid, the share of migrant pupils has multiplied by 10 since 1991.¹⁴³

The 2008 Joint Report on the implementation of the Education and Training 2010 Work Programme underlined that migrants and disadvantaged groups with different cultural backgrounds “perform less well in the benchmark areas in most countries. They need particular attention.... Although factors such as socio-economic background and language go some way to explain this, there is evidence that education and training policies and systems are not meeting these challenges and themselves may be contributing to the problem. This situation requires particular attention, in order to foster the economic and social inclusion of migrants as well as intercultural dialogue.”¹⁴⁴ The European Council of 13 and 14 March 2008 called on the Member States to improve the achievement levels of learners with a migrant background.

Reflecting on the issue of education at the end of 2008, the European Parliament stressed “the need to integrate migrants and minorities (especially Roma people)” and considered that “additional support should be provided to migrants, whilst ethnic minorities and Roma people should be assisted by trained staff who belong to the same minority or at least speak their native language”. Furthermore, the Parliament underlined that universal access to high-quality pre-primary education is “an effective way to open up access to lifelong learning for all children, but particularly children from deprived backgrounds and ethnic minorities”.¹⁴⁵

However, the role of the Union in the area of education is not limited to such political statements or to financial contributions to programmes like the Lifelong Learning Programme or the framework of the Cohesion policy. Even if its contribution has been limited to intra-Community migration of EU citizens until now, the Union has already addressed the link

between mobility and education, by passing a legally binding instrument in the late 1970s.

The Directive on the education of the children of migrant workers requires Member States to “take appropriate measures to ensure that free tuition to facilitate initial reception is offered in their territory to the children... of any worker who is a national of another Member State ..., including, in particular, the teaching – adapted to the specific needs of such children – of the official language or one of the official languages of the host State”. In addition, the Directive obliges the Member States to “take appropriate measures to promote, in coordination with normal education, teaching of the mother tongue and culture of the country of origin” for these children.¹⁴⁶ EU law therefore addressed the link between education and integration at a rather early stage and required Member States to provide for the accommodation of the “specific needs” of children whose parents were new to the territory of a Member State.

At the same time, it is widely acknowledged that transposing, implementing and monitoring the Directive has been difficult.¹⁴⁷ Against this background, the Commission launched a wide public consultation by means of a 2008 Green paper on *Migration and Mobility: Challenges and Opportunities for EU Education Systems*. Some 70% of the contributions received expressed an opinion. A large majority agreed with the Commission’s analysis, which concluded that the Directive no longer corresponds to the reality of current migration flows and that its scope – covering only children of Member State nationals – is too restrictive, limiting its potential impact. There was dissatisfaction also that the Directive does not offer enough policy tools to help implementation.

According to the European Parliament “Directive 77/486/EEC must be amended and should cover the education of children who are nationals of non-Member States or children whose parents are non-nationals of Member States”. The Parliament requested the Commission and the Council to “launch a dialogue amongst Member States in the framework of the open method of coordination to exchange best practices and to develop a common agenda to address the shortcomings in the education of immigrants”.¹⁴⁸ Currently, the quality of access to education (as guaranteed at national level) depends

¹⁴³ See European Commission, Green Paper on Migration & Mobility: challenges and opportunities for EU education systems, COM (2008) 423 final, 3 July 2008. See also the data provided in the accompanying document SEC (2008) 2173 final, 3 July 2008.

¹⁴⁴ See European Council, Draft 2008 joint progress report of the Council and the Commission on the implementation of the ‘Education & Training 2010’ work programme “Delivering lifelong learning for knowledge, creativity and innovation”, 31 January 2008, pp. 9 and 12, available online at: http://ec.europa.eu/education/policies/2010/natreport08/council_en.pdf.

¹⁴⁵ See European Parliament resolution of 18 December 2008 on delivering lifelong learning for knowledge, creativity and innovation – implementation of the ‘Education & Training 2010 work programme’, paragraphs 3 and 15.

¹⁴⁶ See Article 2 and 3 of Council Directive 77/486/EEC of 25 July 1977 on the education of the children of migrant workers, in OJ 1997 L 199, pp. 32-33. Of course this duty is to be read in accordance with the “national circumstances and legal systems” of the host states and “in cooperation with States of origin”.

¹⁴⁷ European Commission, Report on the education of migrants’ children, COM(94) 80 final, 25 March 1994.

¹⁴⁸ See European Parliament resolution of 2 April 2009 on educating the children of migrants, paragraphs 41 and 43.



somewhat on the type of minority in question. For instance, Member States are free to decide whether they introduce mother tongue education (as foreseen by the FCNM);¹⁴⁹ EU law has no say in this matter. However, it may come to be the case that special educational systems will need to be extended to EU citizens who move to other Member States and are in a comparable situation to the members of minorities for whom the system was originally established (see the effect of the *Bickel and Franz* case in Section 1.1.3.). For refugees, the European Union set certain minimum standards regarding access to education. The Qualification Directive laid down that Member States would grant “full access to the educational system” to all minors granted refugee or subsidiary protection status. The Member States are also under an obligation, under EU law, to give adults, who have been granted refugee or subsidiary protection status, access to the general education system, as well as further training or retraining, under the “same conditions as third-country nationals legally resident”.¹⁵⁰

With respect to access to education for asylum seekers, the Reception Directive establishes minimum standards. Member States are requested to give asylum seeking children and children of asylum seekers access to the education system “under similar conditions as nationals of the host Member State for so long as an expulsion measure against their parents is not actually enforced”.¹⁵¹ Member States are also requested not to withdraw secondary education for the sole reason that a minor has reached the age of majority. The directive also stresses that access to education shall not be postponed for more than three months from the date the application for asylum was lodged by the minor or the minor’s parents. The Return Directive, which had to be transposed into national law by 24 December 2010, foresees that “minors are granted access to the basic education system subject to the length of their stay”.¹⁵²

¹⁴⁹ See, for instance, Article 14 paragraph 2 of the FCNM: “In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.”

¹⁵⁰ See Article 27 of the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ 2004 L 304, pp. 12-23.

¹⁵¹ See Article 10 of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ 2003 L 31, pp. 18-25, available online at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF>.

¹⁵² See Article 14 paragraph 1 lit. c) of the Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008, on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ 2008 L 348,

While access to education is guaranteed quite widely by means of the directives, in practice vulnerable groups continue to face many difficulties in accessing quality education. Obstacles to receiving a good quality education include: (a) discriminatory enrolment procedures and access testing; (b) unavailable or inaccessible pre-school facilities; (c) schools that are far away. The children of Roma, Sinti and Travellers and the children of asylum seekers are particularly affected by such practical barriers.

1.4.5. Equal treatment in access to health

According to the Racial Equality Directive, EU Member States are under an obligation to ensure the equal treatment of persons irrespective of racial or ethnic origin in relation to “social protection, including social security and health care”. Moreover, according to the Reception Directive Member States must ensure that asylum seekers receive necessary healthcare “which shall include, at least, emergency care and essential treatment of illness”. Member States shall also provide “necessary medical or other assistance to applicants who have special needs”.¹⁵³ With respect to refugees, Member States are generally called upon to ensure access to health care “under the same eligibility conditions as nationals of the Member State”. However, access may be limited “to core benefits which will then be provided at the same levels and under the same eligibility conditions as nationals”.¹⁵⁴

Nevertheless, groups of individuals, notably rejected asylum seekers and Roma, find it particularly difficult to exercise their right to healthcare. In addition, practical obstacles impede access in culturally diverse populations, where language problems or the absence of culturally sensitive provision may lead to cases of direct and indirect discrimination.

Social determinants of health include not only access to health care and social services, but also employment and education. Provision of these services in a non-discriminatory and inclusive way can therefore improve health and decrease health inequalities. In practice, however, the situation is quite difficult to evaluate. For one thing, legislative provisions vary between Member States, and it is the way laws are applied that determines how easily medical care can be accessed by vulnerable groups. In addition, most Member States provide no data on discriminatory incidents in the context of healthcare.

pp. 98-107, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>.

¹⁵³ See Article 15 of the Reception Directive.

¹⁵⁴ See Article 29 of the Qualification Directive.

EU-MIDIS showed, however, that many migrants and minorities face discrimination in accessing health care.

The Council's 2008 *Joint Report on Social Protection and Social Inclusion*¹⁵⁵ noted that "there remain striking differences in health outcomes [...] Few [Member States] have begun to address health inequalities systematically and comprehensively by reducing social differences, preventing the ensuing health differences, or addressing the poor health that results". In 2008 the European Commission also launched the second Community Action Programme (2008-2013)¹⁵⁶ with the aim of helping to "identify the causes of health inequalities" and promoting "health, including the reduction of health inequalities".

In October 2009 the European Commission issued a *Communication on Solidarity in Health: Reducing Health Inequalities in the EU*.¹⁵⁷ The term 'health inequalities' refers to differences in health status and health outcomes that are related to avoidable social and economic factors, rather than individual and genetic features. A social gradient in health is evident in all European countries, such that the poorest people live less long and enjoy worse health. Typically, individuals belonging to migrant or Roma populations have lower life expectancy and higher morbidity compared to the national average. The Commission gives the following assessment of the health situation of the Roma: "Higher levels of mortality amongst Roma result in estimates for average life expectancy at birth which is typically of the order of 10 years less than the general population. The incidence of environment-related illnesses is higher for Roma than for the general population. Amongst children there is also a prominent lack of vaccination (in some Member States) as well as a high rate of nutritional deficiencies. Roma also frequently experience a higher incidence of accidents and involuntary injuries and a greater risk of drug and alcohol dependency. There appears also to be increased vulnerability to sexually transmitted diseases and HIV/AIDS."¹⁵⁸ The Commission recognised that collecting reliable and comparable data in this area is an important challenge.¹⁵⁹

1.4.6. Conclusion

An individual who is different – regardless of whether that difference is based on "race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation"¹⁶⁰ – is often at risk of being treated unequally. This holds true for many situations that fall within the scope of the EU treaties. At this point, EU law and EU policies step in. The degree to which the EU involves itself in such issues depends on the policy area and the legal means that are available. However, the EU is sufficiently equipped with legal and policy resources to be able to assist persons belonging to minorities. When doing so, the EU may also draw on instruments developed by international bodies, such as the Council of Europe and the OSCE.

¹⁵⁵ Available at <http://register.consilium.europa.eu/pdf/en/08/sto7/sto7274.en08.pdf>.

¹⁵⁶ Decision No. 1350/2007/EC of the European Parliament and of the Council of 23 October 2007 establishing a second programme of Community action in the field of health (2008-13), available online at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:301:0003:0013:EN:PDF>.

¹⁵⁷ COM(2009) 567 final, Brussels, 20/10/2009.

¹⁵⁸ SEC(2008) 2172, Brussels, 2/7/2008, at p. 42.

¹⁵⁹ See, for instance, COM(2009) 567 final, p. 8, which addresses the potential role that FRA can play.

¹⁶⁰ See Article 21 Charter of Fundamental Rights.



2

Recent developments on the ground



2.1. Data collection

Statistics that identify ethnic and national origin can help to surface patterns of structural inequality that affect groups in society which are vulnerable to racial discrimination – patterns that otherwise may not be seen.¹⁶¹ As the European Commission noted in 2006, “[p]olicies and practices in all areas of life, including political, administrative and business life, should be based on objective and reliable data. No one can afford costly mistakes based on faulty assumptions. This also holds for issues regarding equal treatment. There is more need than ever to have – and to use – equality data. Yet all too often, the required data are lacking. And if the information is available, it is frequently incomplete or difficult to compare across borders. As a consequence, major gaps remain in our knowledge and understanding of discrimination issues.”¹⁶² As described in previous FRA/EUMC reports, Member States collect and apply statistics on ethnic or national origin in different ways, varying from official encouragement to prohibition.

The Commission has recognised that it is up to the Member States to decide whether or not ethnic data should be collected, for instance to generate statistics on discrimination. At the same time, in the context of the Racial Equality Directive, the Commission has underlined that the “scarcity of ethnic data in most Member States might hinder proper monitoring

of the application of Community legislation”.¹⁶³

In relation to this issue, the European Parliament has recommended that Member States should consider collecting statistics “using the appropriate safeguards on protection of personal data to exclude the use of ethnic profiling, on representation of ethnic and racial groups in different areas of society, including both the public and private sectors, and to develop policies, on the basis of these data, aiming to ensure equal access to employment, self-employment, occupation, education, social protection and social security, social benefits and access to and the supply of goods”.¹⁶⁴ Similar recommendations have been made by other Council of Europe bodies such as the ECRI and the Advisory Committee under the FCNM.

In all its Annual Reports the Agency has highlighted the severe lack of robust, comprehensive and comparable data on vulnerable minorities’ experiences of discrimination and victimisation. In order to identify the extent to which members of minorities themselves agree to providing voluntarily information on their ethnic origin in data collection, respondents in EU-MIDIS were asked, ‘Would you be in favour of or opposed to providing, on an anonymous basis, information about your ethnic origin as part of a census, if that could help to combat discrimination?’ No EU-wide representative survey had ever measured the opinion of members of minorities on this subject. Consultations had typically adopted a ‘top down’ approach, focusing on what could be done legally.

¹⁶¹ Compare the ECRI study report on Ethnic statistics and data protection in the Council of Europe countries, 2007, available online at: www.coe.int/t/dghl/monitoring/ecri/activities/Themes/Ethnic_statistics_and_data_protection.pdf.

¹⁶² European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, *European handbook on equality data*, 2006 available at http://yhdenvertaisuus-fi-bin.directo.fi/@Bin/744a6ea038e81e9e2cdc229794a764bb/1308067391/application/pdf/117492/Europeanhandbook_WEB.pdf.

¹⁶³ European Commission, Communication on the application of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, COM(2006) 643 final as of 30 October 2006, p. 9.

¹⁶⁴ European Parliament resolution of 27 September 2007 on the application of Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, paragraph 42.

EU-MIDIS found that the majority (65%) of survey respondents were willing to provide anonymous information about their ethnic origin as part of a census or survey, if it could help to combat discrimination. It is important in this context to note that Article 13 of the Racial Equality Directive provides that Member States shall ensure that the competencies of Equality Bodies include 'conducting independent surveys concerning discrimination'. Indeed, by showing that such surveys can be conducted in all Member States, EU-MIDIS itself is a form of evidence.

Some Member States have been consolidating or refining their use of statistics, while in others new public debates have emerged. For instance, the Scottish Executive and the General Register Office for Scotland (GROS) have been working to develop a new ethnicity classification for use in the 2011 census and other government statistical collections. In the United Kingdom, which has used such data for many years, a new Equalities Review has emphasised the need to underpin equality measures by collecting data across seven 'diversity' categories, including ethnicity and religion.¹⁶⁵ As a result, new guidelines have been issued to local authorities.¹⁶⁶ The next UK Census of Population in 2011 will contain a new question on ethnic origins, as well as questions about national identity, and will include Gypsy/Irish Traveller and Arab populations for the first time.¹⁶⁷

In Belgium, the Commission for the Protection of Privacy¹⁶⁸ delivered a reasoned opinion on the practice of the Flemish Public Office for Employment (VDAB) to maintain an internal database that registers sensitive personal data (including ethnic origin) for the purpose of monitoring diversity among its personnel. The Commission judged the practice to be lawful as long as the reason for registering sensitive data is beneficial for the worker concerned and he or she has given written consent.¹⁶⁹ For its diversity policy, the Flemish regional government piloted a monitoring instrument with employers, based on employees' origins.¹⁷⁰

In 2008, in Slovakia, the Parliamentary Committee for Human Rights, Minorities and Status of Women adopted a resolution¹⁷¹ calling on the government to legalise the gathering of data on ethnic origin in order to improve the monitoring of discrimination on 'racial' or ethnic grounds. With respect to Germany, the UN Committee on the Elimination of Racial Discrimination (CERD) 2008 report criticised the complete absence of statistical data on the ethnic composition of the population and workforce.¹⁷² The next German census in 2011 will gather data on migration background and national origin for the first time.¹⁷³ In Hungary, the data protection and minority rights ombudsmen published a report with recommendations on ethnic data collection. The recommendations include options for establishing objective criteria for membership of minority groups for the purposes of political representation and protection of minority rights.¹⁷⁴ In December 2009, the Hungarian Parliament adopted a law on the 2011 census, which will include non-compulsory questions on 'belonging to a national or ethnic group'.¹⁷⁵

In France, a debate on ethnic statistics continued in the media. A section of scientific opinion, led by the Institut National d'Études Démographiques (INED) favoured the collection of ethnic statistical data, whereas others, like the Haute Autorité de Lutte contre les Discriminations et pour l'Égalité (HALDE) and NGOs such as SOS Racisme and LICRA, were opposed.¹⁷⁶

165 The Equalities Review (2007) *Fairness and Freedom: The Final Report of the Equalities Review*, available online at: <http://archive.cabinetoffice.gov.uk/equalitiesreview/publications.html>.

166 A. Tuke (2008) *Measuring equality at a local level*, London: Improvement and Development Agency, available online at: www.idea.gov.uk/idk/aio/8873228.

167 Available at: www.ons.gov.uk/census/2011-census/2011-census-questionnaire-content/index.html.

168 Commissie voor de bescherming van de persoonlijke levenssfeer / Commission de la protection de la vie privée.

169 Avis n°05/2008 du 27 February 2008, available online at: www.privacycommission.be/fr/docs/Commission/2008/avis_05_2008.pdf.

170 Information provided by the Flemish Agency of Internal Administration (Agentschap voor Binnenlands Bestuur), 19/08/2009.

171 Uznesenie Výboru Národnej rady Slovenskej republiky pre ľudské práva, národnosti a postavenie žien k problematike zberu etnických dát.

172 Committee on the Elimination of Racial Discrimination (CERD-UN) (2008), *Consideration of Reports Submitted by State Parties Under Article 9 of the Convention. Concluding Observations of CERD. Germany (Seventy-third session)*.

173 According to Section 3 and 7 of the recently adopted Census 2011 Act (ZensG 2011).

174 See: www.kisebbsegiombudsman.hu/hir-477-jelentes-az-etnikai-adatok-kezeleserol.html; http://abiweb.obh.hu/abi/index.php?menu=aktualis/ajanlasok&dok=20100204_ABI_1.

175 See: www.parlament.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=38&p_izon=10105.

176 See: www.lepoint.fr/actualites-societe/2009-05-07/statistiques-ethniques-yazid-sabeg-veut-montrer-le-vrai-visage-de-la-france/920/0/328176. Compare also www.lemonde.fr/societe/article/2010/02/05/pas-de-consensus-sur-les-statistiques-ethniques_1301389_3224.html. On 5 February 2010, the Comité pour la Mesure et l'Évaluation de la Diversité et des Discriminations (COMEDD) published a report (*Inequality and discrimination: for a critical and responsible use of statistical tools*) in response to a speech on diversity by the French President in which he called for the development of method for measuring discrimination. See <http://www.ladocumentationfrancaise.fr/>.

2.2. Experiences of discrimination: EU-MIDIS

2.2.1. Introduction: the European Union Minorities and Discrimination Survey

EU-MIDIS is the first and largest EU-wide survey to date that interviewed members of selected migrant and ethnic minority groups using an identical (translated) questionnaire in all Member States. Its results are therefore comparable, between different minority groups and across countries. Individual respondents with an immigrant or ethnic minority status were randomly selected. The ethnic groups targeted were identified by the Agency's RAXEN network of national focal points in each country taking the size of each group into consideration in the design of a random sample. This meant in practice that very small vulnerable groups that are sparsely and widely dispersed in the population could not be selected for interviews on the basis of random sampling.

Between one and three groups were selected in each country for surveying, with a minimum of 500 respondents per group. Combining the results from several countries (for example, the responses of all Roma interviewees, or all those with a North African background) permitted the research team to report on the situation of certain minorities across the EU.

In total, 23,565 people with a migrant and ethnic minority background were interviewed for the EU-MIDIS survey. A further 5,000 people from the majority population were interviewed in 10 Member States in order to compare selected responses of minority and majority population respondents living in the same area. The online technical report from the survey outlines which groups were interviewed in which Member States.¹⁷⁷

Questionnaire interviews were conducted face-to-face in people's homes, with each interview lasting between 20 and 50 minutes depending on the number of incidents of discrimination and victimisation that the respondent had experienced in the previous 12 months. With respect to discrimination, nine aspects of everyday life were addressed: (1) looking for work; (2) at work; (3) looking for a house or apartment to rent or buy; (4) treatment by healthcare personnel; (5) treatment by social services personnel; (6) treatment by school and other education personnel; (7) at a café, restaurant, bar or nightclub; (8) entering or being in a shop; (9) trying to open a bank account or obtain a bank loan.

¹⁷⁷ See online at: <http://fra.europa.eu/eu-midis>.

The questionnaire asked respondents a series of questions on the following:

- General experiences of discrimination, including multiple experiences of discrimination.
- Awareness of rights in regard to non-discrimination.
- Experiences of discrimination, firstly in the last five years and secondly in the last 12 months, based on immigrant/ethnic background, in nine areas.
- Experiences of criminal victimisation, in the last five years and in the last 12 months, including whether this was perceived to be ethnically/racially motivated, with respect to: property crime; assaults and threats; harassment of a serious nature; and corruption.
- Contact with law enforcement officials, and the nature and outcome of this contact.
- Contact with customs and border control.

2.2.2. Experiences of discrimination across minority groups and Member States

The analysis of the responses by ethnic group and Member State showed that Roma and Sub-Saharan Africans are the two groups, which experienced most incidents of discrimination across the EU, but there are significant variations between EU Member States.

On average, across nine different areas of everyday life, the Roma (interviewed in seven countries: Bulgaria, Czech Republic, Greece, Hungary, Poland, Romania and Slovakia) suffered discrimination because of their ethnic background more than any other group surveyed in EU-MIDIS (including, for example, Sub-Saharan Africans¹⁷⁸ or North Africans¹⁷⁹). One in every two Roma interviewed said that he or she had faced discrimination on the grounds of ethnicity at least once in the previous 12 months. The average Roma interviewee ran the risk of being discriminated against 4.6 times over a 12 month period. For those who had been discriminated against, this average increased to 11 incidents over a 12 month period.

EU-MIDIS found that Sub-Saharan Africans faced the second highest rate of overall discrimination. 41% had suffered discrimination because of their immigrant or ethnic minority background at least once in the previous 12 months. This was followed by discrimination against North Africans (36%).

¹⁷⁸ This aggregate group consists of Sub-Saharan Africans interviewed in France, Ireland and Portugal; Somalis interviewed in Denmark, Finland and Sweden; and Africans interviewed in Malta as well as the Surinamese interviewed in the Netherlands.

¹⁷⁹ This aggregate group consists of North Africans interviewed in Belgium, France, Italy, the Netherlands and Spain.

In joint fourth place were Turkish (interviewed in six countries: Austria, Belgium, Bulgaria, Denmark, Germany and the Netherlands) and Central and East European respondents,¹⁸⁰ a quarter of whom (23%) had suffered discrimination in the previous 12 months.

Respondents with a Russian background (interviewed in four countries: Estonia, Finland, Latvia and Lithuania) and those from the former Yugoslavia¹⁸¹ experienced the lowest levels of discrimination of all groups surveyed in EU-MIDIS (respectively 14% and 12%).

If these results are broken down further, into specific groups in specific Member States, the ten minorities that experienced the highest levels of discrimination over a 12 month period were, in descending order: Roma in the Czech Republic (64%), Africans in Malta (63%), Roma in Hungary (62%), Roma in Poland (59%), Roma in Greece (55%), Sub-Saharan Africans in Ireland (54%), North Africans in Italy (52%), Somalis in Finland (47%), Somalis in Denmark (46%), and Brazilians in Portugal (44%).

On average, Roma experienced more incidents of discrimination over a 12 month period than members of other aggregate groups surveyed (such as Sub-Saharan Africans or Turks). However, when the results for specific groups were broken down by Member State, the highest incidence of discrimination was experienced by North Africans in Italy (an average of 9.29 incidents for every North African person interviewed). Roma in Poland reported the next highest incidence (6.81 incidents per individual interviewed), followed by Roma in Hungary (6.69 incidents per individual).

EU-MIDIS data: the example of access to services

Discrimination experiences in relation to leisure and retail services (for example when in or when trying to enter a café, restaurant, bar or nightclub) were a significant problem for a number of the groups surveyed. On average, 20% of Roma, 14% of Sub-Saharan Africans, and 13% of North Africans had experienced discrimination when in or trying to enter a café, restaurant, bar or nightclub.

When the results were broken down by group and Member State, Africans in Malta faced most discrimination in this area (35% had experienced

discrimination in the previous 12 months). The second highest rate of discrimination was reported by Roma in the Czech Republic and North Africans in Italy (both 30%).

Discrimination when in or when trying to enter a shop was a significant problem for the Roma. On average, 20% of Roma reported discrimination against them when in or trying to enter a shop. By comparison, 11% of North Africans and Sub-Saharan Africans reported discrimination in this area, and less than 5% of other groups did so.

When the results were broken down by groups and Member State, the Roma in Poland most frequently faced discrimination in shops (44%). The second highest rate was experienced by Roma in Hungary (31%), followed by North Africans in Italy (27%).

On average, 46% of respondents believed that no legislation forbids discrimination on grounds of ethnicity in shops, restaurants, bars or clubs. A further 24% of respondents either did not know or refused to answer the question, while just 30% said that they were aware of the existence of anti-discrimination legislation.

Of the nine areas surveyed in EU-MIDIS, discrimination when trying to open a bank account or obtain a loan was the least problematic. However, one explanation for this may be that the individuals who come into contact with banks are probably among the least disadvantaged in their communities. On average, 7% of Roma, 6% of North Africans, and less than 5% of other general groups reported discrimination when they tried to open a bank account or obtain a loan. When the results are broken down by group and Member State, nevertheless, North Africans in Italy indicated a high level of discrimination (23%) when compared to other groups.

