



Human Rights writings

Human rights of Roma and Travellers in Europe



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Human rights of Roma and Travellers in Europe

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This report was commissioned and published by the Commissioner for Human Rights to contribute to debate and reflection on important current issues relating to the protection of the human rights of Roma and Travellers. The report also includes recommendations by the Commissioner to address the concerns identified. At the same time, all opinions expressed in this report do not necessarily reflect the Commissioner's position.

Cover photo: Roma rights activists cover their faces with enlarged fingerprints during a protest in front of the French embassy in Bucharest, Romania. They are protesting against the expulsions of Romanian and Bulgarian Roma from France. Summer of 2010. © AP Photo/Vadim Ghirda

Back cover photo: A concrete wall has been erected in order to separate the Roma neighbourhood in Kazanlak, central Bulgaria, from the rest of the town. A child is sitting in one of the openings in the wall, which allow the Roma to reach the main street. © Bulgarian Helsinki Committee.

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Foreword

Only a few thousand Roma in Germany survived the Holocaust and the Nazi concentration camps. They faced enormous difficulties when trying to build their lives again, having lost so many of their family members and relatives, and having had their properties destroyed or confiscated. Many had their health ruined. For years, when some tried to obtain compensation, their claims were rejected.

For the survivors, no justice came with the post-Hitler era. Significantly, the mass killing of Roma people was not an issue at the Nürnberg trial. The genocide of the Roma was hardly recognised in public discourse.

Neither were the crimes that the fascist regimes committed against the Roma during the same period in other parts of Europe. In Italy a circular in 1926 ordered the expulsion of all foreign Roma in order to “cleanse the country of Gypsy caravans which, needless to recall, constitute a risk to safety and public health by virtue of the characteristic Gypsy lifestyle”.

The order made clear that the aim was to “strike at the heart of the Gypsy organism”. What followed in fascist Italy was discrimination and persecution. Many Roma were detained in special camps; others were sent to Germany or Austria and later exterminated.

The fascist “Iron Guard” regime in Romania started deportations in 1942. Like many Jews, about 30 000 Roma were brought across the River Dniester where they suffered hunger, disease and death. Only about half survived the two years of extreme hardship before the policy changed.

The history of European repression against the Roma precedes the Nazi and fascist era. In fact, it goes back several hundred years – following the Roma migration from the Indian subcontinent. The Roma were the outsiders used as scapegoats when things went wrong and the locals did not want to take responsibility. The methods of repression have varied over time and have included enslavement, enforced assimilation, expulsion, internment and mass killings.

Truth commissions ought to be established in a number of European countries to establish the truth about the mass atrocities against the Roma people. Ideally, this should be a Europe-wide undertaking. A full account and recognition of these crimes might go some way to restoring trust amongst the Roma towards the wider society.

Not surprisingly, many Roma continue to see the authorities as a threat. When required to register or to be fingerprinted they fear the worst. This is all the more understandable when they explain how they see similarities between much of today's anti-Roma rhetoric with the language used in the past in Europe by Nazis and fascists and other extremists.

The Roma have been collectively stigmatised as criminals in strikingly sweeping statements also in recent times. One example is France where the government in July-August 2010 decided to deport Roma migrants from other EU countries, if necessary by force. The government campaign was accompanied by blatant use of anti-Roma rhetoric. The Roma community as a whole was linked to criminality. Their presence was described as a threat against "public security" – a legal term which is normally used for extraordinary situations when the peace and survival of the state is considered to be at stake.

The alleged link between the Roma and crime is an often repeated refrain in the hate speech. It can be rebutted and the misunderstandings sorted out – if the minds are open for a rational exchange. Of course, some Roma have been guilty of theft. Some have also been exploited and instrumentalised by traffickers. Socially marginalised and destitute people are in most countries over-represented in criminal statistics – for obvious reasons. It is also true that they tend to be disadvantaged in the current justice system which in turn affects such data.