Several sections in this chapter will look at different areas of life such as employment (2.4.1.), the housing sector (2.4.2.), healthcare (2.4.3.) and education (2.4.4.). In all of these areas, the EU-MIDIS results revealed considerable discrimination. In the analysis that follows, EU-MIDIS findings, based on primary data collection, will be complemented by secondary data and other information provided by FRA's RAXEN national focal points.

2.2.3. Non-reporting of discrimination

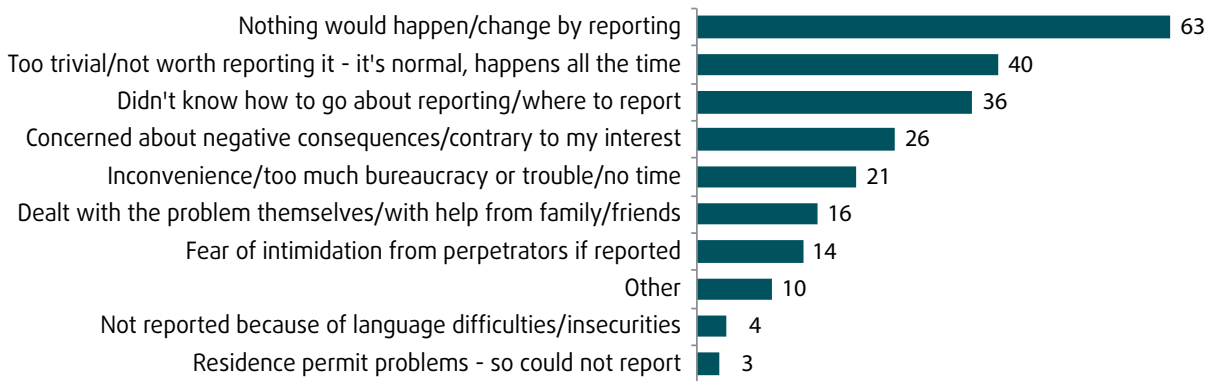
On average – across all groups surveyed in EU-MIDIS – 82% of those who had experienced discrimination in the previous 12 months because of their minority or immigrant background did not report their most recent experience of discrimination either at the place where

¹⁸⁰ This aggregate group consists of Albanians and Romanians interviewed in Italy; Albanians interviewed in Greece; Romanians interviewed in Italy and Spain; and persons from the 10 CEE interviewed in Ireland and the UK.

¹⁸¹ This aggregate group consists of former Yugoslavians interviewed in Austria, Germany and Luxembourg, and Serbians and Bosnians interviewed in Slovenia.



Figure 2.1: Reasons for not reporting discrimination in specific areas (%)



Notes: The areas covered are employment, education, housing, healthcare/social services and consumer services.

Source: FRA (2010) 'Rights Awareness and Equality Bodies', Data in Focus Report 3, Figure 12 (EU-MIDIS survey questions CA5-C15)

it occurred or to a competent authority. Non-reporting ranged from 79% among the Roma to 88% among Central and East Europeans.

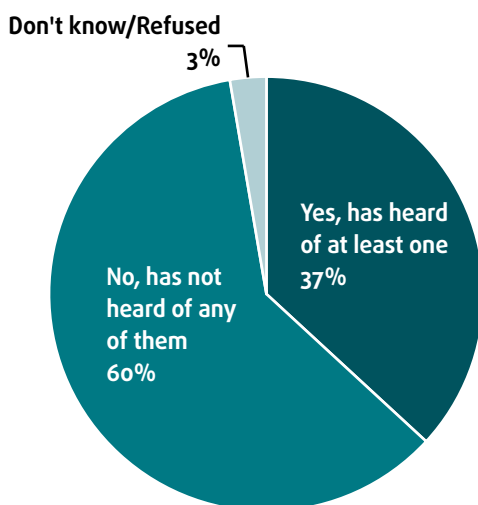
To illustrate, in Portugal non-reporting of discrimination is the norm. 100% of Sub-Saharan Africans and 98% of Brazilians who experienced discrimination did not report their most recent experience. In France reporting levels were higher than in most Member States, but were still relatively low: 29% of North Africans and 37% of Sub-Saharan Africans reported their most recent experience of discrimination.

The most common reason that all respondents gave for not reporting discrimination incidents was the belief that 'nothing would happen' if they did.

When presented with the name or names of Equality Bodies in their country of residence, 60% of respondents said that they had not heard of any of them, a finding that helps to explain the very low rates of discrimination reporting.

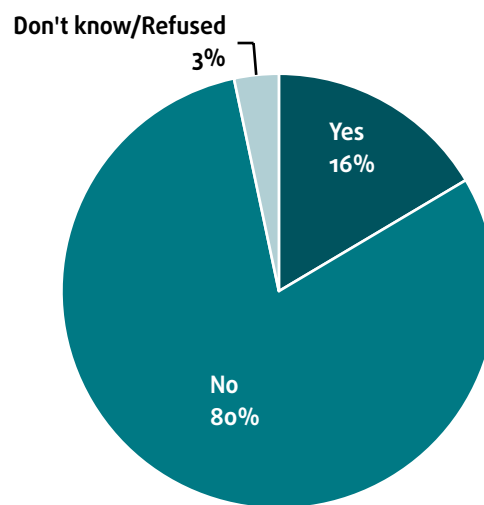
The survey asked respondents whether they knew of any organisation that supports people who have experienced discrimination (for whatever reason). Only 16% of respondents indicated that they had.

Figure 2.2: Ethnic minority/migrant respondents who have heard of at least one of up to three named equality bodies in their country, EU27 (%) – EU-MIDIS results



Source: FRA (2010) 'Rights Awareness and Equality Bodies', Data in Focus Report 3, Figure 8 (EU-MIDIS survey questions B2a-B2c)

Figure 2.3: Awareness of organisations that can support people who suffer discrimination, EU27 (% of all respondents) – EU-MIDIS results



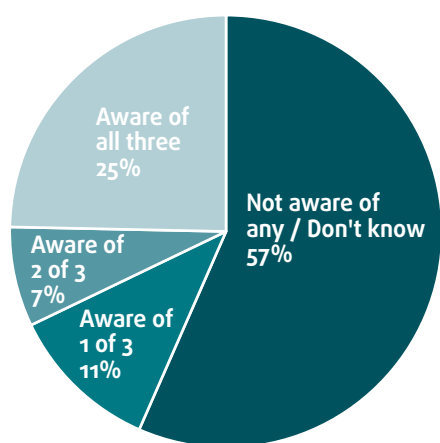
Source: FRA (2010) 'Rights Awareness and Equality Bodies', Data in Focus Report 3, Figure 7 (EU-MIDIS survey question A3)

2.2.4. Comparing awareness of rights among minorities and with the general population

EU-MIDIS examined rights awareness extensively. Questions were asked about awareness of anti-discrimination legislation in three fields, namely employment, housing, and access to goods and services. All these fields fall within the remit of the Racial Equality Directive (2.3.1.). Overall, 57% of all respondents indicated either that no legislation exists or that they were unsure of its existence; 43% said they knew of the existence of legislation at some level. Of the latter group, 11% knew about one of the three areas of anti-discrimination legislation about which questions were asked, 7% knew about two areas, and 25% said they were aware of all three areas.

In sum, only one in four of the respondents surveyed (25%) was aware that legislation addresses discrimination on grounds of race and ethnicity in employment, housing, and the provision of goods and services. This indicates that work needs to be done to ensure that the remaining 75% of ethnic minority and immigrant groups become fully informed about their rights.

Figure 2.4: Awareness of laws that forbid discrimination on the basis of ethnicity in the three areas about which questions were asked (%)



Note: The areas covered are employment, housing, and access to goods and services.

Source: FRA (2010) 'Rights Awareness and Equality Bodies', Data in Focus Report 3, Figure 4, questions B1a-B1c

In view of this result, it may be noted that the Racial Equality Directive includes an article on 'dissemination of information' that states (Article 10): "Member States shall take care that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of the persons concerned by all appropriate means throughout their territory".

The findings of EU-MIDIS show that many of the potential victims for whom this legislation was designed, namely minorities vulnerable to discrimination on grounds of race or ethnicity, are insufficiently aware of its existence.

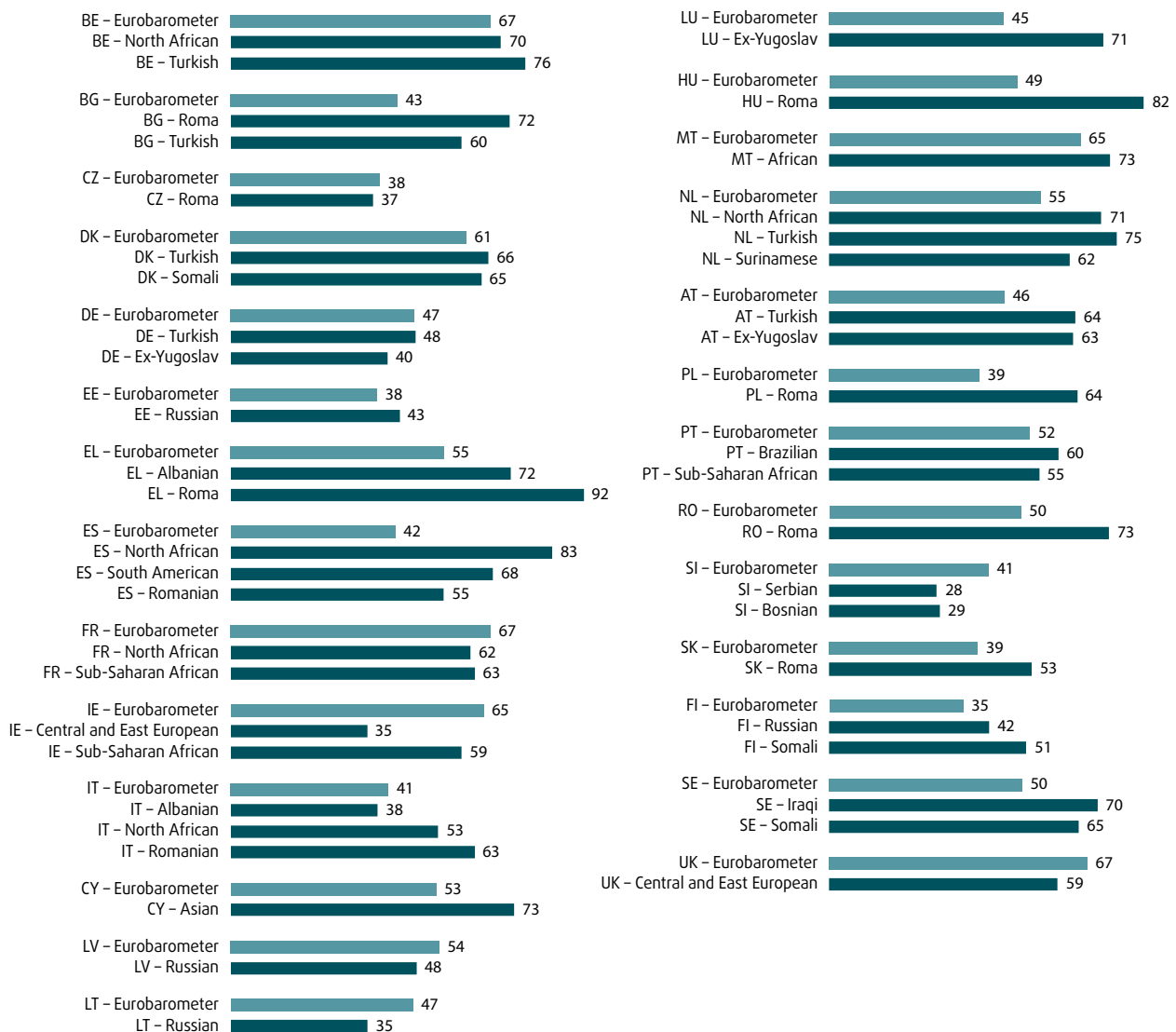
In order to compare the rights awareness of the general population and minority groups with regard to the Charter of Fundamental Rights the general population survey 'Eurobarometer' and EU-MIDIS used exactly the same question: 'Are you familiar with the Charter of Fundamental Rights of the European Union?'. A comparison of the responses received shows that fewer persons belonging to minorities are aware of the EU's bill of rights than are members of the general population. In 19 out of 27 Member States, minority respondents indicated more often than respondents from the majority population that they had never heard of the Charter of Fundamental Rights (see Figure 2.5).

In Sweden, for example, 50% of the majority population, but 65% of Somalis and 70% of Iraqis, had never heard of the Charter. In Austria, 46% of the majority population, but 64% of Turkish and 63% of former Yugoslavians, were similarly unaware.

In all Member States where Roma were interviewed, with the exception of the Czech Republic (where not knowing about the Charter showed a one per cent difference between the Roma and majority population), Roma interviewees were far more likely not to have heard of the Charter. By comparison, in Latvia and Lithuania, EU-MIDIS respondents with a Russian background indicated a higher level of awareness of the Charter than Eurobarometer respondents.

Read alongside the EU-MIDIS findings on familiarity with knowledge of anti-discrimination norms and institutions, these results indicate that minorities are generally less aware than the majority population of legislation in the EU that upholds fundamental rights, including the rights of vulnerable groups. Against this background, it seems that efficient awareness-raising campaigns that will inform minority groups of their rights are urgently needed.

Figure 2.5: Respondents who had never heard of the Charter of Fundamental Rights of the European Union – Comparison between general (light green) and minority (dark green) population



Source: FRA (2010) 'Rights Awareness and Equality Bodies', Data in Focus Report 3, Figure 6, question B3; Flash Eurobarometer 213, question Q5

2.3. Discrimination and racism in selected areas of social life

2.3.1. Employment

2.3.1.1. EU-MIDIS results

The results of the EU-MIDIS survey indicate that people of immigrant or ethnic minority background experience the most serious discrimination in the area of employment (when looking for work and at work).

On average, only 43% of Roma said that they had had some kind of paid employment in the last five years. By comparison, 90% of Central and East European respondents said they had been in paid employment in the last five years. With respect to occupational status, when survey interviews were conducted, an average of 23% of Roma said they were unemployed, and just 28% said they had some kind of paid employment. Almost half were economically inactive: they were homemakers, retired persons, disabled, or too young to work (still in education).

When the figures are broken down by minority and Member State, Africans in Malta had the highest rate of unemployment at the time of the survey interview (54%). They were followed by Roma in Slovakia (36%) and Roma in Bulgaria (33%).

On average, 38% of Roma job seekers reported that they had suffered discrimination because of their ethnicity at least once in the last 12 months when looking for work. In descending order, other general groups reported the following levels discrimination when looking for work: Sub-Saharan Africans (22%), North Africans (20%), Turkish respondents (12%), Central and East Europeans (11%), Russians and former Yugoslavians (both 8%).

When the results are broken down by group and Member State, six of the ten groups that reported the highest levels of discrimination when looking for work were Roma. Roma in Hungary faced discrimination most frequently (47%).

On average, 19% of Roma said they had experienced discrimination at work because of their ethnicity at least once in the previous 12 months. Among other groups, rates of discrimination at work were as follows: Sub-Saharan Africans (17%), North Africans (16%), Central and East Europeans (13%), Turkish respondents (10%), and former Yugoslavians and Russians (both 4%).

When the results are broken down by group and Member State, the top groups that experienced the highest levels of discrimination at work were: North Africans in Italy (30%), Roma in Greece (29%), Roma in the Czech Republic (27%), Africans in Malta (27%), Sub-Saharan Africans in Ireland (26%), Roma in Hungary (25%), Brazilians in Portugal (24%), Turks in Denmark (22%), Roma in Poland (22%), and Romanians in Italy (20%).

Respondents were also asked whether they knew about anti-discrimination legislation with regard to employment. On average, 39% of respondents thought that no legislation forbids discrimination against people on grounds of ethnicity when applying for a job. A further 23% either did not know or refused to answer the question, while 39% said they were aware of the existence of such legislation.¹⁸²

¹⁸² The figures add up to 101% because they have been rounded upwards.

2.3.1.2. Other sources

In a 2008 statistical analysis, the Organisation for Economic Co-operation and Development (OECD) pointed out that young second generation immigrants in Germany are 15% less likely to obtain employment than German peers of the same age. Since only half of this gap can be explained by differences in educational attainment, the OECD concluded that 'labour market discrimination is likely to be a strong explanatory factor'.¹⁸³ An analysis of recent official data in Estonia arrived at similar results. Compared with ethnic Estonians, non-Estonians were more likely to be unemployed and to hold lower level positions, their job insecurity was higher, and the discrepancy between their level of education and the requirements of their jobs wider.¹⁸⁴ This situation did not change during the recession: on the contrary, in general the immigrant population became more vulnerable. Their weak position in Estonia's labour market is linked to their language skills and to the fact that they live in a part of the country where the secondary sector plays a major role in local employment.¹⁸⁵

Similar (indirect) statistical evidence of the problem of discrimination can be found for Belgium, Germany, the Netherlands and the United Kingdom, in FRA's 2008 Annual Report;¹⁸⁶ for France and Sweden in the 2007 report;¹⁸⁷ and for Denmark and Finland in the 2006 report.¹⁸⁸

In 2009 employment continued to be the area, where discrimination was most frequently reported. This was the case, for example, in France,¹⁸⁹ Germany¹⁹⁰ and Spain.¹⁹¹ As in previous years, an indication of racial discrimination in employment was provided by statistical patterns that show inequality between migrants/minorities and the majority

¹⁸³ OECD (2008) Employment Outlook – Edition 2008, Paris: OECD Publishing; quote stems from the summary version Employment Outlook 2008 – How does Germany compare?, available at: www.oecd.org/dataoecd/33/54/40912588.pdf.

¹⁸⁴ K. Kasesaru, A. Trumm A. (2008) 'The Socio-economic Situation of Non-Estonians', in: M. Heidmets (ed.) Estonian Human Development Report 2007, Tallinn, pp. 34-35. The sociological analysis was based on official statistical data from previous years.

¹⁸⁵ In late 2009 the Ministry of Social Affairs published an analytical overview "Employment and Working Life in Estonia 2008-2009" which gave particular attention to the situation of immigrant populations in Estonia's labour market. See www.sm.ee/fileadmin/meedia/Dokumendid/Toovaldkond/toovaldkonna_areng_2008-2009_eng.pdf.

¹⁸⁶ EU Agency for Fundamental Rights Annual Report 2008, p. 43.

¹⁸⁷ EU Agency for Fundamental Rights, Report on Racism and Xenophobia in the Member States of the EU 2007, p. 46.

¹⁸⁸ EUMC Annual Report on the Situation regarding Racism and Xenophobia in the Member States of the EU 2006, p. 43.

¹⁸⁹ HALDE, Annual Report 2008.

¹⁹⁰ M. Sauer (2009) Türkischstämmige Migranten in Nordrhein-Westfalen und in Deutschland: Lebenssituation und Integrationsstand. Ergebnisse der neunten Mehrthemenbefragung, Essen: ZfT, p. 166.

¹⁹¹ Universidad Pública de Navarra, Gabinete de Estudios de CCOO (2008) Encuesta a la población inmigrante en Navarra 2008, Pamplona: Gobierno de Navarra.



population, despite equivalence in qualifications and other relevant criteria. In 2009 surveys revealed such patterns among migrant workers in Italy¹⁹² and ethnic Russians in Estonia.¹⁹³

Italy attracted international attention when immigrants were attacked by a local mob at the beginning of 2010 in Rosarno, Calabria. Between 15 and 17 February 2010, a delegation of 12 Members of the European Parliament conducted a fact-finding mission in Rosarno to gather information about the working conditions of seasonal workers and social conditions in the area.¹⁹⁴ The Extraordinary Commissioner for the Municipality of Rosarno said that each year around 1,500 non-EU immigrants stayed in the area and moved around Italy during harvest season confirming that they live in inhumane conditions.¹⁹⁵

Surveys conducted at national level

Interview surveys carried out in 2008 provide further evidence. A survey¹⁹⁶ of 112 major employers in Slovenia revealed that 31.5% of the employers interviewed would prefer to hire Slovenian nationals of Slovenian ethnic origin. In Lithuania, 40.7% of the employers interviewed for a similar survey said they would not hire a Roma.¹⁹⁷ In Finland responses differed according to the work sector: 65% of employers in the construction sector said they would be willing to employ (appropriately qualified) Roma, compared to 41% in retail.¹⁹⁸

The experiences of migrant and minority workers complement such surveys. In 2008 the Ombudsman against Ethnic Discrimination in Sweden published a report on the experiences of adults of African origin, many of whom had experienced discrimination and

racism in the labour market.¹⁹⁹ In France, a survey published by the *Haute Autorite de Lutte contre les Discriminations et pour l'Egalite (HALDE)* showed that more than one third of the individuals who felt they had suffered discrimination at work did not report it, and that in most cases the person responsible had been the employer or supervisor.²⁰⁰ Most of the migrant women who were interviewed in a German survey stated that they experienced discrimination in the labour market or in vocational training, including bullying.²⁰¹

A study in Ireland showed that job-seekers from non-English speaking countries consistently reported discrimination more frequently than others.²⁰² Another found that negative experiences and discrimination at work were reported most frequently by Nigerians and Chinese respondents, and that Nigerians reported the highest rates of bullying or harassment by co-workers.²⁰³ A United Kingdom study concluded that racial discrimination was perceived to have been a barrier to career progression by one third of Asian and one fifth of black managers.²⁰⁴

The surveys reviewed for this report did not all confirm perceptions of discrimination. For example, Ukrainian migrants working in Poland told researchers that they generally did not experience discrimination.²⁰⁵ Researchers found that in Bulgaria only 1% of female immigrants felt they had been victims of discrimination when they accessed the labour market.²⁰⁶

192 A survey of 200 clerical and manual workers conducted in Milan: Z. Dazzi (2009) 'I lavoratori immigrati pagati il 20 per cento in meno', in *La Repubblica*.

193 T. Vihalemm (ed.) (2009) 'Quality of Life and Integration', in: Estonian Human Development Report 2008, Tallinn, p. 101. The sociological analysis was based on official statistical data from previous years. Available at: www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/rosarno_rap/rosarno_rapen.pdf.

194 See: www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/rosarno_rap/rosarno_rapen.pdf.

195 Human Rights Watch, www.hrw.org/en/news/2010/02/04/italy-speed-investigations-rosarno-attacks.

196 Accepting Diversity – A Step towards a Just Society, carried out by Zavod za izobraževanje in kulturo Črnomelj [Institute for Education and Culture Črnomelj] between October and December 2007.

197 Vilmorus (2008) *Tolerancija*; Phone survey of companies. The study was conducted at the request of the joint-stock company Idea Prima.

198 H. Syrjä & M. Valtakari (2008), *Romanien pitkä matka työn markkinoille. Tutkimus romanien työmarkkinoille sijoittumisen edistämisestä. Työ- ja elinkeinoministeriön julkaisuja, Työ ja yrittäjyys 22/2008*. Available at: www.tem.fi/files/20018/TEMJul_22_2008_tyo_ja_yrittajyys.pdf.

199 Sweden/Ombudsmannen mot etnisk diskriminering (2008) *Att färgas av Sverige: Upplevelser av diskriminering och rasism bland vuxna med afrikansk bakgrund i Sverige*, (Coloured by Sweden: Experiences Regarding Discrimination and Racism among Adult People of African Origin in Sweden), authored by Kalonaityte, Kawesa and Tedros.

200 HALDE/CSA, *Les discriminations dans le monde du travail*, February 2008, available at: www.halde.fr/IMG/pdf/CSA_HALDE_Discrimination_dans_le_monde_du_travail-2-3.pdf.

201 Ch. Färber, N. Arslan, M. Köhnen, R. Parlar (2008) *Migration, Geschlecht und Arbeit. Probleme und Potentiale von Migratinnen auf dem Arbeitsmarkt*, Opladen & Farmington Hills: Budrich UniPress Ltd.

202 H. Russell, E. Quinn, King O'Riain, F. McGinnity (2008), *The Experience of Discrimination in Ireland: Analysis of the QNHS Equality Module*. Also O'Connell, F. McGinnity (2008), *Immigrants at Work: Ethnicity and Nationality in the Irish Labour Market*. Available online at: www.esri.ie/publications/search_for_a_publication/search_results/view/index.xml?id=2608 and www.equality.ie/index.asp?docID=737.

203 Immigrant Council of Ireland, Migration & Citizenship Research Unit, University College Dublin (2008), *Getting On: From Migration to Integration*.

204 Hooker, H., Jagger, N. and Baldwin, S. (2008), *Recruitment of Under-Represented Groups into the Senior Civil Service*, Department for Work and Pensions, ISBN 978 1 84763 477 1.

205 International Organization for Migration (2008) *Ukrainian Migrants on the Polish Labour Market*.

206 A. Krasteva (2008), *Immigration, Gender, Labour* in: P. Spasova, Y. Georgiev (eds.) *The Implications of EU Membership on Immigration Trends and Immigrant Integration Policies for the Bulgarian Labour Market*, Sofia: Economic Policy Institute, available at: http://epi-bg.org/dmdocuments/book-GMF-EPI_all.pdf.