These problems offer no excuse for stigmatising all Roma – the overwhelming majority of whom are not in conflict with the law. It is a crucial ethical principle that a whole group should not be blamed for what some of its members might have done.

The consequences of xenophobic statements by leading politicians should not be trivialised. Some distorted minds may understand such statements to be authorising retribution and even physical attack. The unfortunate rhetoric by some candidates in the course of the 2008 Italian election was followed by ugly incidents of violence directed against Roma individuals and camps. The cold-blooded murder of six Roma, including a 5-year-old child, in Hungary in 2008-09, was committed in an atmosphere fuelled by hate speech.

Anti-Gypsyism is now again being exploited by extremist groups in several European countries. Mob violence against Roma individuals has been reported from, for instance, the Czech Republic and Hungary.

The state representatives whom the Roma tend to meet most often are the police. During my missions, I have been struck in several countries by the signs of bad relations between Roma communities and the police. Many Roma have given specific examples of how the police failed to protect them against assaults from extremists. Even worse, there have been cases where police officers themselves have initiated violence.

Anti-Gypsyism continues to be widespread throughout Europe. In times of economic problems, it appears that the tendency to direct frustration against scapegoats increases – and the Roma appear to be one of the easy targets. Instead of fishing in murky waters, national and local politicians should stand up for and speak out on behalf of principles of non-discrimination and respect for people from different backgrounds. At the very minimum, politicians must avoid anti-Roma rhetoric themselves.

A number of concrete steps can be taken. Past atrocities against the Roma should be included in history lessons in schools. Key professions, such as the police, should be trained about the need to protect Roma against hate crimes, and be disciplined if they themselves misbehave.

Most important is the need for elected politicians to demonstrate moral leadership: they must encourage, and live out in practice, a commitment to respect and promote human rights for everyone.

I hope this review of the policies towards Roma in Europe today will encourage a constructive discussion on what must be done in order to put an end to discrimination and marginalisation.

Thomas Hammarberg

Summary

Roma and Travellers together comprise the largest set of minority groups in Europe. The Commissioner has observed during his visit to Council of Europe member states that discrimination and other human rights abuses against Roma and Travellers have become severe and that no European government can claim a fully successful record in protecting the human rights of the members of these minorities. This view provided the impulse for a comprehensive report on the human rights situation of Roma and Travellers in Europe.

Anti-Gypsyism

The report shows that anti-Gypsyism is deeply rooted in Europe. Many people who have never interacted with Roma or Travellers volunteer detailed, stereotype-laden descriptions of Roma or Traveller appearance and behaviour. Public leaders and opinion bodies – both elected officials and others – have openly defamed Roma and Travellers using racist or stigmatising rhetoric. In some cases, these words have been understood as encouraging violent action against the Roma, such as mob violence and pogroms. The Commissioner is of the opinion that anti-Roma speech, including during electoral campaigns, must be strongly condemned in all cases and punished when it breaks laws against incitement to hatred. Political parties should also adopt self-regulatory measures to exclude racist language.

In an increasing number of European countries, extremist groups explicitly target Roma and Travellers, in some cases galvanising segments of the public against these persons. Such extremist groups are increasingly active on the Internet, a medium which has allowed for enhanced cross-border co-operation among likeminded groups with extremist outlooks. These groups are active in recruiting youths through a variety of techniques, including the organisation of hate music concerts. Vigilante and paramilitary groups often wear uniforms, use weapons and have been increasingly tightening their net around Roma by using verbal and physical threats and carrying out massive protests. Members of these

extremist groups have been found to be at the source of a number of hate crimes targeting Roma. The Commissioner has recommended the termination of financing for organisations promoting racism, including political parties. States might also usefully consider dissolving extremist parties when they are deemed incompatible with the standards and values of a democratic society.