Further surveys were conducted in 2009. In a German survey of almost 1,600 migrants,²⁰⁷ 23% reported that they had suffered discrimination. Another survey of migrants of Turkish origin found that half felt that they had experienced discrimination at the workplace and 43% when looking for work.²⁰⁸ A survey of migrants in Navarra, Spain,²⁰⁹ found that 42% of those questioned felt they had suffered discrimination at least once. An Italian survey found that 50% of immigrant workers reported racist insults.²¹⁰

Surveys of the majority population tend to reinforce these findings. More than half the young people surveyed in northeast Poland stated that they would not like to have a Roma as a work colleague or superior.²¹¹ In a Lithuanian phone survey, almost 60% of employers stated they would hire local citizens before refugees.²¹² In Romania, 44% of respondents agreed that they would not hire a Roma, because they were perceived to be "lazy and untrustworthy".²¹³ In Germany, a study revealed that irrational fears and negative attitudes towards migrants and Muslims were widespread.²¹⁴ In Sweden, finally, whilst an increasing number of Swedes reported positive experiences with immigrants, attitudes towards Muslims had become more hostile and a higher proportion of those polled agreed that headscarves should be banned from workplaces.²¹⁵

Discrimination testing

Victims often do not recognise acts of discrimination against them, not least because discrimination in employment during recruitment is hard to detect or prove. Discrimination testing is designed to expose this problem. In 2008, Animo-Antwerp, the youth section of the Flemish socialist party in Belgium, published the results of a test it had carried out. It sent pairs of CVs to 50 employers. Each employer received two CVs that were identical in every respect except the ethnic origin of the job applicant. Native Belgian applicants were invited to an interview in 60% of the cases, whereas only 25% of ethnic minority applicants were invited to an interview.²¹⁶

In 2009 an Irish testing experiment compared employers' responses to job applications from candidates who had identical profiles apart from their ethnic or national origin. Job applicants with Irish names were more than twice as likely to be invited to interview compared with candidates whose names were identifiably non-Irish.²¹⁷

The results of the first systematic discrimination testing study in Germany since the mid-1990s were published in February 2010 revealing that job applicants with a Turkish-sounding name faced discriminatory barriers in accessing the labour market. On behalf of the Institute for the Study of Labour (*Forschungsinstitut zur Zukunft der Arbeit*, IZA), two researchers tested 528 publicly advertised student internships and discovered that applicants with a Turkish name were 14% less likely to be called back than applicants with a German name. Differential treatment was significantly higher in small companies where "Turkish applicants" were 24% less likely to be called back. The researchers, however, also discovered that applicants were treated equally when a reference letter containing positive statements from previous employers about the candidate's personality accompanied the applications.²¹⁸

Another study of labour market discrimination against non-Western migrants was recently published in the Netherlands. Discrimination testing again revealed that non-Westerners had a lower chance of being invited for a job interview. The report also showed that discrimination is more frequent during recruitment for lower- and middle-ranking jobs.²¹⁹

207 Bertelsmann Stiftung (2009) *Zuwanderer in Deutschland. Ergebnisse einer repräsentativen Befragung von Menschen mit Migrationshintergrund*, pp. 67-71.

208 M. Sauer (2009) *Türkischstämmige Migranten in Nordrhein-Westfalen und in Deutschland: Lebenssituation und Integrationsstand. Ergebnisse der neunten Mehrthemenbefragung*, Essen: ZfT, p. 166.

209 Universidad Pública de Navarra, Gabinete de Estudios de CCOO (2008) *Encuesta a la población inmigrante en Navarra 2008*, Pamplona: Gobierno de Navarra.

210 A survey of 200 clerical and manual workers conducted in Milan: Z. Dazzi (2009) 'I lavoratori immigrati pagati il 20 per cent in meno', in *La Repubblica*.

211 T. Kasprzak, B. Walczak (2009) 'Diagnoza postaw młodzieży województwa podlaskiego wobec odmienności kulturowej: raport z badania', in: A. Jasińska-Kania, K. Staszyńska (eds), *Diagnoza postaw młodzieży województwa podlaskiego wobec odmienności kulturowej*, Białystok: Urząd Marszałkowski Województwa Podlaskiego, pp. 51-133.

212 Lietuvos suaugusiųjų švietimo ir informavimo centras (Lithuanian Centre for Adult Education and Information) at the request of Ruklos pabėgėlių priėmimo centras (Rukla Refugee Reception Centre) in February 2009. It included a sample of 404 Lithuanian companies.

213 *Barometrul interetnic 2009 – Romii și majoritarii (Inter-ethnic Barometer 2009: Roma and the Majority)*, research conducted by IMAS. The press release announcing all the documents produced within the survey is available at: www.sgg.ro/index.php?implementare_program.

214 *Antidiskriminierungsstelle des Bundes (2009) Discrimination in Everyday Life. Perception of Discrimination and Anti-Discrimination Policy in our Society*, Berlin: ADS, pp. 239, 241.

215 The annual *Mångfaldsbarometern (Diversity barometer)* on the attitudes of Swedes towards immigrants. Available at: <http://hd.se/inrikes/2009/10/29/fler-positiva-till-invandrare/>

216 The results can be consulted at: www.minderhedenforum.be/index.htm.

217 The Equality Authority; Frances McGinnity, Jacqueline Nelson, Pete Lunn, Emma Quinn (2009), *Discrimination in Recruitment: evidence from a field experiment*. Available at: www.equality.ie/index.asp?docID=794.

218 L. Kaas and C. Manger (2010) *Ethnic Discrimination in Germany's Labour Market: A Field Experiment*, Bonn: IZA; available at: <http://ftp.iza.org/dp4741.pdf>.

219 See www.scp.nl/dsresource?objectid=24186&type=org.



2.3.1.3. Specific examples of cases and incidents of discrimination

Only a small minority of discrimination complaints ever result in a court case. In 2008 the Irish Equality Tribunal decided two cases in favour of employees who had been discriminated against on grounds of 'race' in dismissal cases.²²⁰ The Tribunal awarded €20,000 in compensation to another woman for racial discrimination in dismissal²²¹ and upheld the complaint of a British national against an engineering company which had failed to take 'reasonable and practicable steps' to prevent his harassment on grounds of 'race'.²²² In Portugal, a case was reported to the Commission for Equality and Against Racial Discrimination²²³ concerning a local authority worker of Cape-Verdean origin who had been suspended, allegedly for accusing the local authority president of racism after he had called her a "nigger", and for talking Creole with her sister, contrary to the president's instructions.²²⁴

In Hungary a company was fined for refusing to employ three applicants as cleaners because of their Roma origin.²²⁵ In Slovakia, a Roma woman took legal action on the grounds that she had been called a "gypsy", assigned to the worst jobs, and was the only employee whose contract was not extended. In France, in 2008, in two cases²²⁶ a court compared the career histories of long-serving employees with African, North African or Asian names with those of majority workers of comparable length of service or qualification in the companies, and judged that their inferior circumstances had been the result of racial discrimination.

In 2009, NGOs reported various cases of employment discrimination in Austria. They included harassment by work colleagues without superiors intervening; employees in a hairdresser's shop being forced to adopt Austrian-sounding names;²²⁷ a man refused employment as a kitchen assistant because he spoke German with an accent; rejection of a qualified Nigerian man because 'the customers would not accept his skin colour'.²²⁸

In Poland, several complaints of labour discrimination were identified. They included Roma assistants receiving inferior contracts,²³¹ and a Nigerian football player denied pay to which he was contractually entitled.²²⁹

Further examples of discrimination reported in 2009 include the following incidents. In Hungary a woman of Roma (Sinti) origin applied for an advertised position at a bakery but was rejected because the representative of the employer explained that work colleagues would not like to have a Gypsy co-worker. After an NGO submitted the case to the ETA the bakery agreed to pay the woman financial compensation.²³⁰

In the Netherlands an instruction was circulated to branches of a supermarket chain not to appoint applicants of Moroccan descent.²³¹ When the instruction came to be known, a local anti-discrimination agency²³² took the case to the Equal Treatment Commission and reported the case to the police. The instruction was withdrawn by the company, who agreed not to discriminate in its future recruitment procedures.²³³

In Germany a kitchen assistant of south-east Asian origin who worked in a Berlin restaurant complained of continuous racist verbal attacks and threats by colleagues, initiated mainly by the chef. The victim informed his employer but after internal talks the main perpetrator continued his discriminatory behaviour, reportedly seeking to drive the victim out of the restaurant. An NGO sent a letter of complaint to the employer, drawing attention to racist and homophobic threats the perpetrator had made to other employees, and the chef was dismissed.²³⁴

In the United Kingdom, a local London newspaper decided to test responses to discriminatory instructions. Posing as a window cleaning business it contacted local recruitment agencies, saying that it wanted to recruit temporary staff but did not want to be sent any members of ethnic minorities. 54% of the agencies agreed to supply only workers from a majority background.²³⁵

220 Ms. Ning Ning Zhang -v- Towner Trading (trading as Spar Drimnagh (DEC-E2008-037); Stratulat -v- M&J Recycling Ltd. (DEC-E2008-037).

221 Equality Tribunal; Decision DEC-E2009-011; Oksana v Goode Concrete Ltd; available at: www.equalitytribunal.ie/index.asp?locID=164&docID=1989.

222 A Worker -v- An Engineering Company (DEC-E2008-038).

223 Comissão para a Igualdade e Contra a Discriminação Racial: www.cicdr.pt/. The case was reported by the NGO 'SOS Racism'.

224 See <http://www1.rtp.pt/noticias/index.php?article=356874&visuaI=26&tema=1>. See press release at: www.esquerda.net/media/panflo_benfica_be.pdf.

225 See www.egyenlobanasmod.hu.

226 Renault (02/04/2008); Bosch (20/06/2008). Renault at the Appeal Court of Versailles, and Bosch at an industrial tribunal.

227 ZARA, Rassismus Report 2008, available at: www.zara.or.at/_doc/2009/ZARA_RassismusReport2008.pdf.

228 Helping Hands Graz, Jahresbericht 2008, available at: <http://helpinghands.htu.tugraz.at/2008.pdf>.

229 Information received from The Halina Nieć Legal Aid Center; e-mail to the Helsinki Foundation for Human Rights dated 11/09/2009.

230 Nemzeti és Etnikai Kisebbségi Jogvédő Iroda (NEKI).

231 See www.ad.nl/ad/nl/5597/Economie/article/detail/2072767/2009/07/15/Geen-Marokkanen-in-AH-to-go-winkels.dhtml.

232 Bureau Discriminatiezaken Den Haag.

233 See <http://www.discriminatiezaken.nl/>.

234 Antidiskriminierungsnetzwerk Berlin (ADNB)

Antidiskriminierungsbericht 2006- 2008, p. 12; available at: http://tbb-berlin.de/downloads_adnb/ADNB-Antidiskriminierungsreport_2006-2008.pdf.

235 See www.rec.uk.com/press/news/730.

Discrimination and job advertisements

The illegality of discriminatory advertisements was underlined in 2008 in an important judgment at the EU Court of Justice, the *Feryn* case (see 1.3.3). In Austria, both in 2008²³⁶ and 2009,²³⁷ a number of advertisements asked for 'Austrians only' or 'only people whose native language is German'. In Denmark three job advertisements, which apparently violated the Labour Market Discrimination Act, were reported to the Ministry of Labour, and ultimately to the Danish police.²³⁸ In Estonia, a firm advertising for a dispatcher 'with Estonian as a mother tongue' was exposed by the Legal Information Centre for Human Rights.²³⁹ In Finland, the Office of the Ombudsman for Minorities identified 33 job advertisements that demanded "Finnish nationality" and/or "perfect Finnish language skills" and forwarded them to Occupational Safety and Health Inspectorates asking them to issue guidelines to the employers concerned; some were passed to the police.²⁴⁰ In 2009, discriminatory adverts were monitored in Spain (Catalonia²⁴¹ and Navarra²⁴²). In Germany advertisements requiring "mother-tongue German" were reported. In Slovenia an advert offered a job to third-country nationals at wages below the minimum.²⁴³

In Poland²⁴⁴ the Polish Society of Anti-Discrimination Law recently published a report based on 60,727 job advertisements that it had monitored and analysed. 24,628 of these included irregularities that might lead to unequal treatment. Some advertisements were discriminatory in more than one respect. 21,298 advertisements discriminated on grounds of sex, 2,411 on grounds of age, 576 on grounds of appearance, 187 on grounds of disability, and 139 on grounds of nationality.

236 ZARA, *Rassismus Report 2007*, available at: www.zara.or.at/materialien/rassismus-report/Rassismus-Reportpercent202007.pdf.

237 ZARA, *Rassismus Report 2008*, available at: www.zara.or.at/_doc/2009/ZARA_RassismusReport2008.pdf; and Helping Hands Graz, *Jahresbericht 2008*, available at: <http://helpinghands.htu.tugraz.at/2008.pdf>.

238 Reported by the NGO 'DACoRD.'

239 Database of the Legal Information Centre for Human Rights, Estonia.

240 Finland/Vähemmistövaltuutettu, *Annual Report 2007*, pp. 17-19. Available at: [www.ofm.fi/intermin/vvt/home.nsf/files/vuosikertomus_en_2007/\\$file/vuosikertomus_en_2007.pdf](http://www.ofm.fi/intermin/vvt/home.nsf/files/vuosikertomus_en_2007/$file/vuosikertomus_en_2007.pdf).

241 SOS Racisme, *Oficina d'Informació i Denúncies, Memòria 2008*.

242 SOS Racismo Navarra, *Informe anual año 2009 sobre el racismo en Navarra*.

243 Data submitted by the Advocate of the Principle of Equality upon request.

244 Polish Society of Anti-Discrimination Law, Kędziora, K., Śmiszek, K., Zima, M. (Ed.) (2009); *Równe zatrudnienie w zatrudnieniu. Przepisy a rzeczywistość, Equal treatment in employment. Regulations and reality*, Warsaw. Available at: www.ptpa.org.pl/images/publikacje/raport_pdf.pdf.

2.3.2. Discrimination and racism in housing

2.3.2.1. EU-MIDIS results

Discrimination in housing (when looking for somewhere to rent or buy) proved to be among the least problematic of the nine areas of discrimination that EU-MIDIS surveyed. The highest discrimination rate among all general groups surveyed was recorded among North Africans and Roma. On average, 11% of North Africans and Roma reported discrimination when they looked for a house or apartment to rent or buy. When the results are broken down by group and Member State, North Africans in Italy experienced the highest rate of housing discrimination.

Housing was one of three areas where respondents were asked whether they knew about anti-discrimination legislation. On average, 44% of respondents believed no legislation forbids discrimination against people on grounds of ethnicity when renting or buying a flat. A further 25% either did not know or refused to answer the question, while 31% said they were aware of the existence of such legislation.

2.3.2.2. Other sources

In Finland in 2008 the Ministry of the Interior published a study on migrants and Roma²⁴⁵ which found that both groups reported experiences of discrimination when seeking housing. In the case of Roma, half those questioned did so.

Few countries carried out discrimination tests to identify the degree to which migrants and ethnic minority groups suffer discrimination in the housing market. In Spain, a SOS Racismo Vizcaya survey²⁴⁶ revealed significant differences between the number of flats made available to migrants compared with natives. In Sweden, the Swedish Union of Tenants assessed discrimination by telephoning roughly 100 public and private landlords across the country, giving foreign and Swedish names.²⁴⁷ In 37% of cases there were indications of ethnic discrimination. Foreign-named applicants often received negative replies whereas Swedish colleagues, who called the same landlord a couple of minutes later, were welcomed and offered a flat without a problem. In France in January 2008 *le Haut Conseil à l'Intégration* (High Council for Integration, HCI) presented a report

245 The report is available at: <http://www.intermin.fi/>.

246 SOS Racismo – Bizkaiko (2008), *Conductas discriminatorias hacia el colectivo inmigrante en el acceso a la vivienda en la ciudad de Bilbao*.

247 Source: the Swedish Union of Tenants (Hyresgästföreningen).

to the French Prime Minister,²⁴⁸ showing that migrants have been victims of systemic discrimination in access to social housing. Various discrimination tests showed that private landlords also discriminated against them.

In Ireland, a study²⁴⁹ showed that racially-motivated anti-social behaviour was an issue in local authority social housing and private housing developments, particularly in low-income areas. The Third ECRI report on Malta²⁵⁰ noted that migrants released from detention were being accommodated in open centres and could access the private housing market only with great difficulty. This report strongly recommended that the Maltese authorities take steps to address racial discrimination in the private housing market. In Portugal, research suggested that immigrants who applied for housing loans were sometimes discriminated against.²⁵¹

In August 2008, the UNHCR Regional Representation for Central Europe launched a survey on the situation of asylum seekers and refugees in Central Europe.²⁵² The report revealed that landlords in Bulgaria had imposed higher rents and deposits on refugees than on local tenants, and deposits were often not returned to refugees when they moved out. The same report revealed that refugees in Slovenia were not entitled to public housing, and faced other problems such as private landlords refusing to issue official contracts, in order to avoid tax.

Research in the United Kingdom identified a more positive development. The *Citizenship Survey: April 2007 – March 2008, England and Wales* showed that fewer people from minority ethnic groups felt that housing departments would treat them less well than other races (11% in 2007-08; 13% in 2001).²⁵³

According to the 2008 Eurobarometer Survey,²⁵⁴ the average European is comfortable with having someone from a different ethnic origin as a neighbour. However, the same survey found that around a quarter of Europeans would feel uncomfortable having a Roma neighbour.

Further surveys and research have been carried out within the EU recently. In France, ISM Corum in conjunction with the City of Lyon's limited liability building company (SACVL) surveyed the allocation of social housing. The study covered the SACVL housing pool of 7,980 housing units. All the households were divided into two groups: one composed of families with surnames that increased the likelihood of discrimination, and the other composed of families with surnames that were not likely to provoke discrimination against them. The study revealed that 69% of the first group lived in the least attractive housing, whereas only 46% of the second group did so.²⁵⁵ In Germany, a multi-subject survey by the Zentrum für Türkeistudien (ZfT) revealed that many migrants of Turkish background continue to experience discrimination with regard to housing. Four out of 10 respondents reported discrimination against them when they tried to rent a flat, and about one quarter had experienced discrimination in their neighbourhood.²⁵⁶

Discrimination tests were carried out in a few countries to identify levels of discrimination against migrant and ethnic minority groups in the housing field. In Belgium, "comité ALARM" carried out a discrimination test on housing in Brussels, between April and August 2009.²⁵⁷ The association responded to 101 offers of rented housing. A first researcher phoned the landlord, speaking with an accent and giving an African name. Ten minutes later a second researcher called, speaking without an accent and giving a 'Belgian' name. In 28 cases, the second applicant received a different answer than the first one – a clear indication of discrimination. The test was methodologically supported by the Centre for Equal Opportunities and Opposition to Racism (CEOR), the Belgian National Equality Body. In France, the national Equality Body, the HALDE, investigated individual complaints and carried out a series of discrimination tests on private sector landlords in Paris and other regions, to identify discriminatory practices in private housing. The HALDE discrimination tests resulted in six referrals to the public prosecutor at the beginning of 2009.²⁵⁸

248 Haut Conseil à l'intégration (2008), *Le logement des personnes immigrées*. The report was based mainly on the results of the Enquête nationale du Logement (National Housing Survey), which was conducted in 2001-2002.

249 D. Silke; M. Norris; F. Kane; B. Portley (2008) *Building Integrated Neighborhoods, Towards an Intercultural Approach to Housing Policy and Practice in Ireland*. Available at: <http://www.nccri.ie>.

250 ECRI report on Malta, adopted on 14 December 2007 (third monitoring cycle).

251 INVIP research. Details of the project can be found at: <http://www.numena.org.pt/conteudo.asp?lingua=POR&idEstrut=30>.

252 UNHCR Regional Representation for Central Europe (2008) *Being a Refugee: Age, Gender and Diversity Mainstreaming Report 2007*. At: www.unhcr-centraleurope.org/pdf/what-we-do/age-gender-and-diversity-mainstreaming/being-a-refugee-2007.html.

253 *Citizenship Survey: April 2007 - March 2008, England and Wales*, 26 June 2008, available at: www.communities.gov.uk/publications/communities/citizenshipsurveyaprm08.

254 European Commission (2008) *Discrimination in the European Union: Perceptions, Experiences and Attitudes*, July 2008.

255 HALDE, *Rapport Annuel 2008*, p. 55.

256 M. Sauer (2009) *Türkischstämmige Migranten in Nordrhein-Westfalen und in Deutschland: Lebenssituation und Integrationsstand. Ergebnisse der neunten Mehrthemenbefragung*, Essen: ZfT, p. 166.

257 ALARM – Action for Accessible Housing for Refugees in Molenbeek (Action pour le Logement Accessible aux Réfugiés à Molenbeek), founded in 2001. More information about the association in Flemish Minority Centre (VMC), *Coloured Poverty (Gekleurde Armoede)*, Brussels, 2008, pp. 9-10.

258 HALDE, *Rapport Annuel 2008*, p. 54.

In 2009 in Germany, the NGO Planerladen published the results of an exploratory project it carried out between July 2007 and June 2008. Its researchers responded by phone to 482 flat advertisements posted in regional newspapers in seven cities in North Rhine-Westphalia. One tester was “German”, the other “Turkish”. 79% of the calls received identical responses but in 90 cases (19%) the “Turkish” tester was treated less favourably, and in total received twice as many rejections.²⁵⁹

In Sweden, the Equality Ombudsman has been mandated by the Ministry on Gender Equality and Integration to investigate the extent of discrimination on the housing market. The Ombudsman will use discrimination testing to investigate. The inquiry will be nationwide and comparisons will be drawn between regions, type of housing, the private and public sector, and women and men.²⁶⁰

2.3.2.3. Specific examples of cases and incidents of discrimination

In Italy, the National Office against Racial Discrimination (UNAR) issued an opinion²⁶¹ defining as unlawfully discriminatory several ordinances that the housing department of the municipality of Verona had issued.²⁶² These ordinances advantaged residents for more than ten years and Italian citizens when low rent public housing was assigned.

In February 2008, the European Committee of Social Rights adopted two decisions that found France had violated the right to housing.²⁶³ One concerned stopping places for Travellers. The other concerned the allocation of social housing to the poorest members of the community, and the inadequacy of the appeal system when housing waiting periods were excessively long.²⁶⁴

In January 2008 the German Federal Administrative Court²⁶⁵ ruled against an attempt by several federal states to implement a nationwide harmonised provision that would have prohibited recognised refugees or those with a subsidiary protection status from taking up residence in another federal state, region or municipality if they were in receipt of social benefits.²⁶⁶

In Sweden in October 2009 the HSB-association was obliged to pay 60,000 SEK (approximately 6,000 Euros) in damages for ethnic discrimination. A couple with a foreign background were denied the opportunity to purchase an apartment from the HSB-association in Örebro, despite the fact that they had made the highest bid. The couple made a complaint to the Equality Ombudsman and a settlement was reached whereby the couple received discrimination damages.²⁶⁷

As in the employment sector, one problem is insufficient awareness that discriminatory advertisements are illegal. In Germany ADBN (Landesstelle für Gleichbehandlung – gegen Diskriminierung), a Berlin-based anti-discrimination office, reported a “relatively new development”: poor proficiency in German was being used as an argument to reject migrant flat-seekers.²⁶⁸ The fourth ECRI report on Germany also stressed that “NGOs report that a key role is played by discriminatory practices of landlords and property managers, based for example on a person’s name or on their fluency in German. Cases in which rooms are advertised as available for mother-tongue German speakers only are also reported”.²⁶⁹ In several cases, real estate agents in the Czech Republic stated in their advertisements that leases were not intended for “other nationalities” and “foreigners”, “only for Czech nationals”. In 2008 a non-governmental organisation *IQ Roma servis* (IQ Roma Service) filed a complaint regarding one such case at a CTI regional inspectorate in Brno.²⁷⁰ In Spain, the Ararteko (Basque Ombudsman) noted discriminatory housing advertisements in his 2008

259 Planerladen e.V. (2009) Ungleichbehandlung von Migranten auf dem Wohnungsmarkt. Ergebnisse eines telefonischen “Paired Ethnic testings” bei regionalen Immobilienanzeigen, available at: [www.planerladen.de/50.html?&tx_ttnews\[tt_news\]=208&tx_ttnews\[backPid\]=7&cHash=080c4f6dd8](http://www.planerladen.de/50.html?&tx_ttnews[tt_news]=208&tx_ttnews[backPid]=7&cHash=080c4f6dd8).

260 More information available at: www.regeringen.se/sb/d/11290/a/133678.

261 Italy / Presidenza del Consiglio dei Ministri, Dipartimento per i Diritti e le Pari Opportunità, Ufficio Nazionale Antidiscriminazioni Razziali / Parere UNAR – Prot. 97/UNAR, available at: www.asgi.it/index.php?page=nws.home&idint=cno8022104&mode=detail&imm=

262 AGEC / Delibera n. 4, e n. 23.

263 European Committee of Social Rights - Complaint n°39/2006, available online at: www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC39Merits_en.pdf. European Committee of Social Rights- Complaint n°33/2006. At: www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC33Merits_en.pdf.

264 Council of Europe, Committee of Ministers /ResChS(2008)8, Collective Complaint No. 39/2006 by the European Federation of National Organisations working with the homeless (FEANTSA) against France, 2 July 2008; and Council of Europe, Committee of Ministers / ResChS(2008)7, Collective Complaint No. 33/2006 by

the International Movement ATD Fourth World against France, 2 July 2008.

265 UNHCR (2007) UNHCR-Stellungnahme zu Maßnahmen zur Beschränkung der Wohnsitzfreiheit von Flüchtlingen und subsidiär geschützten Personen.

266 Germany/Bundesverwaltungsgericht (15/01/2008) 1 C 17.07.

267 Available at: www.do.se/Om-DO/Stamningar-och-forlikningar/Forlikning-bostadsrattsforening/.

268 Antidiskriminierungsnetzwerk Berlin (ADNB) Antidiskriminierungsbericht 2006- 2008, Berlin, pp. 13-14; available at: http://tbb-berlin.de/downloads_adnb/ADNB-Antidiskriminierungsreport_2006-2008.pdf.

269 ECRI (2009), ECRI Report on Germany (fourth monitoring cycle), adopted on 19 December 2008, published on 26 May 2009.

270 Available at www.iqrs.cz/view.php?nazevclanku=posun-v-pristupu-coi-k-diskriminacimu-jednani-realit-kancelari&cisloclanku=2009030005.

annual report²⁷¹ as did the SOS Racismo Claim Office in Catalonia.²⁷²

With regards to Belgium, ECRI's fourth report recommended *inter alia* that the Flemish authorities should review new language and integration requirements in the Flemish Housing Code. ECRI was concerned that these requirements might negatively affect the integration of non-Dutch speakers.²⁷³ In Germany, CERD expressed concern about the "possible negative effects in terms of indirect discrimination on the grounds of ethnic origin, due to the exception to the principle of equal treatment as regards access to rental housing contained in paragraph 19, section III of the General Equal Treatment Act". Under this provision, landlords are entitled to refuse to rent apartments to certain persons from a desire to create and maintain "socially stable residential structures and balanced housing estates and also balanced economic, social and cultural conditions".²⁷⁴

In Italy, a new regulation in the Municipality of Rome entered into force on 18 February 2009, covering the temporary settlement in authorised villages of nomadic communities. The regulation requires the identification of all people, residents and occasional visitors, who enter Roma camps. Residents are issued identification cards, with photo and personal data; local police forces can carry out internal and external security services; residents are permitted to remain in the camps only if they participate in activities that assist their social and working integration. Individuals who violate the provisions of the regulation may be expelled within 48 hours of the notification of assessment.²⁷⁵ A Milanese regulation on nomads, containing very similar provisions, entered into force during the same period.²⁷⁶

2.3.2.4. Roma housing: a special case

The FRA's *Comparative Report on the Housing Conditions of Roma and Travellers in the European Union*²⁷⁷ published in October 2009 showed that there

is ample evidence that the quality and location of Roma and Traveller housing is frequently inadequate. The inadequacy of housing is often linked to the problem of segregation. The existence of prejudicial attitudes on the part of public authorities and/or the general public, leads to the allocation of housing for Roma in areas separate from the majority population. Often these are low value sites, such as polluted land or adjacent to waste dumps or motorways, which creates health hazards. Segregation of Roma communities is not in the long term interest of public authorities that wish to develop their cities and neighbourhoods, particularly as segregated, underdeveloped city areas can lead to a decline in property values. Segregated Roma communities can also become easily identifiable targets for criminal violent attacks, as has been reported in Hungary, Italy, Northern Ireland and Romania.

In 2009, ECRI published a series of country reports in the framework of its monitoring work. Reporting on the Czech Republic, ECRI stated that it "is deeply concerned at the continued marginalisation of Roma, which is expressed, in the field of housing, through a variety of mechanisms: perpetuation of existing segregated localities, and creation of new ones; substandard living conditions; or the imposition of excessively high rents that lead quickly into a downward spiral of debt".²⁷⁸

In its report on Slovakia, ECRI noted with concern that "some of the social housing is being built in the same segregated areas where Roma previously lived. Therefore, although the new social housing provides better living conditions for Roma, they continue to be *de facto* segregated from the rest of the population".²⁷⁹ The situation in Slovakia was also addressed in an expert opinion of the Slovak National Centre for Human Rights. This opinion focused on a wall in the village of Ostrovany which has separated the Roma and non-Roma population of the village since mid-October 2009. The Centre estimates that the authorities of Ostrovany did not remove suspicions that there was intent to separate Roma from non-Roma citizens and concluded that tensions would continue to rise in the village in consequence.²⁸⁰ In March 2010, the UN Committee on the Elimination of Racial Discrimination released its recommendations on Slovakia. In addition to the poignant issue of Roma children's education, the Committee was concerned by housing segregation and cases of violent police behaviour towards the Roma. The Committee further

271 Ararteko, Informe al Parlamento Vasco 2008, p. 577.

272 SOS Racisme, Oficina d'Informació i Denúncies, Memòria 2008, available at: www.sosracisme.org/denuncia/oid.php#part7.

273 ECRI (2009), ECRI Report on Belgium, p. 26.

274 CERD (2008) Consideration of reports submitted by the states parties under article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination: Germany, 73rd Session, 28 July – 15 August 2008, available at: www2.ohchr.org/english/bodies/cerd/cerds73.htm. Note also the remarks in ECRI's 2009 report on Germany.

275 Commissario Delegato per l'Emergenza Nomadi nel territorio della regione Lazio (2009), Regolamento per la gestione dei villaggi attrezzati per le comunità nomadi nella regione Lazio.

276 Commissario per l'Emergenza Nomadi in Lombardia (2009) Regolamento per le aree destinate ai nomadi del comune di Milano.

277 FRA (2009) *Comparative Report on Housing Conditions of Roma and Travellers in the European Union*, available at: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2009/pub-cr-roma-housing_en.htm.

278 ECRI (2009), ECRI Report on the Czech Republic, p. 35.

279 ECRI (2009), ECRI Report on Slovakia, p. 22.

280 SNSLP (2010) Odborné stanovisko k výstavbe múru v Ostrovanoch. At: www.snslp.sk/index.php/lang-sk/odborne-stanoviska/155-odborne-stanovisko-k-vystavbe-muru-v-ostrovanoch-22-1-2010.html.

noted the issue of forced sterilisation of Roma women and suggested that the Slovak government should acknowledge that cases had occurred.²⁸¹

In Greece, the 2009 ECRI report noted that *“the living conditions of some Roma continue to fall unacceptably below international standards”*, while *“some Roma settlements are in complete isolation from the rest of the population, without running water or electricity and without a sewage system or access to public transport”*.²⁸² In August 2009, the Greek Ombudsman, after many years of investigation, published a special report about the registration of the civil and municipal status of Roma as an underlying cause of their precarious housing.²⁸³ The Ombudsman noted that individuals who cannot provide evidence of their municipal status and ‘permanent residence’ in a municipality are blocked from accessing the government housing programme or state-guaranteed low- or non-interest loans.

In Poland, CERD has pointed out the persistent social marginalisation of the Roma minority with regard to housing.²⁸⁴ In Bulgaria, CERD has also expressed its concerns about the specific obstacles Roma encounter with access to housing and other areas of social life.²⁸⁵ In Slovenia, the Ombudsman reported several instances of discriminatory practice by real estate agencies and private individuals, preventing Roma families from buying or selling property.²⁸⁶ In Spain, the 2008 Annual Report of the Basque Ombudsman refers to a number of complaints received during that year, which illustrate the difficulties that many Roma continue to encounter in accessing housing.²⁸⁷

A number of Court cases at European and national level also focused on Roma housing issues. In Bulgaria, a planned forced eviction of Romani families from the Batalova Vodenitsa, a neighbourhood of Sofia, authorised by the District Mayor, would have affected around 180 Roma.²⁸⁸ A decision of the European Court of Human Rights (July 2008) indicated to the Bulgarian

government interim measures it should take under Rule 39 of the Rules of Court, which caused the District Mayor to suspend enforcement of the removal order *“pending the resolution of the housing problems of the Batalova Vodenitsa residents”*.²⁸⁹

In Hungary, a court fined the local government of the 2nd district of Budapest 100,000 HUF (approximately 400 EUR) per capita after almost 40 Roma, including two pregnant women and 20 children, were evicted from the flats they inhabited without proper legal proceedings or entitlement.²⁹⁰

In Lithuania, a court case continued concerning the demolition of a Roma settlement in Kirtimai in 2007.²⁹¹ In September 2008, the Supreme Administrative Court sent the case back to the lower court for proceedings to assess non-pecuniary damages.

In Finland the National Discrimination Tribunal imposed in 2008 a conditional fine of 2,000 EUR on a property company in the city of Raahe. The property company agreed to rent an apartment to a Roma applicant on the condition that the Social Services of the city of Raahe act as a guarantor for the lease. The Tribunal found that this was not a standard procedure with regard to members of the majority population in similar situations. Accordingly, the Tribunal found that the property company had treated the applicant in a discriminatory manner on grounds of ethnic origin.²⁹²

In Romania, a recent study investigated the record of local authorities with respect to segregation and ethnic discrimination, focusing on authorities with direct experience of implementing programmes for the Roma population. The findings were interesting. Where Roma are geographically concentrated, local authorities receive more complaints of inter-ethnic problems or conflicts than where they are more dispersed among the majority population. Some 71.1% of respondents perceived that members of the Roma population were less prosperous than members of the majority population and believed this was because the Roma do nothing on their own initiative, but rely on social assistance. Respondents also tended to believe that Roma do not like to work and lack necessary skills.²⁹³

281 See www2.ohchr.org/english/bodies/cerd/cerds76.htm.

282 ECRI (2009), ECRI Report on Greece, p. 25.

283 The Greek Ombudsman, Δημοτολογική τακτοποίηση των Ελλήνων Τσιγγάνων. At: www.synigoros.gr/diakriseis/pdfs_01/8289_3_Dimotologisi_Roma_Eidiki_Ekthesi.pdf.

284 CERD (2009), Consideration of reports submitted by states parties under article 9 of the convention. Concluding observations of the Committee on the Elimination of Racial Discrimination: Poland, 75th session, 3-28 August 2009, p. 3, available at: www2.ohchr.org/english/bodies/cerd/cerds75.htm.

285 CERD (2009), Consideration of reports submitted by the states parties under article 9 of the Convention. Concluding observations of the Committee on the Elimination of Racial Discrimination: Bulgaria, 74th Session, 16 February – 6 March 2009, p. 4.

286 Varuh človekovih pravic, Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2008, p. 48, available at: www.varuh-rs.si/fileadmin/user_upload/pdf/lp/Varuh_LP-2008.pdf.

287 Ararteko, Informe al Parlamento Vasco 2008, available at: www.ararteko.net/RecursosWeb/DOCUMENTOS/1/9_1641_3.pdf.

288 European Roma Rights Centre (2008), Letter to the President of the Republic of Bulgaria and to the Mayor of Sofia of 2 July 2008.

289 European Court of Human Rights, Fifth Section (2008) Application No 25446/06, Statements of Facts and Questions to the Parties.

290 Hungary/Fővárosi Bíróság/26.P.24.502/2006/10. Source: NEKI, Fehér Füzet 2007, manuscript provided to the Hungarian RAXEN NFP by NEKI.

291 Lithuania/Vilniaus apygardos administracinis teismas/ No. I-8136-17/2007.

292 The decision is available at: www.intermin.fi/intermin/hankkeet/sltk/home.nsf/.

293 Of the local authority employees polled, only 10.4% had training in multicultural intervention and 11.1% in conflict management. See Romanian Institute for Research on National Minorities, “Ethnic segregation models in Romania – rural ghettos in Romania”.

2.3.3. Discrimination and racism in healthcare

2.3.3.1. EU-MIDIS results

EU-MIDIS results showed that discrimination by healthcare staff is a particular problem for the Roma. 17% indicated they had experienced discrimination in the last 12 months. In comparison, discrimination by healthcare personnel was identified as a problem by less than 10% of the other groups surveyed.

When the figures are broken down by groups and Member States, six of the ten groups who reported the highest levels of healthcare discrimination were Roma. However, North Africans in Italy experienced the highest level of discrimination of all individual groups (24% had suffered discrimination in the previous 12 months).

Discrimination by social service personnel showed a similar pattern. 14% of the Roma indicated they had experienced discrimination in this area in the last 12 months, but less than 10% of other general groups identified this as a problem.

Breaking down the results by groups and Member States, six of the 10 groups who experienced the highest levels of discrimination by social services were once again Roma, and North Africans in Italy again reported the highest incidence among all the groups surveyed (22% reported experiencing discrimination in the previous 12 months).

2.3.3.2. Other sources

Complex application procedures, lengthy processing times and other bureaucratic obstacles can prevent people from accessing healthcare. Medical personnel can also restrict access to medical care, for example for asylum seekers. In Poland, there is evidence that medical personnel are insufficiently familiar with regulations regarding foreigners' access to healthcare and often do not speak foreign languages. A report from the French CMU (providers of universal medical insurance) noted that a quarter of doctors and dentists based in Paris refuse to take care of low-income patients because social insurance rules require them to charge lower fees.²⁹⁴ Many of those in this low income category are of migrant or ethnic origin.²⁹⁵

In Italy the medical staff has frequently reported to the police undocumented migrants trying to access emergency care. Newspapers reported the story of a

20-year-old undocumented Nigerian woman who was denounced by a doctor in the emergency ward where she went for treatment. When she refused to give her contact details the doctor requested the police to identify her, on grounds that she was a "public health threat" (the woman was later tried using fast-track procedures and expelled from the country because she had received a previous expulsion order²⁹⁶).

Many migrants are also not aware of their entitlement to healthcare because they are unfamiliar with the host country's medical system and lack communication skills. This problem has been documented, for example in Denmark²⁹⁷ and Greece.²⁹⁸

Other issues of concern are sanitary conditions and access to medical care in detention centres. Here, children and women (availability of pre-natal care) are particularly vulnerable. Both Human Rights Watch²⁹⁹ and the Council of Europe³⁰⁰ have reported on the poor living conditions of asylum-seeking minors in Greece. According to a report by *Médecins Sans Frontières*, in Malta healthy detainees have been placed in the same cells with sick ones as a form of punishment.³⁰¹

Since April 2009, the Belgian federal agency for the reception of asylum seekers, 'Fedasil', has repeatedly refused to assist minors in need who are living in Belgium with their families without a residence permit.³⁰² In several individual cases, the Federal Ombudsman intervened unsuccessfully against its refusal and provided general advice on two occasions in July 2009. The Ombudsman argued that Fedasil's refusal violates the UN Convention on the Rights of the Child and in particular Article 24.1 on "the highest attainable standard of health".³⁰³

294 M. Bieniecki, P. Kaźmierkiewicz (2008) 'Learning to welcome: integration of immigrants in Poland', in: M. Bieniecki et al., *Learning to Welcome: the integration of immigrants in Latvia and Poland*, Warsaw: Institute of Public Affairs, p. 122.

295 See www.cmu.fr/site/index.php4.

296 'Medico denuncia clandestina: espulsa', in: *Corriere del Veneto* (13/04/2009). See also: B. De Fazio (2009) 'L'incubo di K. in ospedale. "Mi hanno strappato il bambino"'. See also: G. Spatola (2009) 'In ospedale per il mal di denti. Espulso un senegalese' in *Corriere della Sera*.

297 Faculty of Health Sciences, Institute of Public Health, Department of Health Services Research (2009), *Migrants access to healthcare* by Marie Norredam, Ph.D.

298 MIGHEALTHNET, National Capodistrian University of Athens, Έκθεση για την υγεία των μεταναστών στην Ελλάδα, 2009. At: www.mighealth.net/el/index.php/, english summary: www.mighealth.net/el/images/f/f7/Greek_State_of_the_Art_Report_-_English_Summary.pdf. Data collected by the MIGHEALTHNET, information network on good practice in healthcare for migrants and minorities in Europe, Greek wiki.

299 Human Rights Watch, *Left to Survive*. At: www.hrw.org/en/reports/2008/12/22/left-survive.

300 CommDH(2009) 6, Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, *Human rights of asylum seekers*, Strasbourg.

301 Médecins Sans Frontières (2009), *Not Criminals*, p. 11.

302 Since 2004 Fedasil is obliged to shelter undocumented underage migrants in need, which means also the sheltering of their family members.

303 Article 24.1 determines the access to The enforcing of this legal right is hindered by additional practical obstacles: cf. chapter 5.1.3, point 40.

The Ombudsman spoke about 'direct discrimination'³⁰⁴ against asylum seekers and undocumented migrants, subjects of the national reception law, who are put in a position where they cannot take adequate care of their children.

In Austria, the independent Human Rights Advisory Board (*Menschenrechtsbeirat*) has a mandate to monitor the activities of the security services and Interior Ministry authorities. In 2007, it published a report³⁰⁵ criticising the standards applied when establishing a person's fitness to remain in detention, and the conditions in which people were held pending deportation. With respect to Denmark, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs drew attention to the length of time that people could be held in detention centres.³⁰⁶ The Danish NGO *Support Group for Refugees in Danger* reported a number of discriminatory incidents concerning the health of asylum seekers.³⁰⁷ In Greece, *Médecins Sans Frontières* withdrew medical support in 2008 from a detention centre for undocumented immigrants and asylum seekers on Lesbos, in protest at the extremely poor living conditions there³⁰⁸ (it seems that this detention centre has since been closed).

Other reports have assessed exclusion, cultural insensitivity and other problems that migrants can face when they need healthcare. In France, for example, the Monitoring Centre of Health Rights of Foreigners published a report³⁰⁹ in June 2008 criticising the Prefectures for their poor application of a 1998 law which allows third-country nationals who require medical treatment to remain legally in the country. In Spain, the first report of the Barcelona Agency for Public Health,³¹⁰ on the health status of migrants, noted that migrant women from developing countries in low-skilled jobs have frequently felt discriminated against when they receive health care. In 2008-2009 in Italy, *Médecins Sans Frontières* conducted a survey on the social and health conditions, respect for rights, facilities, management, and services in detention centres for immigrants without residence

permits (CIE) and reception Centres for asylum applicants and migrants (CARA and CDA). The results highlighted several cases in which fundamental rights of residents were not respected. Problems included lack of contact with the National Health Service, and insufficient access to health care, and legal, social and psychological assistance.³¹¹ *Migration, Geschlecht und Arbeit*, a study in Germany within the framework of the EQUAL integration project MigraNet, examined the specific problems of migrant women in the labour market by interviewing migrant women. One interviewee stated that her dark-skinned daughter had been rejected when applying for a job as a nurse in a hospital, because "patients don't want to be treated by black nurses".³¹² Also in Germany, the 2008 *Robert Koch Institute* report *Migration and Health*³¹³ found that the health system lacks inter-cultural competence and multi-lingual information.

In Ireland, a 2008 study, *Health, Faith and Equality*, warned that standards and services were being compromised by a lack of inter-cultural training. The study identified several issues associated with different religious faiths, including use of medicines containing animal derivatives and a range of medical interventions (circumcision, blood transfusion, organ transplants, and post mortems).³¹⁴

In the United Kingdom, the first national statistical report of the Department of Health on the experiences of black and minority ethnic (BME) patients³¹⁵ revealed differences between BME groups and their white British counterparts that explain why BME groups are less likely to report a positive experience. The Glasgow Anti Racist Alliance (GARA) also published its 'State of the Nation – Race and Racism in Scotland 2008' report, highlighting the limited ethnic monitoring undertaken by the National Health Service in Scotland, and noting the higher percentage of BME children in care.³¹⁶

304 Federal Ombudsman, Interim Report, Third Trimester 2009, p. 1, with: http://www.federaalombudsman.be/sites/1070.fedimbo.belgium.be/files/Intermediatereport_fedasil_ENG.pdf.

305 Menschenrechtsbeirat (2007) Gesundheitsversorgung in Schubhaft.

306 European Parliament: Final Report of the Committee on Civil Liberties, Justice and Home Affairs from the delegation to Denmark: DV\731861EN.doc, p. 4 and p.10.

307 Flygtninge i fare, Livet for sygdomsramte asylsøgere i Danmark. At: www.stoettekredsen.dk/syge.html.

308 At: www.msf.gr/index.php?option=com_content&task=view&id=1895&Itemid=236.

309 ODSE (2008) La régularisation pour raison médicale en France : un bilan de santé alarmant (1998-2008 : dix ans d'application du droit au séjour des étrangers malades).

310 Agència de Salut Pública de Barcelona (2008), La salut de la població immigrant de Barcelona, available at: www.aspb.es/quefem/docs/salut_immigrants_BCN.pdf.

311 *Medici senza frontiere* (2010), *Al di là del muro*.

312 Ch. Färber, N. Arslan, M. Köhnen, R. Parlar (2008) *Migration, Geschlecht und Arbeit. Probleme und Potentiale von Migrantinnen auf dem Arbeitsmarkt*, Opladen & Farmington Hills: Budrich UniPress Ltd.

313 Robert-Koch-Institut (2008) Schwerpunktbericht der Gesundheitsberichterstattung des Bundes. Migration und Gesundheit.

314 At: www.tcd.ie/ise/news/articles/2008/10-06-radford-report.php.

315 Department of Health, Healthcare Commission, Copyright holder: Crown.

316 At: www.gara.org.uk/.

2.3.3.3. Specific cases of discrimination against Roma

The Agency reported on Romani women and access to health care in 2003.³¹⁷ The report found that the health status of Roma is generally very poor across Europe, and there is little information about the needs and interests of Romani women. It found that Roma may experience various kinds of direct and indirect discrimination in accessing health care. These include: refusal of assistance by general practitioners or health care institutions; segregation in health care facilities; inferior and degrading treatment; and difficulties in accessing emergency care imposed as a result of their ethnicity. The short and long term consequences of this discrimination include unattended health problems, decreased trust in public services, and heightened social exclusion.

Other organisations have also reported on discrimination in healthcare in different EU Member States. For example, in Bulgaria, according to the report of the European Committee on Social Rights, Roma are not granted adequate access to healthcare.³¹⁸ The 2009 ECRI report described how pregnant Roma women were placed in separate wards of inferior quality in certain maternity hospitals.³¹⁹ According to one interviewee, in some instances healthy women had been allocated beds beside ill and contagious patients, creating significant health risks for mothers and their babies.³²⁰ Discrimination by medical staff was also reported in the delivery of emergency care. In some cases, it was alleged that ambulances had refused to enter Roma neighbourhoods, or had entered only after a significant delay.³²¹ It was reported that some General Practitioners had refused to examine Roma patients, or would do so only at certain times.³²²

In Hungary, an involuntary sterilisation case of a Roma woman handled by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) was finally settled by the Hungarian Government in 2009, and financial compensation was

paid to the victim.³²³ In a similar case in Slovakia, the European Court of Human Rights ruled in favour of eight Roma women suspected of having been involuntarily sterilised during their stay in a hospital in Kosice (see 1.4.2.1).³²⁴

In Bulgaria, the March 2008 report of the Department of Ethnic and Demographic Issues on Interethnic Relations and Intercultural Dialogue concluded that the majority of Roma have no access to the public health care system because they lack identity documents and health insurance.³²⁵ In Italy, a *Save the Children Fund* survey³²⁶ of Roma mothers and children living in a camp in Rome found that about 70% of those interviewed had no access to any form of health care. In the Slovak Republic, the evaluation report³²⁷ of the Government's Programme to Support the Health of the Disadvantaged Roma Community noted various structural problems, such as the lack of running water and absence of sewage and waste facilities.

2.3.4. Discrimination and racism in education

2.3.4.1. EU-MIDIS results

Up to 10% of the groups surveyed by EU-MIDIS reported discrimination by school personnel and other educational establishments. The groups most affected were the Roma (10% in the previous 12 months), North Africans (8%) and Sub-Saharan Africans (6%).

The results showed that North Africans in Italy suffered the highest level of discrimination. 21% had experienced discrimination in the previous 12 months. They were followed by Roma in Poland (20%).

2.3.4.2. Other sources

Research studies have affirmed the link between inequality and segregation in education. Different forms of segregation may be found in EU Member States. In its most recent report on Bulgaria, ECRI found that many Roma children continue to face language problems in school and have high levels

317 EUMC (2003) Breaking the barriers: Romani women and access to public health care, available at www.fra.europa.eu/fraWebsite/attachments/ROMA-HC-EN.pdf.

318 Council of Europe, European Committee on Social Rights (2008) Decision on the Merits, 3 December 2008, available at: www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC46Merits_en.pdf.

319 European Commission against Racism and Intolerance (2009), ECRI Report on Bulgaria (fourth monitoring cycle), p. 27.

320 Center for the Study of Democracy (2009) Interview with the Chair of World Without Borders.

321 European Commission against Racism and Intolerance (2009) ECRI Report on Bulgaria (fourth monitoring cycle), p. 27. At: www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Bulgaria/BGR-CbC-IV-2009-002-ENG.pdf.

322 Center for the Study of Democracy (2009) Interview with the Chair of World Without Borders.

323 'Hungary provides compensation to coercively sterilised Romani Woman': Available at: www.errc.org/cikk.php?cikk=3011.

324 Available at: <http://cmiskp.echr.coe.int>.

325 Bulgaria/Дирекция 'Етнически и демографски въпроси' към Администрацията на Министерски съвет (2008) Доклад за състоянието на междуетническите отношения и интеркултурния диалог, противодействието на проявите на расизъм и ксенофобия и развитието на демографските процеси в Република България, p. 20. Available at: www.nccedi.government.bg/upload/docs/DEDI_2paper_2008.pdf.

326 Save the Children (2008) Studio sulla salute materno infantile nelle comunità rom. Il caso di Roma (Survey on the health conditions of mothers and children in the Roma community. The case of Rome), Rome: Save the Children.

327 Slovakia/Vláda SR (2008) Hodnotiaca správa o výsledkoch I. etapy Programu podpory zdravia znevýhodnenej rómskej komunity (Evaluation Report on Results of the 1st Stage of the Programme to Support the Health of the Disadvantaged Romany Community).

of drop out rates. For social as well as economic reasons, most of these children continue to study in schools that are effectively segregated. Lack of statistics on the situation of minority pupils obstructs the performance and evaluation of state programmes.³²⁸ In Romania, a research report *Monitoring the application of measures against school segregation in Romania*³²⁹ concluded that 67% of a sample of 90 schools were segregated, and that Order No. 1540/2007 issued by the Minister of Education, Research and Youth³³⁰ had not been enforced in 63% of a sample of 77 schools. Specific instances of segregation in the education of children with language difficulties and/or belonging to minority population were reported in several countries.