Anti-Gypsy stereotypes also continue to be spread and perpetuated in the media across Europe. A number of journals and broadcast media have been reporting on Roma and Travellers only in the context of social problems and crime. The Commissioner has stressed the need for self-regulation and ethical journalism to end the negative portrayal of Roma in the media. As a general principle, what is illegal offline should also be illegal online in a context where the Internet is used to perpetrate anti-Roma hate speech and to organise violence. Mechanisms to monitor racism on the Internet should be established by member states, in accordance with the General Policy Recommendations No. 6 of the European Commission against Racism and Intolerance (ECRI) on combating the dissemination of racist, xenophobic and antisemitic material via the Internet.

Anti-Gypsyism may also entail a lack of recognition of Roma history of past suffering, particularly during the Second World War. This passive denial is often manifested in silence about Roma victims at commemorations and memorials, in media coverage, or in official history and textbooks. The Commissioner stresses that the extermination of Roma during the Second World War must not be forgotten. Teaching about Roma history, raising awareness of Roma genocide during the Second World War, and building and maintaining memorial sites are the least member states could do to honour Roma victims. Governments throughout Europe should translate the existing Council of Europe *Factsheets on Roma History* in their national languages in order to use and disseminate them as widely as possible in their national contexts, including schools. Truth commissions should also be created – ideally as a Europe-wide undertaking – to establish the historical facts concerning the atrocities committed against the Roma people.

Racially motivated violence against Roma and Travellers

Violence against Roma and Travellers has been prevalent in post-1989 Europe, with a notable increase of serious cases in recent years. In some contexts, this violence has been perpetrated by organised fascist or neo-Nazi groups and has involved planning and preparation. However, anti-Roma violence is not committed only by organised groups. In some instances, non-Roma communities have engaged more or less spontaneously in vigilante violence against Roma and Travellers, while in other cases the violence has been carried out by individuals motivated simply by racist hatred without any particular political ideology. In some countries, anti-Roma violence has been committed by a combination of different kinds of perpetrators.

The development in recent years of ideologically-committed movements based in whole or in part on hatred of Roma is a matter of great concern. These movements have launched violent and in several cases deadly attacks. For instance, arson attacks have been carried out in a number of cases at night while people have been sleeping. In certain situations, public officials have been directly involved in instigating vigilante actions against Roma and Travellers. The Commissioner deems necessary an urgent redoubling of efforts in this area, at all levels, in order to deliver a clear message to potential perpetrators and to encourage victims to report incidents of wrongdoing. Member states should ensure that the police thoroughly investigate racist offences, including by fully taking the racist motivation of criminal acts into account, and should establish mechanisms of systematic monitoring of racist incidents.

Treatment of Roma and Travellers by law enforcement and judicial authorities

Reports received by the Commissioner from around Europe indicate patterns of discrimination and ill-treatment by police towards Roma and Travellers. Roma have been subjected to police violence both in detention facilities and public spaces, such as Roma settlements during police raids. In a number of cases, when criminal investigations

of such acts have been initiated, they appear to have been manifestly biased or discriminatory. The Commissioner has observed that the established case law of the European Court of Human Rights (the Strasbourg Court) clearly indicates that member states are obliged to carry out an effective investigation of possible racist motives in these situations. The Commissioner invites member states to establish independent police complaints mechanisms in order to improve Roma and Travellers' trust in law enforcement authorities.

There are a number of reports that isolated Roma settlements have been subjected to particular attention by police, often in the form of intrusive raids. Roma persons in cars or other vehicles have been targeted for "stop-and-search" operations by police in a discriminatory manner. Ethnic profiling has also been reported in the context of the movement of Roma across international borders. The Commissioner has underlined that Roma should not be subjected to any kind of policing that would differ from that encountered by the general population. Laws should explicitly prohibit racial profiling and establish a reasonable suspicion standard in police operations. The police must receive training in these issues, as ECRI recommended in its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing.

Roma representatives have also reported arbitrary seizure of property or extortion by police. Such practices can violate Article 8 of the European Convention on Human Rights (which protects the right to respect for private and family life) and affect the enjoyment by Roma of other human rights, including rights to housing and security.