Available data shows that migrants and minorities are overrepresented in 'special needs' schools in many EU Member States, which diminishes their chances of educational and professional success. In Austria, the first national report on education of the Ministry for Education, Arts and Culture (BMUKK) highlighted the link between pupils' socio-economic family background and their educational achievements. Pupils with a migrant background were overrepresented in special schools and underrepresented in higher education.³³¹ In the Czech Republic, the Minister of Education, Youth and Sports recently called on elementary school teachers to make sure that only pupils with a genuine mild mental disability are assigned to practical elementary schools (former "special" schools). The Minister's instruction was informed by 2009 research (undertaken by the Institute for Information on Education) which revealed that more than 26.7% of Roma pupils attended elementary schools where the curriculum was designed for pupils with mild mental disabilities whereas only 2.17% of pupils from the majority population did so.³³²

In Greece, the UN Committee for the Elimination of Racial Discrimination expressed concern in its 2009 report about the alleged limited access for children from the Turkish-speaking minority in Western Thrace to quality minority education.³³³

In 2009, the Children's Rights Ombudsman Institution published a report on the integration of foreign citizens' children into Lithuanian schools.³³⁴ The report noted many practical obstacles to integration of migrants' children in schools. They included the absence of a methodology for evaluating the level of students' knowledge and performance, insufficient preparation of teachers, and in some cases insufficient financing of Lithuanian language classes and other additional classes.

In Ireland, it was found that certain aspects of school admission policies had an indirect impact on newcomer students,³³⁵ because they are much less likely to fulfil certain key criteria (having an older sibling in the school, application for a school place at an early age,³³⁶ having a parent who attended the school, etc.). Furthermore, primary schools in Ireland are predominantly Catholic in their ethos, whereas many newcomer groups have a more diverse religious profile than the majority population.³³⁷

In the United Kingdom, in a report that focused on 13 local areas in England, the Institute of Community Cohesion found that school admission procedures add to segregation by inappropriately allocating black and minority ethnic pupils to schools far from where they live. Many of these schools, moreover, are in areas that have a low minority presence and are therefore inexperienced in dealing with diverse cultures. Other factors may play a role. For example, schools whose performance rating is lower tend to have vacancies and are therefore more likely to enrol newly arrived students who cannot get into fully-subscribed schools closer to home. New arrivals may also lose out because they are unfamiliar with enrolment procedures or arrive too late to meet applications deadlines.³³⁸

328 European Commission against Racism and Intolerance (2009) ECRI Report on Bulgaria (fourth monitoring cycle), available at: www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Bulgaria/BGR-CbC-IV-2009-002-ENG.pdf.

329 Prepared by Laura Surdu for Romani CRISS, published in the newsletter Romania/ Invățământul pentru romi, No. 33 of 16 January 2009.

330 Order 1540/2007, Article 1, paragraph 2, rules that, beginning with the 2007-2008 school year, 1st and 5th grade classes shall not be composed exclusively or predominantly of Roma students.

331 See W. Specht (ed.) (2009) Nationaler Bildungsbericht Österreich 2009. Band 1. Das Schulsystem im Spiegel von Daten und Indikatoren. BMUKK/bifie. Graz: Leykam. Available at: www.bifie.at/sites/default/files/pub-pdf/2009-06-16_NBB-Band1.pdf.

332 See www.msmt.cz/ministerstvo/dopis-ministryne-skolam-uprilezitosti-zapisu-do-1-trid and www.errc.org/cikk.php?cikk=3061 (in English).

333 UN CERD/C/GRC/CO/19, Concluding observations of the Committee on the Elimination of Racial Discrimination on Greece, p. 4.

334 Children's Rights Ombudsman Institution of the Republic of Lithuania (2009), Report on the Integration in Lithuanian Schools of Children of Lithuanian and Foreign Citizens who (re)immigrated to Lithuania, (21/01/2009), No. 15-2008/KI-6.

335 ESRI, Smith, E., Darmody, M., McGinnity, F., Byrne, D. (2009), *Adapting to Diversity: Irish Schools and Newcomer Students*; p. 181.

336 Many Irish children have their names registered with a school at the time of their birth.

337 ESRI, Smith, E., Darmody, M., McGinnity, F., Byrne, D. (2009), *Adapting to Diversity: Irish Schools and Newcomer Students*; p. 181.

338 Institute of Community Cohesion. 2009. Building community cohesion in Britain.



In 2009 more than a quarter of the 5,360 unaccompanied asylum seekers who arrived in the UK claiming to be children were judged to be adults, some solely on the basis of visual assessment. However, the Refugee Council estimates that as many as half of such decisions may be wrong. As a result, children as young as 14 are placed in detention centres or housed with unrelated adults, and deprived of education and care to which they are entitled.³³⁹

Further obstacles to equal access to quality education were encountered in Finland, Latvia, and Lithuania. In Finland, the Municipality of Enontekiö had not fulfilled its statutory obligation to arrange classes in the Sámi language for all Sámi pupils. In Latvia, the Tukums City Council decided not to open a first grade minority education programme in one secondary school, even though the parents of 15 children had applied in due order to enrol their children in the first grade. In Lithuania, the Equal Opportunities Ombudsperson received a complaint alleging that admission procedures to Vilnius Šolom Aleichemo secondary school advantaged students of Jewish origin; the school subsequently discarded the discriminatory requirements in question.

Similar instances were reported by the FRA in 2009. In Italy, the Municipality of Milan issued a circular³⁴⁰ on the enrolment of children up to five years old in nursery schools. It stipulated that non-EU babies whose parents could not present their residence permits by 28 February 2008 would not be enrolled in the municipality's nurseries. A Moroccan woman sued the Municipality for discriminatory treatment because she lost her job and could not renew her residence permit.³⁴¹ In February 2008, the Tribunal in Milan ruled that the above mentioned clause was discriminatory and ordered the municipality to enrol the child.³⁴² In Latvia, state-guaranteed education is provided to immigrants and their children who hold a permanent residence permit, but not to children of third-country nationals whose residence permit is temporary. Such families must sign a contract with the school to attend and also have to pay a variable tuition fee which local governments set.³⁴³

2.3.4.3. Racist incidents

Racist incidents in schools are systematically monitored only in a few EU Member States. For example, France³⁴⁴ and the Netherlands³⁴⁵ have systems of monitoring racist incidents in education. In Germany, some Federal States monitor right-wing extremism in schools and in the United Kingdom schools have a mandatory duty to collect and keep annual records of racist incidents.

Types of racist incidents and discriminatory practices reported to the FRA by the RAXEN network in 2008 and 2009 include problematic content in schoolbooks in Belgium³⁴⁶ and in school magazines in Slovenia,³⁴⁷ ethnic profiling during a study trip in Denmark,³⁴⁸ segregation of Roma pupils in Hungary and Poland,³⁴⁹ unjustified placement of Roma children in special needs schools in Slovakia,³⁵⁰ teachers involvement in hate speech against minority students in Romania.³⁵¹ Hate speech and harassment by peers, parents or teachers has also been recorded in a number of Member States. For example, in Austria, pupils made anti-Semitic remarks during a visit to the former Nazi concentration camp in Auschwitz.³⁵² In Hungary the headmaster of a school told undisciplined children

³⁴⁴ The first results of SIVIS (Système d'Information et de Vigilance sur la Sécurité scolaire – Vigilance and Information System on School Safety) were published at the end of 2008. According to the Ministry's information, violent racist, xenophobic or anti-Semitic incidents accounted for 5% of the incidents listed by public secondary schools in 2007-2008. See Annual Report 2008 on The Fight against Racism, Anti-Semitism and Xenophobia published by the National Consultative Commission on Human Rights (Commission Nationale Consultative des Droits de l'Homme – CNCDH) in March 2009.

³⁴⁵ In 2008 local and regional Anti-Discrimination Agencies (ADBs) registered 248 complaints in the area of education, accounting for 5.2% of all complaints. The majority (156) concerned racist discrimination.

³⁴⁶ Verstraete, Eva (2006) Vlaamse leermiddelen onder de loep. Op zoek naar het interculturele gehalte, Universiteit Gent: Steunpunt Diversiteit & Leren.

³⁴⁷ In 2008, a school magazine featured an article seen as offensive for students with a non-Slovene background. The Inspectorate sent the case to the competent district attorney on suspicion of a criminal offence.

³⁴⁸ During a study trip Danish school teachers disproportionately focused on the luggage of students of ethnic minority origin when searching for weapons. The case was forwarded to the public prosecutor. Letter, 4 August 2008, Journal no SA2-2008-5129-0077.

³⁴⁹ In a case in Hungary, six Roma children were prohibited from attending school, on the basis disciplinary problems. In a case in Poland, Roma students were physically separated from the rest of the school. In 2008, the Commissioner of the Sejm National and Ethnic Minorities Commission recognised that there had been discrimination.

³⁵⁰ In 2008, Amnesty International Slovakia (AI) observed that Roma children from the village of Pavlovce nad Uhom composed 99.5 per cent of the pupils of the local special school. Almost two thirds of the Roma children of school age in March 2008 attended the school.

³⁵¹ In Romania, a teacher shouted at sixth grade students, "Go into the classroom, stinky Gypsies. You make the hallway stink. I have had enough of you, may you drop dead". A case was filed with the National Council for Combating Discrimination, which found the teacher guilty.

³⁵² Reported in the media, at <http://derstandard.at/1241622687753/KZ-Besuch-Eklat-bei-Schuelerfahrt-nach-Auschwitz>.

³³⁹ At: www.refugeecouncil.org.uk/news/reviews/newsreview/2009/20090605.htm.

³⁴⁰ Italy, Comune di Milano, Circular No. 20.

³⁴¹ T. Monestiroli (2008) 'Asili, primo ricorso contro la Moratti', in: La Repubblica – Milano (15/012008).

³⁴² Tribunale di Milano, Sezione I Civile, N. 2380/08 R. G.

³⁴³ Information provided by the Ministry of Education and Science.

of mostly Roma origin that the Hungarian Guard, a paramilitary anti-Roma organisation, was right and "Gypsies deserve to be smashed".³⁵³

2.4. Experiences of police stops, perceptions of ethnic profiling and trust in the police

Law enforcement based on equality and non-discrimination is a cornerstone of democratic societies. As a result of immigration into the EU and movement within and between Member States, as well as the presence of established national minorities, law enforcement in the EU has to increasingly work with diverse communities. The mission of law enforcement is not only to fight crime, but also to address the needs and rights of victims and witnesses, and their wider communities. In this context law enforcement is a public service – one which is serving a diverse European population. With this in mind, EU-MIDIS³⁵⁴ asked minority groups about their perceptions and experiences of discrimination on the basis of their ethnicity and immigrant background in different areas of everyday life – including law enforcement.

EU-MIDIS found that many minority groups reported that they were frequently stopped by police. North Africans reported the highest rate (33% stopped at least once in the previous 12 months), followed by Roma (30%); Sub-Saharan Africans (27%); Central and East Europeans and respondents from the former Yugoslavia (22%); Turkish respondents (21%); and Russians (20%).

When the figures are broken down by group and Member State, very high rates were recorded for Sub-Saharan Africans in Ireland (59%) and Roma in Greece (56%).

In Greece, the Roma were by far the most heavily policed group in the survey. 323 police stops were reported for every 100 Roma interviewees, just over three stops for every interviewee over a 12 month period. This was twice as high as the rate recorded among North Africans in Spain and Sub-Saharan Africans in Ireland, who jointly had the second highest stop rate of 160 per 100 interviewees (just over 1.5 stops for every interviewee).

In 10 Member States, respondents from the majority population were also interviewed to assess differences between the majority and minority population. In several countries minority respondents were stopped by the police significantly more often than members of the majority population (see also Chapter 4 in the *EU-MIDIS Main Results Report*³⁵⁵).

In Hungary, for example, 15% of respondents from the majority population reported that they had been stopped in the previous 12 months, compared with 41% of Roma respondents. In Greece, 23% of the majority and 56% of Roma respondents were stopped; in Spain, 12% of the majority and 42% of North African respondents; in France, 22% of the majority and 42% of North African respondents.

Across all respondents, the proportion of respondents who considered that they had been stopped specifically because of their immigrant or ethnic minority background was as follows: North Africans (19%), Roma (15%), Sub-Saharan Africans and Central and East Europeans (9%), Turkish respondents (5%), Ex-Yugoslavians (1%), and respondents of Russian background (0%).

When the results are broken down by group and Member State, very high rates of presumed ethnic profiling (over 20%) were recorded for the Roma in Greece (39%), North Africans in Spain (31%), Sub-Saharan Africans in France (24%), Roma in Hungary (24%), and North Africans in Italy (21%).

When asked whether the police treated them respectfully during a stop, 33% of Roma respondents and 32% of North African respondents indicated that the police's behaviour towards them, during their last stop, was fairly or very disrespectful. 20% of Sub-Saharan Africans and 18% of Turkish respondents considered the police to have been fairly or very disrespectful, while the rates for other groups were 12% or lower.

When these figures are broken down by group and Member State, high rates (30% or higher) of fairly or very disrespectful police treatment were indicated by the Roma in Greece (51%), Roma in Poland (45%), North Africans in Italy (41%), Sub-Saharan Africans in France (36%), North Africans in Belgium and Sub-Saharan Africans in Portugal (both 35%), North Africans in the Netherlands (34%), North Africans in France (32%), and Roma in Hungary (30%).

³⁵³ Equality body report at: www.egyenlobanasmod.hu/.

³⁵⁴ EU-MIDIS (2010), Data in Focus Police Stops and Minorities, available at www.fra.europa.eu/fraWebsite/attachments/EU-MIDIS-police.pdf.

³⁵⁵ Available online at: <http://fra.europa.eu/eu-midis>.

2.5. Religious freedom

2.5.1. EU-MIDIS findings regarding Muslims

Given the shortage of extensive, objective and comparable data on Muslims in the European Union, EU-MIDIS³⁵⁶ provided, for the first time, comparable data on how respondents who identified themselves as Muslims experience discrimination and victimisation. Muslims were identified in large numbers in 14 EU Member States; they have diverse ethnic origins; for example, North and Sub-Saharan African, Turkish, Iraqi, and ex-Yugoslavian. The overwhelming majority of respondents (89%) in these groups stated that religion plays a “very important” or “fairly important” role in their lives.

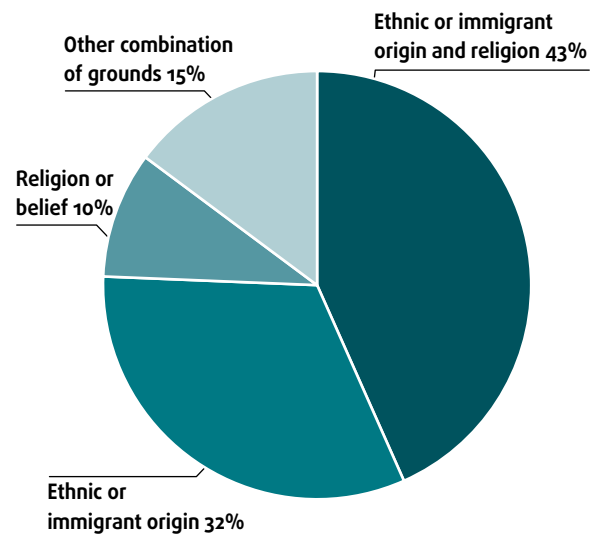
The results revealed high levels of discrimination and low levels of rights awareness and reporting in the countries surveyed. Interestingly, when respondents who had experienced at least one incident of discrimination were asked to identify the ground of discrimination, only 10% stated that it was exclusively due to religion or belief (Figure 2.6). However, almost half of the respondents selected both ‘religion or belief’ and ‘ethnic or immigrant background’. This result shows the difficulty of distinguishing between these two grounds of discrimination because they are interrelated with those who are discriminated against.

The survey results also showed that, in all 14 Member States where Muslim respondents were interviewed, discrimination in employment and private services tended to dominate respondents’ experience of everyday discrimination. Given that the EU’s third Common Basic Principle on Integration specifically mentions that “*employment is a key part of the integration process and is central to the participation of immigrants, to the contributions immigrants make to the host society, and to making such contributions visible*”,³⁵⁷ the high levels of discrimination experienced by respondents five years after Member States agreed these common principles raises concern about the progress that has been made. Policy makers and social partners could make use of these findings to develop targeted measures and actions. Moreover, given that the sixth Common Basic Principle on Integration states that “*access for immigrants to institutions, as well as to public and private goods and services, on a basis equal to that of national citizens and in a non-discriminatory way, is a critical foundation for better integration*”, the EU-MIDIS findings provide evidence

³⁵⁶ FRA (2009), Data in Focus: Muslims, available at http://fra.europa.eu/fraWebsite/attachments/EU-MIDIS_MUSLIMS_EN.pdf.

³⁵⁷ See http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/jha/82745.pdf.

Figure 2.6: Discrimination by grounds or combination of grounds – Muslim respondents



Source: FRA (2009) ‘Muslims’, Data in Focus Report 2, Figure 1, EU-MIDIS, question A2

that policies and measures are urgently needed that focus more concretely on these areas.

Relative to employment, respondents generally experienced less discrimination in health and social services, and housing and education. However, this may indicate that not all respondents required health or social services, had school-age children, or had sought accommodation in the previous 12 months.

The survey also asked respondents whether they wore traditional or religious clothing that was different to the clothing worn by the majority population. Wearing traditional or religious clothing, including a headscarf, seems to have only marginally affected respondent’s discrimination experiences. This finding contradicts a common assumption that wearing traditional or religious clothing, such as headscarves, has a negative effect on the attitudes of mainstream society and its behaviour towards minorities. This finding merits further examination by means of additional quantitative and qualitative research, to find out more about how women experience discrimination.

2.5.2. Religious freedom reported in other sources

Events in 2008–2010 show that diversity is not always perceived in positive terms and intercultural dialogue is not always found easily. At the same time there are positive signs, such as the efforts that have been made to rationalise the debate surrounding the Muslim population in Europe by providing objective information.

For instance, the Austrian Integration Fund has produced a report on 'Islam in Austria'.³⁵⁸ The Ministry of Labour and Immigration and the Ministry of Interior and Justice of Spain have produced data on the perceptions of the Muslim population (this showed that some 70% of interviewees felt very or fairly comfortable living in Spain, while 84% reported no hindrance to religious observance, and 81% recognised that non-believers must have the same values and respect as believers³⁵⁹).

Regarding the place of religion in the political debate, data gathered by FRA suggests that constructing mosques or minarets is the issue that has most frequently led to heated arguments. In certain *Länder* in Austria³⁶⁰ planning laws were amended to pre-empt the erection of buildings that might raise popular concern. In Spain, the non-Muslim population has repeatedly opposed the opening of new mosques or other kinds of Islamic institutions.³⁶¹ In Hungary, the planned opening of a Muslim cultural centre in Budapest provoked civil protest, which was supported by some local politicians.³⁶²

Anti-religious hate crimes have also become an issue in recent years. In Sweden, a report published by the Swedish National Council for Crime Prevention in 2009 noted that more than 600 hate crimes complaints with an anti-religious motive had been recorded. Almost half of these (45%) were identified as Islamophobic hate crimes, an increase from the previous year when 66 complaints were recorded. Around a quarter (26%) contained an anti-Semitic motive, an increase of 41 complaints in comparison with the previous year.³⁶³

2.5.3. The issue of religious symbols

The issue of whether pupils or educators should be permitted to or prohibited from displaying religious symbols has also provoked debate and legislative measures in recent years. Current policies range from a nationwide prohibition of the display of religious

symbols in public schools, as in France, to granting pupils and teachers complete freedom to wear or show religious symbols.

In Belgium, a public Flemish school in Antwerp introduced a ban in June 2009 on the wearing of 'religious signs'. The decision attracted public attention. On 11 September 2009 the central council of Flemish public schools³⁶⁴ introduced a general ban on 'religious signs' in Flanders.³⁶⁵ From the academic year 2008-2009 onwards, only four secondary schools situated in the Brussels-Capital Region have permitted pupils to wear headscarves at school, and 75% of schools managed by the French community ban headscarves and other head coverings.³⁶⁶ On 16 March 2010, the Belgian Council of State suspended the general ban on "religious signs" until the Constitutional Court decides whether it contradicts the Belgian Constitution. On 12 March 2010, the Belgian Court of Appeal of the city of Mons held that a maths teacher may teach in a public school in Charleroi wearing an Islamic veil. The woman, who taught at several schools in Charleroi, was banned from wearing her veil during class by one school, a decision supported by the municipal council of Charleroi on 24 November 2009. The Court held that the woman may wear her veil during class and ordered the school to reappoint her within a week. The judgment confirmed the point of view of the Centre for Equal Opportunities and Opposition to Racism (CEOR), which advocates that the public display of religious and philosophical symbols should be regulated by law rather than administrative decision.³⁶⁷

The Dutch government announced in September 2008 that it intended to ban in all schools in the Netherlands (but not in higher education institutions), clothing that covers the face (but not headscarves). The ban applies to everyone who enters school premises, including pupils, teaching staff and parents who bring their children to school. The Commissie Gelijke Behandeling (CGB) ruled that the Amsterdam police was not guilty of discrimination when it refused to allow a member of staff to wear a headscarf while in uniform and when her position brought her into contact with the general public.³⁶⁸

358 At: www.integrationsfonds.at/.

359 Metroscopia Co., www.tt.mtin.es/periodico/inmigracion/201004/INM20100407.htm.

360 In Austria the provinces of Vorarlberg and Kärnten amended their laws. See *Raumplanungsgesetz, Vorarlberg/LGBl 39/1996*, last amended by *LGBl 35/2008*; and *Baugesetz, Vorarlberg/LGBl 52/2001*, last amended by *LGBl 34/2008*.

361 At least for Catalonia the situation may be clarified by a recent law that has been considered a pioneer initiative in Spain. *Catalunya/Llei 16/2009 dels centres de culte*, available at: www.parlament.cat/web/activitat-parlamentaria/lleis.

362 'Arab negyedtól tartanak Sas-Hegyen', in: *Népszabadság*. Also 'Nyílt levél Molnárnak és Kuppernek az Iszlám Központról' in: *Népszabadság*.

363 *Brottsförebyggande rådet (2008) Hatbrott 2009:10 – En sammanställning av polisanmälningar med främlingsfientliga, islamofobiska, antisemitiska och homofobiska motiv*. See: www.bra.se/extra/faq/?module_instance=2&action=question_show&id=508&category_id=0.

364 These are public schools directly managed by the Flemish Community, as distinct from public schools run by the municipalities or the provinces.

365 Cf. website: www.g-o.be/go_splash/.

366 Official figures from the French community are only available for schools belonging to its own network (the so-called 'network of the French Community').

367 At: www.diversite.be/?action=artikel_detail&artikel=342.

368 The Netherlands/CGB/2008-123.

Reportedly wearing religious headgear is banned in Denmark's police force.³⁶⁹ The Danish Home Guard also forbade a Muslim woman to wear the headscarf.³⁷⁰ While a public opinion survey in Denmark concluded that the majority of respondents were against the right of Muslims to wear a headscarf and pray during the working day,³⁷¹ another survey showed that nine out of 10 Danish companies had no problem with these issues. One major supermarket chain announced that its strategy was to recruit women with headscarves to improve integration and reflect society's diversity.³⁷²

In Germany the situation remains complex since only half of the *Länder* introduced bans on headscarves in schools (and partly in public administration) after a judgment of the Constitutional Court in 2003. A report by Human Rights Watch concluded that bans which prohibit teachers (and some other civil servants) from displaying religious symbols in eight German *Länder* contravene Germany's international legal obligations and discriminate against Muslim women by forcing them to choose between their jobs and their religious beliefs.³⁷³ In September 2009 an administrative Court in Berlin ruled that schools must allow Muslim students to pray during lesson breaks once per day.³⁷⁴

The issue of displaying religious signs in public was also raised before the ECtHR in the reporting period. In the case of *Dogru v. France*,³⁷⁵ the Court had the opportunity to examine the situation in France in relation to law no. 2004-228 on secularism, which provides that "[i]n State primary and secondary schools, the wearing of signs or dress by which pupils overtly manifest a religious affiliation is prohibited". The applicant, a Muslim girl, was asked to remove her headscarf because it was argued that this was incompatible with physical education classes. The applicant repeatedly refused to do so and was expelled for breaching a "duty of assiduity" by failing to participate actively in physical education classes.

In its judgment the Court made reference to its earlier case law regarding religious signs. It recalled that compelling a Sikh motorcyclist to wear a helmet was a justifiable safety measure,³⁷⁶ as were security checks requiring the removal of a turban or veil³⁷⁷ and the refusal of administrative services to a student who did not comply with dress code and wore a headscarf.³⁷⁸ The Court also referred to the case of *Leyla Sahin* when it had concluded that in the context of Turkey it is legitimate to exclude students from lectures if they do not remove the Islamic headscarf while on the university's premises.³⁷⁹ In line with this case law, the Court found that the conclusion reached by the national authorities was not unreasonable.³⁸⁰

In several Member States, there has been discussion about whether it should be forbidden to wear a burqa, which covers the face completely, in public. In France, the National Advisory Commission of Human Rights (CNCDH) delivered an opinion on this subject on 22 January 2010, recommending that support to women who are victims of violence should be improved as well as promoting dialogue and training in schools.³⁸¹ On 26 January 2010, a parliamentary report was published on the practice of wearing the "integral veil", which advised against the introduction of legislation to ban the wearing of religious symbols. It recommended the provision of training for public officials and mediation with women who wear the *burqa*.³⁸² On 25 March 2010, the *Conseil d'État* delivered a report on the same contested issue.³⁸³ It concluded that a general ban on wearing the burqa in public is unfeasible, and would be appropriate only when it is necessary for security reasons or in the context of delivering certain goods and services.

Despite these sceptical voices, including a disapproving resolution from the Council of Europe's General Assembly,³⁸⁴ the National Assembly, in a resolution dated 11 May 2010, decided that it was necessary to protect women from being forced to wear a full veil. In May 2010 the Minister of Justice presented a draft bill banning the wearing in public of clothing that is designed to hide the face; it was adopted on 14 September and confirmed by the

369 See <http://ekstrabladet.dk/112/article1121488.ece>.

370 Hjemmeværnskomandoen, (2009) 'Uniformsbestemmelser skal overholdes' at The Danish Home Guards' homepage.

371 M. Bræmer (2009) 'Lønmodtagerne ramt af muslimforskrækkelse' in Ugebrevet A4.

372 The COOP chain. Another supermarket chain, FØTEX, has banned religious dress and won a case on this in the High Court in 2005.

373 Human Rights Watch (2009), Discrimination in the Name of Neutrality. Headscarf Bans for Teachers and Public Servants in Germany, p. 2. Muslim teacher trainees have been denied subsequent employment as teachers after they have completed their training – unless they take off their headscarves. Many of the women interviewed said they felt "alienated and excluded" (p. 3), though some had been living in Germany for decades.

374 Administrative Court in Berlin, Verwaltungsgericht Berlin, 29 September 2009, VG 3 A 984.07.

375 ECtHR, *Dogru v. France*, 4 December 2008. See also the Court's judgment in the case of *Kervanci v. France*, delivered on the same date.

376 ECtHR, *X v. the United Kingdom*, (Dec) 12 July 1978.

377 ECtHR, *Phull v. France*, (Dec.) 11 January 2005; ECtHR, *El Morsli v. France*, (Dec.) 4 March 2008.

378 EComHR, *Karaduman v. Turkey*, 3 May 1993.

379 ECtHR, *Leyla Sahin v. Turkey*, 29 June 2004.

380 See paragraph 73 of the judgment.

381 At: www.cncdh.fr/IMG/pdf/10.01.21_Avis_sur_le_port_du_voile_integral.pdf.

382 At: www.assemblee-nationale.fr/13/pdf/rap-info/i2262.pdf.

383 The report is available in French at: www.conseilletat.fr/cde/media/document/avis/etude_vi_30032010.pdf.

384 Parliamentary Assembly of the Council of Europe, "Recommendation 1927 (2010). Islam, Islamism and Islamophobia in Europe", 23 June 2010. At: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/t10/EREC1927.htm> (in particular §3.13).

Constitutional Council on 8 October 2010.³⁸⁵ The law defines public space very broadly, to include not just government buildings and public transport, but streets, markets and thoroughfares. Any person defying the ban is subject to a fine of €150 or a course of citizenship lessons, and any person who forces another to go veiled may be fined €30,000 and imprisoned for up to one year (the fine and prison sentence increase to €60,000 and two years if the person forced to wear the veil is a minor). The law provides for a six month period of “education” to explain to women who wear a full veil that they will face a fine if they continue to wear it in public.

The bill was widely promoted by French politicians as a way of protecting women’s rights. Though human rights organisations³⁸⁶ and the institutions mentioned above expressed concern that it may unfairly stigmatise a vulnerable group, the ban is popular; polls suggest that 65-70% of French people support it.³⁸⁷ Critics of the law say that the French government is creating a problem where none exists, since it is estimated that only around 2,000 of the country’s Muslim women wear a full veil, out of a total population up to two million Muslim women.³⁸⁸

At the end of April 2010, the lower house of the Belgian Parliament voted in favour of a ban on clothes or veils that do not allow the wearer to be fully identified, including full-face Muslim dress such as the *niqab* or *burqa*.³⁸⁹ At the time of writing the law had not yet entered into force and still had to be passed in the Senate. Even if the *burqa* – in contrast to the veil – is hardly used, the debate also inspired discussion in other countries.³⁹⁰ According to the constitution, laws that have been adopted but not ratified are reversed by new elections (which took place in Belgium on 13 June 2010). So far the newly elected parliament has not scheduled a new draft of this law. However, about 20 municipalities in Belgium have already implemented a local police regulation against clothing which covers the face fully.³⁹¹

In Spain, the town of Lleida was the first Spanish municipality, in 2010, to prohibit the wearing of a *burqa* in municipal buildings (but not in streets and other outdoor public spaces) or while carrying out municipal duties.³⁹² Other Catalan municipalities like Barcelona, Cervera, Cunit, El Vendrell, L’Hospitalet, Manresa, Mollet del Vallès, Reus, Santa Coloma de Gramenet, Tarragona and Tàrrrega followed, but took a range of positions between prohibition and restriction. Views also varied as to whether the *niqab* should be included. On this matter, the *Unió de Comunitats Islàmiques de Catalunya* (UCIDCAT) (Federation of Catalan Islamic Communities) issued a communiqué expressing concern that the argument could increase levels of Islamophobia in society.³⁹³ The prohibition has also extended to other Spanish Autonomous Communities such as Andalucía (the municipality of Coin banned the use of the *niqab* in public buildings). At national level, the *Senado* (Upper Chamber of the Spanish Parliament) decided on 23 June 2010 to ban the use of the *burqa* (and the *niqab*) in public spaces including streets.³⁹⁴

In March 2010, the Council of Europe’s Commissioner for Human Rights published a viewpoint on this issue in which he concluded that prohibition of the *burqa* and the *niqab* would not liberate oppressed women but might instead lead to their further alienation from European societies. A general ban on such attire would constitute an ill-advised invasion of individual privacy and, depending on its precise terms, might be incompatible with the European Convention on Human Rights.³⁹⁵

In May 2010, the Council of Europe’s Parliamentary Assembly’s Committee on Culture, Science and Education adopted a draft resolution on a report entitled ‘Islam, Islamism and Islamophobia’. On prohibition of the *burqa* and the *niqab*, the Assembly pointed out that imposing legal restrictions on the freedom to wear or not wear religious clothing in public may be justified “for security purposes, or where the public or professional functions of individuals require their religious neutrality, or that their face can be seen”. However, the resolution suggested a general ban would deny women “who genuinely and freely desire to do so” their right to cover their face and this might violate the right to freedom of religion guaranteed by the European Convention on Human Rights. European governments should instead seek to educate Muslim

385 The text of the law can be found at the Senate’s website: www.senat.fr/seances/s201009/s20100914/s20100914011.html#Niv3_tit52_Vote_sur_l_ensemble.

386 See, for example, Amnesty International, “La question du voile”. At: www.amnesty.fr/index.php/amnesty/s_informer/actualites/la_question_du_veile.

387 Some 70%, according to a Financial Times-Harris poll conducted in February 2010. See J. Blitz, “Poll shows support in Europe for burka ban”, Financial Times, 1 March 2010; 64% according to a poll conducted in April 2010 by the Sofres. Detailed results available at: www.tns-sofres.com/_assets/files/2010.04.24-burqua.pdf.

388 ‘French constitution experts approve burqa ban’.

At: <http://euobserver.com/?aid=30993>.

389 See the Proposition de loi visant à interdire le port de tout vêtement cachant totalement ou de manière principale le visage.

390 The BBC estimated that 30 women wore this kind of veil in Belgium, in a Muslim population of around half a million. See: <http://news.bbc.co.uk/2/hi/8652861.stm>.

391 At: www.diversite.be/?action=artikel_detail&artikel=358&select_page=215. See also CEOR, *Memorandum for the Federal*

Elections, point 4.5.

392 See: www.paeria.es/cat/ajuntament/actes.asp?IdTipus=PAO&Detall=True&IdDetall=ACO&IdActe=1070&Dia=1&Mes=1&Any=2010&TextCerca=&Consulta=False&PaginaAnterior=/cat/ajuntament/actes.asp&Pagina=1.

393 See: <http://ucidecatalunya.blogspot.com>.

394 At: www.senado.es/legis9/plenos/ds_20100623_48.html.

395 Viewpoint of Thomas Hammarberg.

women on their rights, as well as their families and communities, and encourage them to take part in public and professional life.³⁹⁶

Amnesty International has also reacted to what it called a “growing public debate in Europe on the wearing of full face veils, such as the burqa and the niqab, by Muslim women” and published a statement arguing that such bans would violate international human rights law.³⁹⁷

2.6. Participation in public life

2.6.1. Political participation

Political participation is traditionally linked to and made conditional upon national citizenship. However, five EU Member States – Denmark, Finland, Italy, the Netherlands and Sweden – have ratified the Council of Europe’s 1992 Convention on the Participation of Foreigners in Public Life at Local Level. Furthermore, a great number of EU Member States grant, to some extent, third-country nationals the right to political participation at local level – in fact, more than half of the EU Member States do so. Belgium, Denmark, Greece,³⁹⁸ Ireland, the Netherlands and Sweden provide all third-country nationals with the right to vote and the right to stand as a candidate. Luxembourg and Estonia provide third-country nationals with the right to vote but not to stand as a candidate. Some EU Member States, such as, Finland, Lithuania³⁹⁹ and Slovakia grant the right to vote and to stand as a candidate to all third-country nationals who have a permanent residence or who hold a long-term residence status. Slovenia and Hungary provide third-country nationals with permanent residence or with long-term residence status with the right to vote but not to stand as a candidate. Finally, several Member States provide only citizens of certain third countries with political rights: in Portugal and the UK, certain citizens of certain third countries have the right to vote and to stand as a candidate, while in Spain⁴⁰⁰ citizens from certain third countries have the right to vote, but not to stand as a candidate.

Participation of third-country nationals at elections – if granted such a right – varies. In Denmark, an analysis of local elections in November 2009 showed that 68% of ethnic Danes who were eligible to vote, voted, compared to 37% of the immigrants who were entitled to vote. The report compared trends in participation in Denmark’s two largest cities, Copenhagen and Aarhus, which showed that the participation of immigrants in elections has decreased dramatically in the last 12 years (by 11% in Copenhagen and 17% in Aarhus) and that the gap between ethnic majority participation and ethnic minority participation has increased.⁴⁰¹ A project in Ireland detected a trend in the other direction. It reported that the number of migrant voters registered to vote in European and local elections held in June 2009 had increased significantly. An additional 15,681 immigrants registered and voted in the 10 local areas the study considered.⁴⁰²

EU Member States have exclusive competence over citizenship, including the conditions on which citizenship can be obtained. As a result, it is for the Member States to define who is entitled to participate in their political system. In fact the States have diverging traditions and rules in this regard. National rules on citizenship may exclude immigrants from political participation. In certain instances they may also exclude members of minorities who have lived for decades in the country concerned. In June 2009 no less than 16% of Estonia’s population were non-citizens (including 7.6% who are *de facto* stateless).⁴⁰³ With regard to stateless persons permanently resident in Member States the European Parliament recently expressed its concern that “some Member States impose unwarranted demands on them or demands which may not be strictly necessary in order to obtain citizenship”. The Parliament called on those Member States “to systematically bring about just solutions, based on the recommendations of international organisations” and advocated that “stateless persons permanently resident in the Member States should have the right to vote in local elections”.⁴⁰⁴

396 At: www.assembly.coe.int/CommitteeDocs/2010/IslamIslamismandIslamophobiaInEurope_E.pdf.

397 Amnesty International, 21 April 2010. At: <http://www.amnesty.org/en>.

398 Greece, Law 3838/2010 on Modern provisions regarding Greek citizenship and political participation of aliens of ethnic origin and aliens who reside lawfully in Greece”, adopted in March 2010.

399 Lithuania, Law No. IX-959, 28 June 2002.

400 The third-country nationals who will be able to vote in the May 2011 local elections are nationals from Bolivia, Cap Verde, Chile, Colombia, Ecuador, Iceland, Paraguay, Peru, New Zealand and Norway.

401 Bhatti, Y. and K. Møller Hansen (2010) ‘Valgdeltagelse ved kommunevalget 17. November 2009. Beskrivende analyse af valgdeltagelsen baseret på registerdata’, Institut for Statskundskab, Arbejdsrapport 2010/3. At: www.nyidanmark.dk/NR/rdonlyres/4E15849D-A7CD-4D42-95B4-6B5DEAD19510/0/valgdeltagelse_rapport_2009.pdf.

402 New Communities Partnership, 2010, Voter Education Report “Our Voice can Make a Difference”. Available at: www.newcommunities.ie/publications/fullist/voter-education-report-full-report-june-2010/.

403 Estonia, Ministry of Foreign Affairs, *Citizenship (as of 8 June 2009)*. Available at: www.vm.ee. Latvia is also a well known example of a country where the rules on accession to citizenship still exclude hundreds of thousands of individuals.

404 See European Parliament resolution of 2 April 2009 on problems and prospects concerning European Citizenship, at paragraph 19.

The Commission reaffirmed that it is well aware “of questions related to persons belonging to the Russian-speaking minority in Estonia and Latvia who are considered to be ‘non-citizens’ and to the situation of ‘erased persons’ in Slovenia”. While underlining that it has no power to deal with questions of acquisition or loss of nationality, the Commission stated that it has “sought to contribute to solutions linked to this issue by promoting integration and by using the Community instruments at its disposal such as ensuring that Member States strictly implement EC anti-discrimination legislation”.⁴⁰⁵

The Parliament recently considered that “it would be desirable to encourage an exchange of experiences regarding the naturalisation systems existing in the various Member States with a view to achieving closer coordination of the eligibility criteria and procedures for Union citizenship – without encroaching on the power of individual Member States to determine the ways of acquiring and losing citizenship – and hence to reducing the instances of discrimination inherent in the different legal systems”.⁴⁰⁶

In fact, laws on citizenship are not set in stone and have been under discussion in several countries. On 11 March 2010, the Greek Parliament approved a milestone bill proposed by the Greek government that comprehensively reforms Greek citizenship law. The law introduces the *jus soli* principle and offers migrants’ children an opportunity to acquire Greek citizenship automatically if one of the parents is born and permanently resides in the country. In addition, the bill provides a new path to citizenship for migrant children.⁴⁰⁷

In the *Rottmann* case (March 2010) the CJEU confirmed that the withdrawal of citizenship, after it has been acquired by naturalisation, is not contrary to European Union law even if the withdrawal causes the persons concerned to become stateless. At the same time, the Court made clear that this is the case only if “the decision to withdraw observes the principle of proportionality”.⁴⁰⁸

EU law plays a prominent role regarding the political participation of EU citizens living in an EU state other than their home country. EU citizens have the right to participate in local and European elections in their country of residence even if they are not citizens

405 See European Commission, 5th report on citizenship of the Union as of 15 February 2008, COM(2008) 85 final, at p. 3.

406 See European Parliament resolution of 2 April 2009 on problems and prospects concerning European Citizenship, at paragraph 18.

407 Law n.3838/2010. See: <http://eudo-citizenship.eu/citizenship-news/260-greek-parliament-passed-comprehensive-citizenship-reform-on-11-march-read-a-summary-by-eudo-citizenship-expert-dimitris-christopoulos>.

408 CJEU, case C-135/08, *Rottmann*, judgment of 2 March 2010.

of that country.⁴⁰⁹ However, EU citizenship does not provide an entitlement to participate in national and regional elections. The Parliament complained in April 2009 that this limitation results in a situation where “many Union citizens thus find themselves disenfranchised both in their Member State of origin and in their adopted Member State”, since a number of Member States do not permit expatriate residents from elsewhere in the EU to take part in their national elections.⁴¹⁰

Political participation, as guaranteed by current EU law, is obviously restricted by national legislation that bars citizens of other Member States from joining or founding political parties. Such exclusion might obstruct EU citizens from exercising their right to stand as a candidate.⁴¹¹ Imperfect understanding of political rights is another obstacle to political participation. Since EU citizens can belong to linguistic minorities and speak a language that is not an official language of the EU, the European Parliament has called on Member States “to disseminate information about Union citizenship also in regional and minority languages”.⁴¹² This issue was discussed in Latvia, where the Central Election Commission (CEC) has developed, in compliance with the State Language Law, information material in the Latvian language only. According to a newspaper interview, the chairman of the Commission confirmed that it was the view of the State Language Inspectorate that state institutions should produce all information materials only in the Latvian language, even though he agreed that a percentage of Latvian citizens might not be able to understand Latvia’s voting procedures as a result.⁴¹³

The right to political participation, as guaranteed through EU citizenship, is also relevant for members of national minorities who move to another Member State. In some circumstances, too, citizenship can be extended to nationals of another country because they are members of a particular ethnic community.⁴¹⁴ For instance, it was discussed, whether members of the German-speaking minority in South Tyrol (Italy)

409 Article 20 paragraph lit. b TFEU.

410 See European Parliament resolution of 2 April 2009 on problems and prospects concerning European Citizenship, at paragraph 48.

411 See COM (2008) 85 final, at pp. 7 and 8.

412 See European Parliament resolution of 2 April 2009 on problems and prospects concerning European Citizenship, paragraph 9

413 Lulle B., Dabūsim tādus, kādus esam pelnījuši, in: *Neatkarīgā Rīta Avīze latvijai*.

414 See COM(2008) 85 final, p. 3. The HCNM of the OSCE has argued in its respective Recommendations of June 2008 that States should “ensure that such a conferral of citizenship respects the principles of friendly, including good neighbourly, relations and territorial sovereignty, and should refrain from conferring citizenship en masse, even if dual citizenship is allowed by the State of residence”. OSCE High Commissioner on National Minorities (HCNM), The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations and Explanatory Note, June 2008, Guideline number 11.

may eventually be granted Austrian citizenship.⁴¹⁵ Hungary passed a law on 26 May 2010 that offers Hungarian citizenship to persons of Hungarian ancestry residing abroad.⁴¹⁶

2.6.2. Participation in public bodies

The participation of members of minorities in public institutions is also an important dimension of public life. The United Kingdom House of Commons agreed to establish a new committee known as the Speaker's Conference. It has been asked to consider, and recommend ways to rectify the disparities between the representation of women, ethnic minorities and disabled people in the House of Commons and their representation in the UK population at large. The Speaker's Conference was asked to deliver its final report before the general election in spring 2010. In the outgoing parliament, only 15 of 659 MPs were members of black, minority or ethnic (BME) communities; and of these only two were women.⁴¹⁷

Similar disparities are evident in other Member States. With regard to Bulgaria, CERD (2009) underlined the low representation of members of certain minority groups in the civil service, army and police. The Committee recommended that Bulgaria should take measures to improve their representation in such institutions, and act to prevent and combat discrimination in selection and recruitment processes.⁴¹⁸ In Germany, the UN Special Rapporteur on Racism noted the under-representation of migrants in *"important institutions, including the political system, the police and the courts and called for positive measures to ensure the adequate representations of persons with a migration background in State institutions"*.⁴¹⁹

In September 2009, the Hungarian Prime Minister announced a governmental plan to open 200 posts in the civil administration to experts of Roma origin from January 2010.⁴²⁰ Subsequently, the Minority Rights

Ombudsman reported that flaws in the recruitment scheme allowed non-Roma applicants to be included in the programme. Other criticisms included data protection concerns, job descriptions that in practice excluded most candidates, unreasonable exclusion of many government offices from the programme, and unstable employment conditions.⁴²¹

In its Policy Programme 2007-2011, the Netherlands set itself the objective of doubling the proportion of officials in the public sector with an ethnic minority background.⁴²² Half of the 2,000 trainee posts offered in the civil service were to be allocated to ethnic minorities. The Ministry of the Interior and Kingdom Relations also agreed to diversity objectives in the police force and policy academy,⁴²³ seeking to raise the proportion of ethnic minority staff to at least 8.5% by the end of 2010.⁴²⁴ In March 2010, nevertheless, the Ministry stated that this goal would probably not be realised. The Minister noted that the main reason was staff turnover, caused by the reluctance of the police force to embrace diversity, the absence of transfer opportunities, and discrimination.⁴²⁵ The same elements are mentioned in a study on the reasons why turnover of ethnic minority officials is high.⁴²⁶

In a 2009 report on the United Kingdom, ECRI welcomed the efforts made to address under-representation of ethnic minorities in the police. The Home Office's objective was to raise the proportion of police from an ethnic minority background to at least 7% of the force. It exceeded this target in 2007, when the proportion was 8%, though only 3.9% of officers were from a minority background. ECRI encouraged the United Kingdom to continue its efforts and monitor progress in recruitment, retention and career advancement.⁴²⁷

2.7. Minorities in the media

The media are of special importance to minorities because they tend to define a society's perception of minorities and in doing so can improve their social inclusion and participation. The Advisory Committee which was established under the Council of Europe's

415 See for instance "Vorstoss: Vaterland auch im Pass", in Dolomiten 18 December 2009.

416 See: <http://eudo-citizenship.eu/citizenship-news/306-hungarian-government-proposes-access-to-citizenship-for-ethnic-hungarians-in-neighbouring-countries>. Slovakia reacted by amending its Citizenship Act on the same day to provide that, if a Slovak citizen acquires the citizenship of another state by an act of will (neither by marriage nor birth), that person will automatically lose Slovak citizenship.

417 At: www.parliament.uk.

418 CERD (2009) Considerations of reports submitted by States Parties under Article 9 of the Convention - Concluding observations of the Committee on the Elimination of Racial Discrimination - Bulgaria, p. 3

419 United Nations (2009) press release 'UN expert on racism concludes mission to Germany' (01/07/2009), available at: www2.ohchr.org/english/issues/racism/rapporteur/docs/PRelease_end_mission010709.pdf.

420 'Kétszáz roma diplomás kerülhet a közigazgatásba', available at: www.kormanysovivo.hu/news/show/news_2380?lang=hu.

421 See: www.kisebbségiombudsman.hu/hir-526-rovid-osszegzes-nemzeti-es-etnikai.html.

422 See: www.regering.nl/Het_kabinet/Beleidsprogramma_2007_2011.

423 Inspectie Openbare Orde en Veiligheid, Ministerie van Binnenlandse Zaken en Koninkrijksrelaties (Public Order and Safety Inspectorate, Ministry of the Interior and Kingdom Relations), 2009, Diversity bij de politie (Diversity of the Police). Den Haag: IOOV.

424 See: www.lecd.nl/Algemeen/publicaties/Documents/DEF%20100308%2009-212%20Diversiteitsanalyse%202008%20NL.pdf.

425 See: www.rijksoverheid.nl.

426 See: www.aofondsrijk.nl/fileadmin/ao_data/Middelen/Onderzoeken/Onderzoek_uitstroomredenen.pdf.

427 ECRI report on the United Kingdom adopted on (fourth monitoring cycle).

FCNM has stated that the media “*should inform the society at large of minority-related issues with a view to promoting a spirit of tolerance and intercultural dialogue*”.⁴²⁸ Minority participation in the media is an indicator of their involvement in cultural and public life in general.

On these grounds, the Committee of Experts of the European Charter for Regional or Minority Languages urged Slovenia’s media to promote public awareness of regional or minority languages and take an active stand against expressions of intolerance. It encouraged the Czech Republic to promote awareness and tolerance of regional or minority languages and the cultures they represent, as an integral element of the country’s cultural heritage, inter alia in the media.⁴²⁹ It urged Hungary to broadcast programmes in minority languages on private radio stations and to improve the time-slots, time-schedules and financial support available for television programmes in minority languages.⁴³⁰

The Advisory Committee recommends that minorities should participate in supervisory boards of public service broadcasters, and in production teams, to ensure that information on minority issues is adequate. In the private sector, it calls for the provision of “*incentives for broadcasting in minority languages or on minority-related issues [that both] can contribute to increasing participation of persons belonging to national minorities in the media*”.⁴³¹

According to a 2009 Eurobarometer survey on discrimination in the EU,⁴³² a significant proportion of European citizens feel that diversity is insufficiently reflected in the media. The survey measured different grounds of discrimination (disability, ethnic origin, religion or belief, gender, age or sexual orientation) and it showed that Europeans’ perception of diversity in the media varies under different grounds. 44% of Europeans felt that disability was not sufficiently reflected, while about one third held the same view with regard to ethnic origin (36%), religion or belief (35%), age (33%) and sexual orientation (31%). About one quarter of Europeans felt that gender diversity was not sufficiently reflected in the media (26%).

The Eurobarometer survey results also revealed substantial differences between Member States. Regarding ethnic diversity, the survey results showed that Spain was the country in which the highest proportion of respondents considered that media coverage of ethnic diversity was insufficient (50%), followed by Italy (47%) and Greece (46%). In the UK and Cyprus, only a quarter of the population shared this opinion, which might indicate that minorities are better represented in the media in these countries.

In its 2009 report, ECRI called on Austria to re-establish a regulatory press mechanism, compatible with the principle of media independence, but empowered to enforce compliance with ethical standards and rules of conduct, including the promotion of standards designed to prevent expressions of racism, xenophobia, anti-Semitism or intolerance.⁴³³ A new *Presserat* was established in March 2010.⁴³⁴

In Belgium, the *Conseil supérieur de l’Audiovisuel* (CSA) presented a study on diversity and equality in French-speaking TV programmes in March 2010, which revealed that minorities were under-represented. In September 2009, during the study’s observation period, over 95% of interviewed experts and spokespersons, about 90% of journalists and 100% of all candidates of TV-games, were perceived as “white”. Women were also clearly under-represented and disabled persons were “quasi absent”.⁴³⁵

In parts of Spain, minorities also appear to be under-represented in the media. About 270,000 Roma people live in Andalusia (about 5% of the population). However, the TV news dedicated just 0.09% of its time to this group. This is one of the conclusions of a report which the Andalusian Audiovisual Council (CAA) presented in Cordoba on International Roma Day.⁴³⁶

428 Commentary on “The effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs”, adopted on 27 February 2008, p. 23.

429 See Reports of the Committee of Experts ECRML(2007)4 and ECRML(2009), 7.

430 See Report of the Committee of Experts ECRML(2010), 2.

431 *Commentary on the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs*, p. 34.

432 Special Eurobarometer 317 “Discrimination in the EU in 2009”, November 2009, pp. 15-21. At: http://ec.europa.eu/public_opinion/archives/ebs/ebs_317_en.pdf.

433 ECRI report on Austria, adopted on 15 December 2009, paragraph 83.

434 At: http://www.presserat.at/show_content.php?hid=1.

435 At: www.csa.be/system/document/nom/1207/Catherine_Bodson_repr_sensation_diversit_d_c2009.pdf.
































436 At: www.consejoaudiovisualdeandalucia.es/opencms/export/sites/caa/Galerias/descargas/estudios_analisis/2010_Estudios_y_analisis/Tratamiento_informativo_del_Pueblo_Gitano_en_las_Televisiones_Pubxlicas.pdf.