Further, Roma are disproportionately subjected to arbitrary detention measures. The Commissioner believes that excessive use of police power in this area should be drawn to a close, and that concrete measures must be taken to ensure that Roma are not subject to arbitrary detention. Additional steps to re-establish trust between Roma and Traveller communities and the police should be undertaken, such as the recruitment of Roma in the police or the recruitment and training of Roma mediators to liaise with the police.

In a number of countries, Roma appear to be discriminated against in decisions to remand in custody, rates of prosecution and sentencing. Some of the problems facing Roma in the field of criminal justice include a lack of adequate representation when facing charges, an absence of respect for Roma as witnesses or deficiencies in interpretation services. The principle of the presumption of innocence is not always respected when Roma individuals are put on trial. It is important that steps are taken to prevent racial discrimination against accused Roma persons who are subject to judicial proceedings so that these persons receive a fair trial.

These problems are compounded by the failure of justice systems to respond adequately to complaints by Roma of racial discrimination and/or other abuses. Efforts aimed at improving the effectiveness of the justice system's response to discrimination should include the establishment of effective anti-discrimination legislation or its strengthening, as well as specialised bodies that would offer a low-threshold mechanism to deal with complaints and assist with the implementation of the legislation.

Respect for private and family life of Roma and Travellers

Forced and coercive sterilisations of Roma women

From the early 1970s, under the influence of resurgent eugenics considerations in late communism, doctors in Czechoslovakia in a number of cases coercively sterilised Roma women with support from policy-makers and national structures, including with assistance from social workers. Following the fall of communism, the new government endeavoured to end these practices. However, some health professionals appear to have continued the practice long after the transition in both the Czech Republic and Slovakia, sterilising Roma women who came to them for obstetrical/gynecological procedures without their full and informed consent. Such cases have also been documented in Hungary.

In November 2009, the late Czech Ombudsperson Otakar Motejl, whose 2005 report on the subject is one of the most important studies

on the legacy of coercive sterilisation in Czechoslovakia and its successor states, stated that as many as 90 000 women may have been sterilised on the territory of the former Czechoslovakia since the beginning of the 1980s. Of the countries that continued this practice after 1990, only the Czech Republic has stated officially an expression of regret “over instances of error” in November 2009. An effective domestic remedy for reparation and compensation does not appear to be available to the vast majority of victims of these practices in any of these countries. The Commissioner believes that all countries concerned should publicly acknowledge that these practices have taken place, express regret and set up effective remedy mechanisms providing assistance to victims. Time limits for compensation claims in court should take into account existing obstacles and start from the time when the victim first became aware of the sterilisation.

In order to prevent the recurrence of forced and coercive sterilisations, it is also important to adopt legislative changes clearly defining a requirement of free, prior and informed consent with regard to sterilisations, including a reflection period for the patient. Judicial and administrative sanctions must also be upheld against those persons liable for sterilising women without their full and informed consent.

Removal of Roma children from the care of their biological parents

Roma children are often over-represented among the children placed in out-of-family care, including in institutional and foster care. Roma children are in some cases removed from their families on the sole ground that homes are not suitable and stable or that economic and social conditions are unsatisfactory. In some countries, high levels of institutionalisation of Roma children result from legacies of communist-era policies in which the state was promoted as superior to parents in raising children, particularly in cases where children come from weak or deprived backgrounds, or have some form of disability.

In accordance with the case law of the Strasbourg Court, member states should ensure that no child is placed in institutional care solely on grounds relating to the poor housing conditions or financial

situation of his or her family. Placement of a child in an institution should remain the exception and should have as the primary objective the best interests of the child. Also, adoption and placement in foster families should be based on clear procedures that are consistent with international standards.