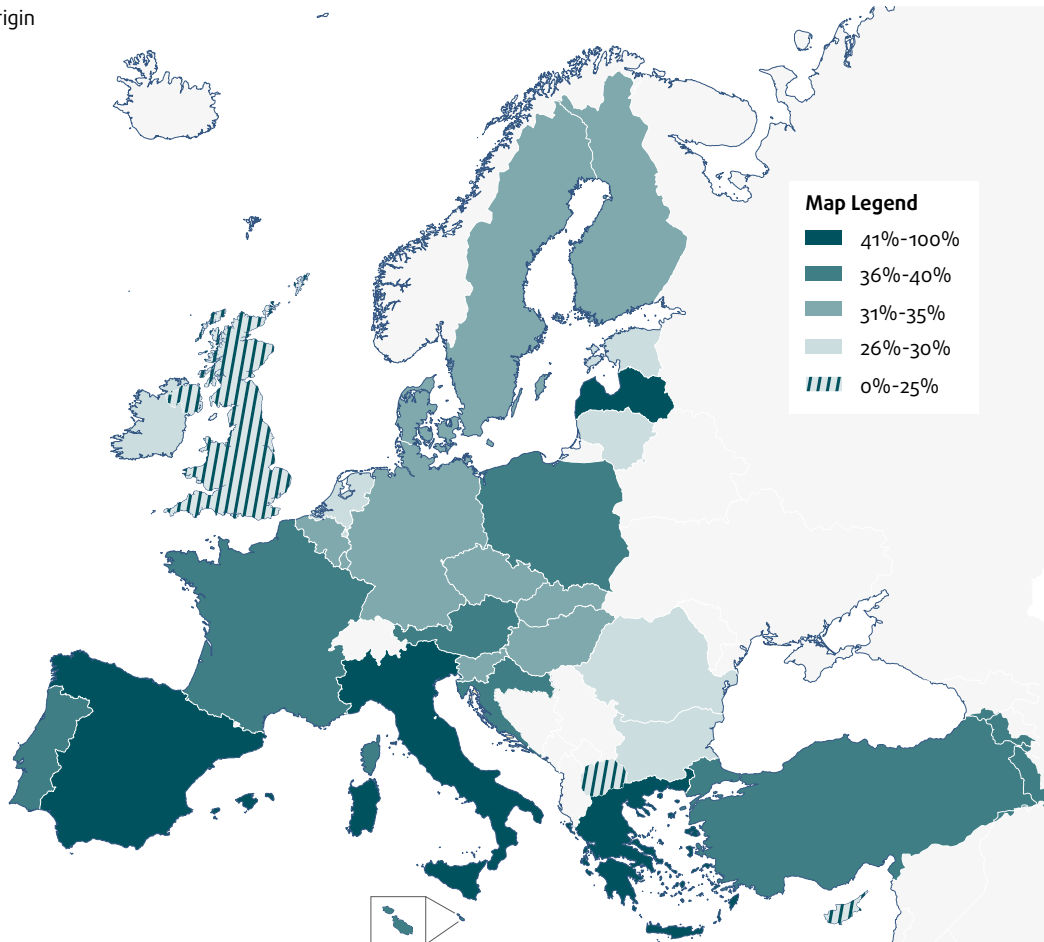
Figure 2.7: Reflection of diversity in terms of ethnic origin in the media in the EU27 and candidate countries, by country (%)

Question: QE1 1.1. Do you think that diversity is sufficiently reflected in the media, in terms of ... ?

Option: Ethnic origin

Answer: **No**

 ES	50%
 IT	47%
 EL	46%
 LV	41%
 AT	39%
 MT	38%
 FR	37%
 PT	37%
 EU27	36%
 PL	36%
 SE	35%
 HU	35%
 CZ	35%
 SI	35%
 BE	35%
 DK	34%
 LU	33%
 DE	32%
 FI	32%
 SK	31%
 NL	29%
 EE	29%
 LT	28%
 BG	27%
 IE	27%
 RO	26%
 CY	25%
 UK	25%
 HR	39%
 TR	38%
 MK	23%



Source: European Commission, Special Eurobarometer 317, 2009, p. 17.

2.8. The use of languages

When implementing European Union law, EU institutions and the Member States are obliged to “respect ... linguistic diversity”.⁴³⁷ At the same time the EU has no legal competence to legislate on the use of languages at national level. Nor does the EU have an explicit legislative competence to fight discrimination based on language.⁴³⁸ The Racial Equality Directive and the Employment Directive do not explicitly address discrimination on the basis of language. However, despite the absence of such an enabling provision in EU law, the latter does offer a clear-cut prohibiting provision: Article 21 of the Charter of Fundamental Rights states that in the scope of EU law “any discrimination” based on language “shall be prohibited”. Moreover, unjustified differentiation on the basis of language can constitute indirect discrimination on grounds of

ethnicity. Finally, various Member States, for instance Finland⁴³⁹ and Romania,⁴⁴⁰ have, when transposing the Directive, gone beyond EU law to address language discrimination – which may diminish the risk that EU countries might fall below standards of international law, notably the International Covenant on Civil and Political Rights (ICCPR).⁴⁴¹

⁴³⁹ See Non-Discrimination Act [yhdenvertaisuuslaki (21/2004)].

⁴⁴⁰ Article 3 of Ordinance 137 and Article 1 (2) of Romania/Law 48/2002 concerning the adoption of Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination (31/01/2002).

⁴⁴¹ The ICCPR was ratified by all EU Member States. It provides that “[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. This prohibition is further reinforced, for instance in Article 25 ICCPR, regarding rights of political participation.

⁴³⁷ Article 22 of EU Charter of Fundamental Rights.

⁴³⁸ See the limited lists of grounds in Article 19 TFEU.

2.8.1. The value of linguistic diversity and its dimensions

The Union started to promote multilingualism long before the Charter came into creation, not least because multilingual European societies could make better use of the Common Market.⁴⁴² In 2008 the Commission underlined in *Multilingualism: an asset for Europe and a shared commitment* that “[e]ach of the many national, regional, minority and migrant languages spoken in Europe adds a facet to our common cultural background”.⁴⁴³ The Committee of the Regions has observed that “linguistic diversity” should be read to include recognition and use of the official languages of the EU, the official languages of the EU Member States, and “the minority languages spoken but not officially recognised in the EU Member States”. The Committee stressed that the “designation ‘minority’ or ‘smaller’ must not become a reason for discrimination against the language”.⁴⁴⁴

A broad commitment to linguistic diversity is not always evident at EU level, where the Lingua Programme was limited to the official languages of the Union (together with Letzeburgesch). However, under the current Culture Programme 2006-2013, the languages eligible for literature translation projects are defined more broadly and cover all official languages “as defined by the Constitution or by the basic law of the respective country”.⁴⁴⁵ This innovation allows languages like Basque and Catalan to be sustained, which may be seen as an important step in efforts to avoid discrimination on the basis of language.

Apart from its obvious cultural and economic importance, linguistic diversity also has a citizenship dimension. The Council recently stressed that languages are not only a personal and cultural enrichment but that “a knowledge of languages is one of the basic skills European citizens need to acquire in order to play an active part in the European knowledge society, and one that both promotes mobility and facilitates social integration and cohesion”.⁴⁴⁶ The same point was emphasised in 2010

by the Council of Europe’s Commissioner for Human Rights who underlined that “[l]anguage is an essential tool for social organisation, including for the very functioning of the state. However, language is also a central dimension of individual identity on a personal level, and is often especially important for those in a minority position.”⁴⁴⁷

The use of regional or minority languages at EU level could help to show how these commitments to linguistic diversity can become operative. The Council has accepted that Acts adopted by the Parliament and Council through normal legislative procedures might be made public in languages that are not EU-official languages but “whose status is recognised by the Constitution of a Member State” or “the use of which as a national language is authorised by law”.⁴⁴⁸ Such languages might also be used in speeches to Council meetings if the request is made in advance and staff and equipment for interpretation are available. Most importantly, minority languages could be used in written Communications to Union Institutions and bodies. However, it must be stressed, first, that opening new linguistic channels would require agreement between individual Member States and EU institutions and, second, their direct and indirect costs would have to be borne by the Member State(s) concerned. So far, little movement has occurred.⁴⁴⁹

Finally, linguistic diversity can have a mediating trans-cultural effect. The Commission recently made the point that “[m]ultilingual people are a precious asset because they act as the glue between different cultures”.⁴⁵⁰ However, if not contextualised in a spirit of sincere cooperation, language policies may also be harmful. The fact that EU Member States share institutions and procedures in a common supranational organisation is definitively helpful for overcoming interethnic tensions. At the same time the supranational ‘umbrella’ does not efface diplomatic tensions between neighbouring EU countries and the need to constantly engage in improving relations remains an important reality for Member States. The OSCE HCNM underlined this, saying that “States should address their concerns for persons or situations

442 For additional analysis and references, see Gabriel N. Toggenburg, *The EU’s “Linguistic diversity”: Fuel or brake to the mobility of workers*, in Andrew P. Morriss and Samuel Estreicher (eds.), *Cross-Border Human Resources, Labor and Employment Issues: Proceedings of the New York University 54th Annual Conference on Labor*, Kluwer International 2004, pp. 675-721.

443 See COM(2008) 566, 18 September 2008, p. 5.

444 See Opinion of the Committee of the Regions on ‘Multilingualism’, in OJ 2008, C 257, p. 30-35, at paragraphs 8 and 34. At: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:257:0030:0035:EN:PDF>.

445 See Programme Guide of the Culture Programme (007-2013), November 2009, p. 48. At: http://eacea.ec.europa.eu/culture/programme/documents/programme_guide_culture_nov_2009_en.pdf.

446 See Council *Conclusions on multilingualism*, 2868th Education, Youth and Culture Council meeting, 22 May 2008.

447 See Viewpoint *Language rights of national minorities must be respected – their denial undermines human rights and causes inter-communal tensions*, 25 January 2010. At: www.coe.int/t/commissioner/Viewpoints/100125_en.asp.

448 See Council conclusion of 13 June 2005 on the official use of additional languages within the Council and possibly other institutions and bodies of the European Union, in OJ 2005 C 148, pp. 1-2.

449 See, however, the “Administrative arrangement between the Kingdom of Spain and the Council of the European Union”, in OJ 2006 C 40, 2 or the Administrative Agreement between the European Commission and the Kingdom of Spain, in OJ 2006 C 73, pp. 14-15.

450 See COM(2008) 566 final, p. 6.



*within other States through international co-operation and the conduct of friendly relations”.*⁴⁵¹

On 30 June 2009 the National Council of the Slovak Republic amended the Act on the State Language of the Slovak Republic. This move was criticised by Hungarians in the Slovak Republic and in the Republic of Hungary. The OSCE High Commissioner on National Minorities noted that some elements of the new law “raise or – depending on the implementation – might raise issues of compatibility with international standards and with the constitutional principles of the Slovak Republic”.⁴⁵² One argument was that the “overlap of minority-related provisions in different pieces of legislation might create legal uncertainty and might lead to different interpretations, which might have a negative impact on the overall legal position of national minorities” in Slovakia.⁴⁵³ Taking into account this advice, the Government of Slovakia adopted principles for the implementation of the amended State Language Act. The Commissioner welcomed these, which came into force on 1 January 2010 and underlined that it is “essential that steps taken to promote the State Language do not undermine linguistic rights of persons belonging to national minorities”.⁴⁵⁴ Similar problems of legal clarity may exist in other contexts.⁴⁵⁵ From an EU law perspective, such language regimes run the risk of being illegal wherever they might create unjustified barriers to the free movement of workers or other citizens, or the freedom to provide services.⁴⁵⁶

2.8.2. The protection of regional languages and the languages of traditional minorities

As already stated, there is no EU competence allowing the Union to deal with language use at a national level. It is up to the Member States to design their legal approaches to regional and minority languages (for instance, recently France introduced a new article in the Constitution, stating that regional languages are part of French Republic’s heritage).⁴⁵⁷ However, within the Council of Europe, many EU Member States entered international obligations in the framework of the European Charter for Regional or Minority Languages (ECMRL).⁴⁵⁸ The Charter is designed to protect and promote regional or minority languages which are traditionally used within a territory of a State, and aims at enabling speakers of these languages to use it in private and public life. It is overseen by the Expert Committee overseeing the ECMRL. In fact – just as is the case with the FCNM – one of the strengths of the Charter is its inherent monitoring mechanism. The Charter employs indeed a system of State reporting under which State reports submitted on a three years regular basis are examined by independent experts. The Committee of Experts submits its reports to the Committee of Ministers of the Council of Europe, who may make recommendations to States parties based upon these reports. So far, the Committee of Experts has examined over 50 national reports.

The explanatory report to the Charter clearly outlines that it is designed to protect and promote regional or minority languages as a threatened aspect of Europe’s cultural heritage, and that it excludes the languages of migrants who only rather recently enrich Europe’s linguistic landscape. Nearly two thirds, namely 16 out of the 27 EU Member States have ratified the ECMRL.⁴⁵⁹ These international commitments can in turn contribute to avoiding discriminations in the scope of the EU treaties.

451 See the general principle no. 3 in the Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations, June 2008. At: <http://www.osce.org/hcnm/68722>.

452 OSCE (2009) Opinion of the OSCE High Commissioner on National Minorities on amendments to the ‘Law on the State Language of the Slovak Republic’; available at: www.foreign.gov.sk/.

453 OSCE (2009) Opinion of the OSCE High Commissioner on National Minorities on amendments to the ‘Law on the State Language of the Slovak Republic’.

454 See the High Commissioner statement on Slovakia’s language law as of 4 January 2010, available at: www.osce.org/hcnm/item_1_42279.html.

455 For instance, in Lithuania where in 2009 two cases of dispute between local governments and the state over street names in minority languages were taken to the Supreme Administrative Court. In both cases, the court upheld the requirement of the county governor to remove street signs in the minority language (Lithuania/Lietuvos vyriausiasis administracinis teismas/ No. A-261-997/2009; Lithuania/Lietuvos vyriausiasis administracinis teismas/ No. A-756-152/2009). Similar decisions in the past have raised concerns in the context of the FCNM. So, for instance, in its opinion dating from 21 February 2003 (first monitoring cycle) the Advisory Committee concludes that “further efforts are needed to remedy the legal uncertainty noted as regards the use of minority languages in relations between persons belonging to national minorities and the administrative authorities, and as regards local names, street names and other topographical information” (paragraph 110).

456 See joint answer given by Mr Orban on behalf of the Commission to written questions E-3753/09, P-3875/09, P-3876/09, 30 September 2009.

457 See Article 75-1, reform of 21 July 2008, text in English.

458 The ECMRL was opened for signature in 1992 and came into force in 1998.

459 To date, it has been ratified by 24 States (Armenia, Austria, Croatia, Cyprus, Czech Republic, Denmark, Finland, Germany, Hungary, Liechtenstein, Luxembourg, Montenegro, Netherlands, Norway, Poland, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom) and has been signed by a further 9 States (Azerbaijan, Bosnia and Herzegovina, France, Iceland, Italy, Malta, Moldova, the Russian Federation, and FYROM).

2.8.3. Language duties: the imposition of language requirements

Language duties can lead to discriminatory effects. However, in most cases such requirements will fall outside the scope of EU law.⁴⁶⁰ For instance, often national citizenship is conditional upon knowledge of the state language of the respective country as this is indeed an important positive factor of integration. Enabling immigrants to acquire this basic knowledge is essential to successful integration.

However, certain strict language duties have been criticised for having asymmetric effects. For instance, Denmark tightened the rules on language skills in the context of naturalisation procedures in November 2008. The chairman of the 60 language schools conducting the Danish language training and the tests stated that this was an example of discrimination of those immigrants who do not have much education, sick people who might have difficulties in learning and not least many of the female Muslim immigrants who have come to Denmark with limited educational background. Likewise, the Board for Ethnic Minorities has warned the Government of the negative consequences of excluding large groups of citizens who have lived, worked and paid tax in Denmark for more than nine years from achieving citizenship.⁴⁶¹

The link to EU law arises where EU citizens making use of their free movement rights are confronted with language duties. For certain professions, the Court of Justice recognised that it is legitimate to require knowledge of the official state language at stake. However, even in such cases the language policy at stake *“must not in any circumstance be disproportionate in relation to the aim pursued, and the manner in which they are applied must not bring about discrimination against nationals of other member states”*.⁴⁶²

Recent developments show that language restrictions do sometimes raise concern within the Council of Europe context. The FCNM Advisory Committee points in its 2008 Opinion on **Lithuania** to the Law on Equal Treatment. The latter law provides in its Article 4(3) for exceptions to the prohibition of direct

discrimination. One of them is the requirement to have command of the State language. The Advisory Committee is deeply concerned that, if this exception is applied in a manner that does not take specific circumstances of a particular case into account, it could have a discriminatory effect on persons belonging to national minorities.⁴⁶³

ECRI applies a wide interpretation of racism that includes the belief that grounds like language, religion or nationality justify *“contempt for a person or a group of persons or the notion of superiority of a person or a group of persons”*.⁴⁶⁴ Consequently ECRI criticised countries such as on Malta (2007), Germany (2008) and Greece (2009) in recent reports as their national anti-discrimination laws do often not cover discrimination on the grounds of language and nationality.⁴⁶⁵ Also, with regard to the new Equality Bill, that was in April 2009 introduced in the United Kingdom’s House of Commons, ECRI recommends that language should be included as a characteristic protected under the Bill which will then harmonise discrimination law.⁴⁶⁶

In Germany, a labour court in Berlin sentenced an art institute to pay compensation to a 48 year old German woman, born in the Dominican Republic, for rejecting her job application on the grounds that German was not her mother tongue. The court regarded this as a case of indirect discrimination on the grounds of ethnic origin without objective justification.⁴⁶⁷ In Cyprus there were several complaints about unnecessary demands for knowledge of the Greek language which restricted access to employment as an estate agent, in a tourist office, or in the nursing profession.⁴⁶⁸ Also in Denmark⁴⁶⁹ and Sweden,⁴⁷⁰ there were cases before Equality Bodies of complaints of discrimination on ground of language.

460 See, however, cases like CJEU, Case C-281/98, *Roman Angonese v Cassa di Risparmio di Bolzano Spa*, judgement of 6 June 2000; CJEU, Case 274/96, *Bickel and Franz*, judgment of 24 November 1998; CJEU, case C-379/87, *Groener*, judgment of 28 November 1989.

461 ‘Tusinder ma opgave at fa statsborgerskab’ in *Jyllandsposten*, 23/09/2008.

462 See CJEU, case C-379/87, *Groener*, judgment of 28 November 1989, at paragraph 19 (language proficiency of teachers); compare in this context also CJEU C-424/97, *Haim*, judgment of 4 July 2000 (language proficiency of dentists) or CJEU, case C-193705, *Commission v. Luxembourg*, judgment of 19 September 2006 (language proficiency of lawyers).

463 Opinion of the Advisory Committee 28 February 2008 (2nd monitoring cycle).

464 See ECRI’s General Policy Recommendation N°7 “National legislation to combat racism and racial discrimination” as adopted on 13 December 2002.

465 See ECRI report on Germany adopted on 19 December 2008 commenting on the 2006 General Equal Treatment Act (the AGG which came into force on 18 August 2006); ECRI report on Greece adopted on 2 April 2009 commenting on the Law 3304/2005; ECRI report on Malta delivered 14 December 2007 commenting on the Legal Notices 461/2004 and 85/2007.

466 See ECRI report on the United Kingdom, adopted on 17 December 2010, at paragraph 58.

467 See also RAXEN Bulletin I 2009; Berlin/Arbeitsgericht/55 Ca 16952/08 (11/02/2009).

468 Information provided by an officer of the Cypriot Equality body ON.

469 Ligebehandlingsnævnet (2009) ‘Ligebehandlingsnævnets udtalelse j.nr. 2500044-09, www.ast.dk/page_pic/pdf/2500044_09_sprog_15_04_2009_10_12.pdf.

470 See: www.do.se/Om-DO/Stamningar-och-forlikningar/Forlikning-Jonkopings-kommun/.

In Estonia, the 2009 ECRI report recommended that the Estonian authorities establish a “monitoring mechanism” for the work of the Language Inspectorate. It also recommends regular consultation with representatives of Russian-speaking minorities on the work of the Language Inspectorate in order to improve the manner in which it is perceived by members of this group.⁴⁷¹ In Latvia, access to the labour market for non-native speakers of the Latvian language, including citizens of Latvia, is affected by formal language proficiency requirements introduced in 2009 for various professions and occupations in public and private employment.⁴⁷² In Lithuania, in a survey 42% of ethnic minority respondents indicated that problems faced in the labour market can be due to poor Lithuanian language skills.⁴⁷³

The 2008 ECRI report on Belgium notes that offers of employment do sometimes stipulate that a specific mother tongue is required for a particular position when in fact there is no justification for such a requirement. In fact the Belgian CEOOR regularly receives complaints regarding alleged discrimination on grounds of language, although its remit does not cover cases of discrimination on the grounds of language. According to the Belgian Constitution⁴⁷⁴, employers may regulate the use of language of their workers during work hours, even for informal communication. ECRI urged Belgium to create a body, authorised for language-based discrimination.⁴⁷⁵ ECRI also addressed the Flemish Housing Code that was amended on 15 December 2006 and now requires applicants for social housing in Flanders to show a willingness to learn Dutch. The new provisions of the Code also require newly arrived non-citizens to enrol in and regularly attend the obligatory primary civic integration programme. ECRI calls for the utmost vigilance, however, regarding these new requirements and generally speaking, any measure involving an obligation related to language or integration as a condition for entitlement to social benefits. ECRI underlines that *“any language requirement for obtaining employment must be reasonable and justified and must fulfil the particular need of the employment in question. Failing that, any requirement for an unduly high level of language skills would be construed as discrimination on the basis of language, and should be penalised accordingly”*.⁴⁷⁶

471 See ECRI report on Estonia as adopted on 15 December 2009, at paragraph 24.

472 See www.likumi.lv/doc.php?id=194735.

473 Darbo ir socialinių tyrimų institutas (2008) Vyrų ir moterų, priklausančių etninėms mažumoms, padėtis darbo rinkoje, tyrimo ataskaita. Report of study conducted by request of the Department of National Minorities and Lithuanians Living Abroad.

474 Article 129, § 1,3.

475 Cf. ECRI Report on Belgium (fourth monitoring cycle), published on 26 May 2009, p. 20.

476 ECRI report on Belgium as adopted on 19 December 2008.

The UN Committee on the Elimination of Racial Discrimination (CERD)⁴⁷⁷ also expressed its concerns about the Flemish Housing Code in Belgium. However, in July 2008, the Constitutional Court ruled that this did not violate the principle of prohibition of discrimination and the right to housing as provided by Articles 10, 11 and 23 of the Belgian Constitution, nor European or international treaties. The Court considered that the obligation to show one’s willingness to learn Dutch was not disproportionate to the objective which was to enable everyone to lead their lives in keeping with human dignity since: 1) it related only to a basic knowledge of the language; 2) courses were available free of charge and the persons concerned were free to demonstrate their willingness to learn Dutch by any other means; and 3) no obligation of result could be imposed, so neither actual knowledge of the language nor its use on completion of the course or other form of instruction could be either required or verified.⁴⁷⁸

Language rights granted to speakers of minority languages can justify language duties imposed to speakers of the majority language. This is especially the case for public administrations or public service providers: a right to use a certain minority language before public authorities can only be enforced, if sufficient staff are proficient in the respective language. In this context certain language requirements might be imposed when employing staff. As outlined above, the CJEU ruled that such language duties can – as long as they conform to the principle of proportionality – also be applied *vis-à-vis* EU citizens who make use of their fundamental freedoms.⁴⁷⁹ Equally, the CJEU held that language rights granted to persons belonging to a minority have to be extended to EU citizens who find themselves *“in the same circumstances”*⁴⁸⁰ as the persons belonging to the protected minority, that is whose *“language is the same”*⁴⁸¹ like the minority language protected by the local or national language regime at stake.

A different form of language duties are the language quota imposed on public or private broadcasters. For instance, in Latvia the Electronic Media Law adopted in June 2010, envisages that national and

477 Committee on the Elimination of Racial Discrimination, Concluding Observations for Belgium.

478 Belgium/Grondwettelijk Hof-Cour constitutionnelle/Arrest nr. 101/2008 (10/07/2008), available online at: www.const-court.be/.

479 See CJEU, case C-379/87 (*Groener*). In 2009, the Court stressed that “language and culture are intrinsically linked” and that the “objective pursued by a Member State of defending and promoting one or several of its official languages must [not] of necessity be accompanied by other cultural criteria in order for it to justify a restriction on one of the fundamental freedoms guaranteed by the Treaty.” See CJEU, case C-222/07, *UTECA*, judgment of 5 March 2009, at paragraph 33.

480 See CJEU, case 137/84, *Mutsch*, judgment of 11 July 1985, at paragraph 18.

481 See CJEU, case 274/96, *Bickel and Franz*, judgment of 24 November 1998, at paragraph 31.

regional electronic mass media should broadcast at least 65% of its programmes in state language. During the third reading of the draft law, the opposition party “Concord Centre” objected to the language quotas, claiming that they contradicted a 2003 ruling of the Constitutional Court,⁴⁸² which abolished language restrictions on broadcasts.⁴⁸³ However, the majority of the MPs and the President’s Constitutional Law Commission⁴⁸⁴ did not share this concern. Still the quotas were criticised by some commercial television companies,⁴⁸⁵ politicians and the Russian Ministry of Foreign Affairs.⁴⁸⁶ The concern often expressed vis-à-vis such quota is that they potentially limit public or private broadcasting in minority languages. At the beginning of 2010 the Council of Europe’s Commissioner of Human Rights underlined that the media should ideally reflect the plurality and diversity of the population and that regulation of the broadcast media should be based on “objective and non-discriminatory criteria and should not be used to restrict enjoyment of minority rights”.⁴⁸⁷

2.8.4. Language rights: the possibility to use one’s own language before administrative authorities

Several articles of the European Charter for Regional or Minority Languages deal in detail with the issue of knowledge of regional or minority languages by representatives of administrative authorities and public services, as well as translation and interpretation.⁴⁸⁸

Sweden has recently implemented recommendations of the Committee of Experts of the European Charter for Regional or Minority Languages regarding

communication between persons belonging to minorities and authorities. A new Act on National Minorities and National Minority Languages expanded the administrative areas for Sami and Finnish. This gives more individuals the right to use Sami and Finnish in their dealings with the authorities and also the right to pre-school and care of the elderly partly or completely in the minority language.⁴⁸⁹ In regard to Lithuania, the FCNM Advisory Committee notes in this context “with deep concern” that the Supreme Administrative Court declared null and void the decision by the local authorities of the region of Vilnius, to authorise the use of Polish, in addition to Lithuanian, in the offices of the local administration of the region. The local authorities’ initial decision was based on Article 4 of the Law on National Minorities.⁴⁹⁰

As already mentioned, legal provisions allowing the use of minority languages when dealing with public authorities cannot be utilised to their full potential if civil servants are not sufficiently able to speak that language. For instance, the Expert Committee overseeing the ECMRL mentioned with regard to Sweden that practical obstacles to the exercise of the right to use Sami in criminal proceedings, “such as the lack of Sami-speaking judicial personnel” have persisted.⁴⁹¹ As regards the situation in Spain the Expert Committee notes for instance that despite the recent legal developments requiring staff working on the judicial administration based in Catalonia to prove a knowledge of the Catalan language, the authorities recognises that still only a minority of judicial staff use Catalan. As a result “anticipation of the difficulties involved in the choice of Catalan in courts dissuades citizens and legal practitioners from using Catalan”.⁴⁹² The Committee of Experts was also informed that in Galicia out of 234 prosecutors less than 10 use Galician. In practice therefore, “when a citizen decides to use Galician in the first place, the solution proposed will be to recruit interpreters and translators but not for the judge to use the language”.⁴⁹³ Problems were also reported with regard to the use of the Basque and the Catalan language by the Ombudsmen in the Autonomous Communities of Navarra and Valencia. In 2009 the former Ombudsman received 136 complaints by people who were denied the possibility to use the

482 Judgment of the Constitutional Court of 05/06/2003 in the case No.2003-02-0106 at www.satv.tiesa.gov.lv/upload/2003-02-0106.rtf.

483 Saeimas stenogramma, likumprojekts “Elektronisko mediju likums”, trešais lasījums, available: <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/2A1C6D7A71ADED85C2257751002FA33C?OpenDocument>.

484 Konstitucionālo tiesību komisijas Viedoklis par sabiedrisko elektronisko plašsaziņas līdzekļu tiesisko regulējumu demokrātiskas valsts iekārtā (24.05.2010), available in Latvian at: [www.president.lv/images/modules/items/Viedoklis_KTK_sab_mediji_240510\(1\).pdf](http://www.president.lv/images/modules/items/Viedoklis_KTK_sab_mediji_240510(1).pdf).

485 Komerctelevizijas nemierā ar iecerētajām valsts valodas lietojuma prasībām (09.06.2010), in: <http://diena.lv/lat/politics/hot/komerctelevizijas-nemiera-par-ieveretajam-prasibam-valsts-valodas-lietojumam?&comments=2>. Bažas par Elektronisko mediju likumu, in: <http://zinas.nra.lv/latvija/politika/25344-bazas-par-elektronisko-mediju-likumu.htm>.

486 Krievijas ĀM velta kritiskus vārdus Elektronisko mediju likuma normām un arī Zatlēram, in: <http://diena.lv/lat/politics/hot/krievijas-am-velta-kritiskus-varodus-elektronisko-mediju-likuma-normam-un-ari-zatleram>. Krievijas ĀM: krievvalodīgo diskriminācija Latvijā turpinās.

487 Commissioner for Human Rights (2010), Language rights of national minorities must be respected – their denial undermines human rights and causes inter-communal tensions, viewpoint online at: www.coe.int/t/commissioner/Viewpoints/100125_en.asp.

488 See in particular Article 9 and 10 of the European Charter for Regional or Minority Languages.

489 The new legislation, the Swedish Code of Statutes 2009:724, enters into force on January 1 2010. The administrative area for Finnish is expanded to an additional 18 municipalities and the administrative area for Sami is expanded to an additional 13 municipalities. The administrative area for Meänkieli is not expanded.

490 Opinion of the Advisory Committee 28 February 2008 (second monitoring cycle).

491 See opinion of the Expert Committee, 4 April 2008 (third monitoring cycle), at paragraph 95.

492 See opinion of the Expert Committee, 4 April 2008 (second monitoring cycle), at paragraph 240.

493 *Ibid.*, paragraph 1067.

Basque language (in 2008 the number of complaints had been 37)⁴⁹⁴. The Valencian Ombudsman received 74 complaints by people who had encountered difficulties to use the Catalan language (in 2008 they had been 119)⁴⁹⁵.

In Poland there has been a noted increase in activities in relation to the realisation of minority language rights, especially with the introduction of minority language as the ancillary language in government offices. Poland's 2009 ratification of the ECRML further exemplifies this trend.⁴⁹⁶ In its 2009 Opinion on Poland the FCNM Advisory Committee notes that in the years 2006-2008, twenty-one Polish municipalities introduced the minority "supporting language" in relations between the municipal authorities and persons belonging to national minorities. However, the Advisory Committee underlines that less than half of the municipalities meeting the required 20% threshold introduced the minority language as the "supporting language".⁴⁹⁷

2.8.5. Language rights: the possibility to use one's own language vis-à-vis service providers

Cultural mediation plays an important part in the process of communication and liaison between healthcare providers and clients from minority ethnic backgrounds. This is especially important for immigrants who might not (yet) be able to speak the language of the host country.⁴⁹⁸ However, some countries reported problems in the availability of interpreters and many EU Member States do not make available general information on the healthcare system in other languages.

In Ireland, the Health and Safety Executive has a project on *Emergency Multilingual Aid (EMA)* to assist frontline staff in communicating with patients with limited English proficiency attending hospitals in acute or emergency situations, covering the most common questions and terms that staff may need to ask patients in order to make an assessment of them in such situations. The *EMA* is available to read or download in Arabic, Bosnian, Cantonese, Chinese, Czech, French, German, Hungarian, Irish, Latvian, Lithuanian, Mandarin, Pashtu, Polish, Portuguese, Romanian, Russian, Slovak, Spanish, Somali, and Urdu.⁴⁹⁹

Denmark has had a system of interpreters assisting non-Danish speaking patients free of charge. However, following the introduction of a new law, this service will cease to exist in the future. As of 2011, persons who have lived in Denmark for more than seven years will have to pay for interpretation themselves.⁵⁰⁰

In Belgium the Federal Public service (FPS) of Public Health, Food-Chain Security and Environment has a unit (DG1) dedicated to maintaining contact with cultural mediators who report on racial and ethnical discrimination in hospitals. According to DG1, it is often cultural mediators who act as catalysts in reporting discrimination cases.⁵⁰¹

As regards regional languages or languages of traditional minorities it was noted by the Committee of Experts overseeing the ECRML that the privatisation of companies can have negative effects on the use of certain languages. In its 2008 report on Germany the Committee notes that a private railway company ceased announcing the names of railway stations in North Frisia in German as well as North Frisian.⁵⁰² In its report on Spain, which dates from the same year, the Committee of Experts noted that there are complaints with regard to Telefónica de España S.A. as "they principally ignore minority languages in recruitment, service provision, customer services, web pages and correspondence".⁵⁰³

494 Defensor del Pueblo de Navarra, *Informe anual de la gestión realizada por la Institución del Defensor del Pueblo de Navarra durante el año 2009*.

495 Síndic de Greuges de la Comunitat Valenciana, *Informe a les Corts Valencianes 2009*, available at: http://portales.gva.es/sdg/publicaciones-f_c.htm.

496 European Charter for Regional or Minority Languages became effective in Poland as of 1 June 2009 (the Charter was signed in 2003 and ratified in January 2009). Pursuant to Charter Article 3 paragraph 1, Poland recognises the following as minority languages under the Charter: Byelorussian, Czech, Hebrew, Yiddish, Karamaic, Kashubian, Lithuanian, Lemko, German, Armenian, Roma, Russian, Slovak, Tatar, and Ukrainian. See Ministry of Interior and Administration website: www.mswia.gov.pl/portal/pl/584/Europejska_karta_jezykow_regionalnych_lub_mniejszosciowych.html.

497 According to the Advisory Committee out of the total of 2,478 municipalities in Poland, fifty-one meet the statutory 20% minority threshold requirement. See the opinion of the Advisory Committee, 20 March 2009, second monitoring cycle.

498 Note that – as regards language of traditional minorities – also the ECRML provides in its article 13. 2. c that the Parties undertake "within the territory in which the regional or minority languages are used (..) to ensure that social care facilities such as hospitals, retirement homes and hostels offer the possibility of receiving and treating in their own language persons using a regional or minority language who are in need of care on grounds of ill-health, old age or for other reasons".

499 A copy of the guide can be downloaded from the HSE website.
500 Retsinformation: LBK nr.95 af 07/02/08, Chapter 10, § 50, stk.2: www.retsinformation.dk/Forms/R0710.aspx?id=114054.

501 These cases were reported by interpreters and intercultural mediators to the National Focal Point, Belgium and confirmed by DG1 in an email exchange.

502 See opinion of the Expert Committee, 3 April 2008 (third monitoring cycle), at paragraph 38.

503 See opinion of the Expert Committee, 4 April 2008 (second monitoring cycle), at paragraph 280.

2.8.6. Other language issues: the spelling of names

Another important element regarding the public use of minority languages concerns the official spelling of names of persons belonging to minorities. The European Charter for Regional or Minority Languages also provides that “Parties undertake to allow the use or adoption of family names in the regional or minority languages, at the request of those concerned”.⁵⁰⁴

In 2008, the ECtHR stated that “the name is not only an important element of self-identification; it is a crucial means of personal identification in society at large”. The Court also decided that the refusal of the government authorities to accept the preferred spelling of a person’s name violated the right to respect for private life as spelled out in the European Convention (Article 8).⁵⁰⁵

In Lithuania the Supreme Council of the Republic came to the conclusion in 1991 that names and surnames in passports must be spelled using the Lithuanian alphabet.⁵⁰⁶ Since 1997, several bills changing the regulations for the official spelling of names and surnames have been registered but not passed. On 21 October 1999,⁵⁰⁷ the Constitutional Court of the Republic of Lithuania (in response to a request made by *Vilniaus apygardos teismas* (Vilnius Regional Court)) ruled that the mentioned Decision on the Spelling of Names and Surnames in Passports of Lithuanian Citizens is compatible with the Constitution. In 2009, the President⁵⁰⁸ of Poland and members of its Parliament⁵⁰⁹ brought up the question of the official spelling of names and surnames. On 11 June 2009, the Lithuanian Parliament adopted the decision to request the Court to clarify the ruling of 1999 (rather than to rule on the compatibility). On 6 November 2009, the Court came to the conclusion that parallel spelling of the name in the passport in a non-Lithuanian language, in addition to that in the Lithuanian language, is permissible but

does not amount in its legal consequences to the record of the name in the State, namely Lithuanian, language. A new bill allowing the spelling of names in the Latin alphabet was presented by the Lithuanian government on 29 March 2010, but was subsequently rejected by the Parliament on 8 April 2010.⁵¹⁰

With reference to the *Konstandinidis* case (Section 1.1.3), it was already highlighted that EU law plays a certain role when it comes to questions of language use, such as spelling.⁵¹¹ In a (at the time of writing) pending case, the CJEU has to consider the issue of spelling in Lithuanian passports (Section 1.1.3).⁵¹²

504 Article 10 paragraph 5 ECRML. For instance, the Committee encouraged the Dutch authorities in 2001 “to take the necessary measures to permit the use of family names in Frisian in official documents”. See the evaluation report dating from 9 February 2001, p. 22, available online at: www.coe.int/t/dg4/education/minlang/Report/default_en.asp#Netherlands. In 2003, a new decree entered into force, permitting the adoption and the use of Frisian family names.

505 ECtHR, Case *Guzel Erdagöz v. Turkey* (application 37483/02), judgment of 21 October 2008.

506 Lithuania / 31.01.1991 / No. I-1031 (20/02/1991).

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508 J. Važgauskaitė (2009) ‘Kaczynskis: leiskite lenkams pavardės rašyti gimtąja kalba’, in ALFA, available online at: www.alfa.lt/print/10268918/.

509 ELTA (2009) ‘J. Kalinowskiś dėl lenkų pavardžių: mūsų kantrybė baigėsi’, in DELFI, available online at: www.delfi.lt/news/daily/lithuania/article.php?id=22031703&rsslk=true.

510 See the rejected bill: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=368047&p_query=&p_tr2=.

511 See CJEU, Case C-168/91, *Christos Konstantinidis*, judgment of 30 March 1993.

512 See CJEU, Case C-391/09, *Malgožata Runevič-Vardyn and Łukasz Paweł Wardyn v. The Municipal Government Administration of the City of Vilnius, the Ministry of Justice of the Republic of Lithuania, the State Commission on the Lithuanian Language and the Civil Registry Division of the Legal Affairs Department of the Municipal Government Administration of the City of Vilnius*, reference for a preliminary ruling, available online at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:312:0020:0020:EN:PDF>.



Conclusion

This report shows that in recent years the European Union has been actively seeking to protect persons belonging to minorities in various contexts. The Treaty of Lisbon confirms that minorities and diversity issues have moved towards the centre of European attention in recent years. The new treaty positions the protection of persons belonging to minorities at the top of the legal hierarchy, i.e. EU primary law, and it places an explicit obligation on the Union to fight discrimination in all of its activities and policies.

EU Primary law - namely the Charter of Fundamental Rights - even uses the term 'national minorities'. It remains to be seen how the judiciary will interpret this new notion of EU law. The Union has been active in relation to national minorities, particularly in the context of its enlargement agenda. With the entry into force of the Lisbon Treaty, the contribution of national minorities to the Union's "*cultural, religious and linguistic diversity*" should also be acknowledged in its internal sphere.

A closer look at the experiences of persons belonging to minorities on the ground reveals that, in many areas of life, discrimination still forms part of what 'belonging to minorities' means. Good legislation and good policies are integral to tackling this issue. Equally important are the structures that are supposed to fight discrimination and raise rights awareness in the 27 EU Member States.⁵¹³ In particular, persons who are vulnerable to discrimination need strong local institutions, which can provide efficient and independent help when the protection of fundamental rights is at stake.

The Union does not hold legal competence to develop an overarching minority policy; it can, however, guarantee that persons belonging to different types of minorities benefit from the various aspects of the Union's equality agenda insofar as possible.

⁵¹³ In light of this, the FRA has published four reports with a focus on 'Strengthening the fundamental rights architecture in the EU and its Member States' (see bibliography).

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Annex

Figure A1: Opinions on EU Member States delivered under the framework of international monitoring (until end of 2010)

EU Member State	FCNM Framework Convention for the Protection of National Minorities		ECRML European Charter for Regional or Minority Languages		ECRI Council of Europe European Commission against Racism and Intolerance		CERD Convention on the Elimination of All Forms of Racial Discrimination	
	Date of adoption of the Advisory Committee Opinion		Date of adoption of most recent Committee of Experts' evaluation report		Date of adoption of the ECRI report		Date of adoption of concluding observations	
Austria	08/06/2007	2nd	10/09/2008	2nd	15/12/2009	4th	22/09/2008	17th
Belgium	NR		NS		19/12/2008	4th	11/04/2008	15th
Bulgaria	18/03/2010*	2nd	NS		20/06/2008	4th	23/03/2009	19th
Cyprus	19/03/2010	3rd	23/04/2009	2nd	16/12/2005	3rd	10/08/2001	16th
Czech Republic	24/02/2005	2nd	23/04/2009	1st	02/04/2009	4th	11/04/2007	7th
Denmark	09/12/2004	2nd	28/09/2010	3rd	16/12/2005	3rd	28/09/2010	19th
Estonia	24/02/2005	2nd	NS		15/12/2009	4th	23/09/2010	9th
Finland	14/10/2010	3rd	30/03/2007	3rd	15/12/2006	3rd	13/03/2009	19th
France	NS		NR		29/04/2010	4th	23/09/2010	19th
Germany	27/05/2010	3rd	02/12/2010	4th	19/12/2008	4th	22/09/2008	18th
Greece	NR		NS		02/04/2009	4th	14/09/2009	19th
Hungary	18/03/2010	3rd	11/09/2009	4th	20/06/2008	4th	01/11/2002	17th
Ireland	06/10/2006	2nd	NS		15/12/2006	3rd	14/04/2005	2nd
Italy	15/10/2010	3rd	NR		16/12/2005	3rd	16/05/2008	15th
Latvia	09/10/2008	1st	NS		29/06/2007	3rd	10/12/2003	5th
Lithuania	28/02/2008*	2nd	NS		24/06/2005	3rd	11/04/2006	3th
Luxembourg	NR		03/06/2010	2nd	16/12/2005	3rd	18/04/2005	13th
Malta	22/11/2005	2nd	NR		14/12/2007	3rd	19/04/2000	14th
Netherlands	25/06/2009	1st	27/11/2007	3rd	29/06/2007	3rd	25/03/2010	18th
Poland	20/03/2009	2nd	1 st state rep due for June 2010		28/04/2010	4th	14/09/2009	19th
Portugal	05/11/2009	2nd	NS		30/06/2006	3rd	10/12/2004	11th
Romania	24/11/2005	2nd	1 st state rep due for May 2009		24/06/2005	3rd	13/09/2010	19th
Slovakia	28/05/2010	3rd	24/04/2009	2nd	19/12/2008	4th	25/03/2010	8th
Slovenia	26/05/2005	2nd	20/11/09	3rd	30/06/2006	3rd	20/09/2010	7th
Spain	22/02/2007	2nd	04/04/08	2nd	07/12/2010	4th	28/04/2004	17th
Sweden	08/11/2007	2nd	26/11/08	3rd	17/12/2004	3rd	23/09/2008	18th
United Kingdom	06/06/2007	2nd	09/11/09	3rd	17/12/2009	4th	10/12/2003	17th

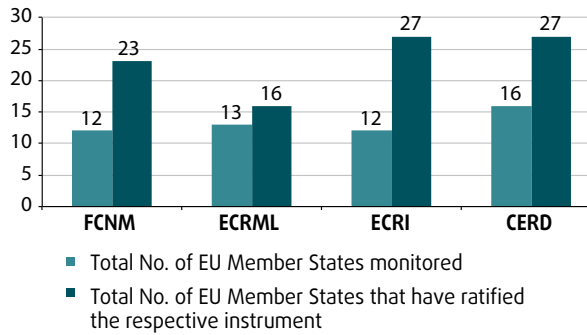
NR = signed but not ratified

NS = not signed

* FCNM / CRML - still restricted (unpublished)

Source: FRA, 2010

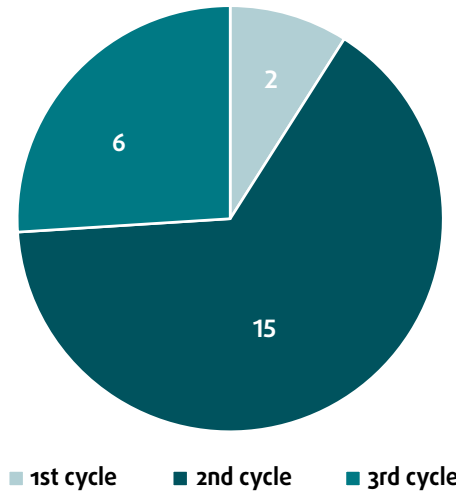
Figure A2: Number of Member States monitored by FCNM, ECRML, ECRI and CERD, 2008-2010



Notes: FCNM = Framework Convention for the Protection of National Minorities; ECRML = European Charter for Regional or Minority Languages; ECRI = Council of Europe European Commission against Racism and Intolerance; and CERD = Convention on the Elimination of All Forms of Racial Discrimination.

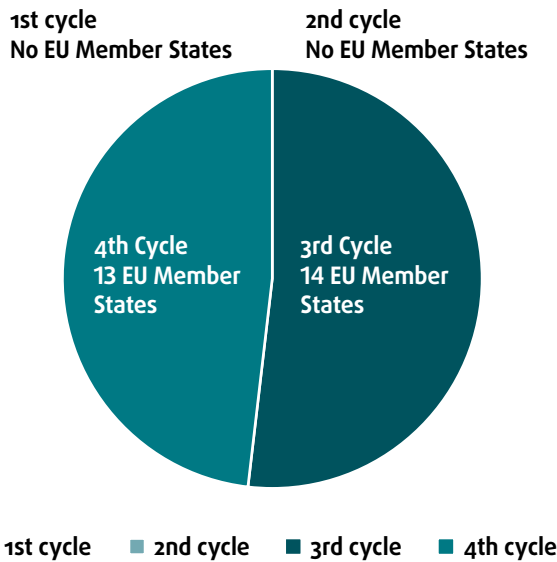
Source: FRA, 2010

Figure A3: Monitoring under the Council of Europe Framework Convention for the Protection of National Minorities (FCNM), by number of EU Member States under different cycles (1st, 2nd or 3rd monitoring cycle completed)



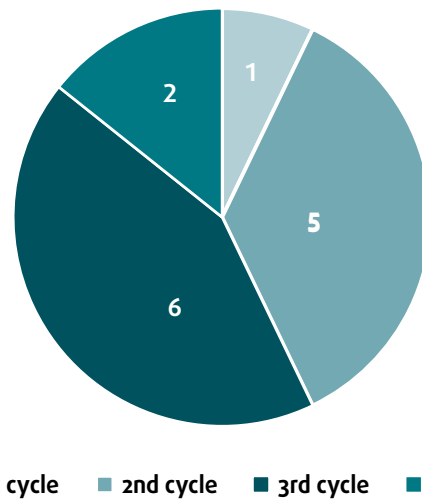
Source: FRA, 2010

Figure A4: Monitoring under the Council of Europe European Commission against Racism and Intolerance (ECRI), by number of EU Member States under different cycles (3rd or 4th monitoring cycle completed)



Source: FRA, 2010

Figure A5: European Charter for Regional or Minority Languages (ECRML) Monitoring Cycle, by number of EU Member States under different cycles (1st, 2nd, 3rd or 4th monitoring cycle completed)



Source: FRA, 2010

Figure A6: Recent thematic and special reports delivered under the framework of international monitoring mechanism

Thematic / special reports	
FCNM	<p>Thematic commentary:</p> <p>Commentary on the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, 2008 See at online at www.coe.int/t/dghl/monitoring/minorities/default_en.asp</p>
ECRML	<p>Thematic commentaries:</p> <p>The European Charter for Regional or Minority Languages: Legal Challenges and Opportunities (Council of Europe Publishing, Regional or Minority Languages series, No. 5, August 2008, ISBN 978-92-871-6333-2)</p> <p>The European Charter for Regional or Minority Languages and the media (Council of Europe Publishing, Regional or Minority Languages series, No. 6, August 2008, ISBN 978-92-871-6431-5)</p>
ECRI	<p>General policy recommendation:</p> <ul style="list-style-type: none"> • General Policy Recommendation No. 12 on combating racism and racial discrimination in the field of sport (19 December 2008) See online at www.coe.int/t/dghl/monitoring/ecri/activities/GeneralThemes_en.asp <p>Statements:</p> <ul style="list-style-type: none"> • Statement of the European Commission against Racism and Intolerance on the ban of the construction of minarets in Switzerland (1 December 2009) • Statement of the European Commission against Racism and Intolerance on recent events affecting Roma and immigrants in Italy (20 June 2008) • Declaration of the European Commission against Racism and Intolerance on the occasion of Euro 2008 "Unite against racism" (13 May 2008) • Joint Statements made on the occasion of the International Day for the Elimination of Racial Discrimination 2008 and 2009 (ECRI – OSCE/ODIHR – FRA) See online at www.coe.int/t/dghl/monitoring/ecri/activities/Statements_en.asp.
CERD	<p>Sessional / Annual Report of Committee (1 November 2008) See online at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/Go8/449/20/PDF/Go844920.pdf?OpenElement.</p> <p>General Recommendation 32: The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination (August 2009) See online at www2.ohchr.org/english/bodies/cerd/docs/GC32.doc.</p> <p>General Recommendation 33: Follow-up to the Durban Review Conference (August 2009) See online at www2.ohchr.org/english/bodies/cerd/docs/GC33.doc.</p> <p>Early warning measures:</p> <ul style="list-style-type: none"> • letter to Czech Republic (15 August 2008) • letter to France (28 September 2009) • letter to Italy (15 August 2008)

European Union Agency for Fundamental Rights

Respect for and protection of persons belonging to minorities 2008-2010

2011 — 85 p. — 21 x 29.7 cm

ISBN 978-92-9192-698-5

doi:10.2811/27794

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HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

Europeans can and should take pride in the richness of Europe's national identities and the diversity of its ethnic minorities, while remaining mindful that this growing diversity – this richness – must be managed with due respect and care. Recent developments in European Union (EU) law and the entry into force of the Treaty of Lisbon in December 2009 make it clear that minority issues have moved to the forefront of the EU's political agenda. By examining what the Treaty and these new laws mean for the protection of minorities, the European Union Agency for Fundamental Rights (FRA) provides analysis and evidence-based research, contributing to more nuanced debates on public policy. This report addresses a variety of concerns regarding minorities, including freedom of movement, integration, and both ethnic and racial discrimination. It takes an in-depth look at recent developments on the ground and reveals that discrimination is still present in many forms. Tackling these issues will require more effective legislation and policies, as well as raising awareness.



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ISBN 978-92-9192-698-5



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