Common law and customary marriage among certain Roma groups

Some Roma groups maintain practices of common law and customary marriages. These informal unions have implications in the enjoyment of a range of human rights. Firstly, when minors are involved, these practices may infringe upon the rights of the child and perpetuate the subordinate position of women in practice. In ensuring compliance with human rights standards, utmost care should be taken to avoid generalisations and the stigmatisation of entire communities. The focus should rather be placed on education and awareness-raising activities. Secondly, adults who have entered into a non-recognised common law marriage may be denied or granted less favourable access to economic and social rights than officially wedded couples. As highlighted by the Strasbourg Court, adjustments may be required to prevent minority groups, including Roma, becoming victims of indirect discrimination in accessing these rights.

Roma and trafficking in human beings

Reports reaching the Commissioner indicate that trafficking in human beings in Europe affects Roma disproportionately. Roma are reportedly trafficked for various purposes including sexual exploitation, labour exploitation, domestic servitude, illegal adoption and begging. Roma women and children are often seriously over-represented as victims in all forms of trafficking. The vulnerability of Roma must be taken into account in national policies regarding trafficking in human beings, without any stigmatisation. Protection measures should include training of law enforcement officials and awareness-raising campaigns targeting Roma communities, in particular segregated and socially excluded communities.

Enjoyment by Roma and Travellers of economic and social rights

The right to education

Many thousands of Roma throughout Europe are not or have not been schooled at all, or have left school with limited education results. In some countries, the fact that Roma and Travellers lack personal documents has a negative impact on school enrolment. Lack of public transport or funds for transport, and racist bullying as well as lack of school materials, represent additional obstacles in the way of Roma pupils seeking to go to school. In some countries, Roma children are over-represented in alternative systems such as “home schooling”. Many Roma children with developmental, intellectual or physical disabilities may not be attending school at all in certain European countries. Roma children also suffer from a lack of pre-school facilities.

Policies and practices that separate Roma children from others in education are found in several Council of Europe member states. Educational arrangements are frequently segregated in cases where Roma live in isolated communities – either rural slum settlements or urban ghettos. The fact that non-Roma parents pull their children out of schools frequented by Roma also results in *de facto* segregation of entire schools. Even in mainstream schools, Roma pupils are often separated from the majority in classrooms, by being in specific areas of the class, or in entirely separate classes. Remedial classes, separate classes and segregation in the classroom have been reported in many European countries.

Roma children are also disproportionately streamed into special schools, in particular schools for children with intellectual disabilities. In the Czech Republic, segregation persists despite the 2007 ruling of the Strasbourg Court in the matter of *D.H. and Others v. the Czech Republic*, and the enactment of a new Schools Act in 2004 which restructured the provision of special needs education. An estimated 30% of Roma children are still educated in schools designed for pupils with mild mental disabilities, compared to 2% of their non-Roma counterparts.

These practices are seen in a number of other countries. The Commissioner has taken a stand against all forms of segregation

in education and has called for clear commitments and measurable advances to be made in the fields of desegregation and inclusive education. Desegregation must be combined with the necessary support measures for children in order for them to integrate into mainstream classes so that they can succeed and excel in education.

In some Roma communities, the parents of girls may expect their daughters to leave school early in order to marry and start their own families. There are cases where child marriage precludes girls from attending school, thereby undermining their right to education as well as their future employment opportunities. Positive measures for awareness-raising seem to reveal progress in improving Roma girl school enrolment.

Although some countries in Europe have been developing and implementing policies for Traveller outreach in education since the 1960s, much remains to be done. Indeed, in recent years we have seen in some countries an erosion of previously existing provisions for Traveller education. It is important that special attention is given in these countries to the enrolment of Traveller children in school, in particular for children whose families have a nomadic way of life.

Where Romani language, history or cultural lessons are provided in education, frequently they are targeted primarily or solely at Roma children, thus depriving non-Roma of the right to know about the contributions Roma have made to their own and other European societies. In the main, the development of school curricula in this area remains in its infancy. Improving the quality of education received by Roma and Traveller children necessarily means including Roma and Traveller culture and history in standard curricula.

Access to adequate housing

Discrimination in access to housing is reported in a number of member states, often taking forms such as denial of access to public and private rental housing on an equal footing with others or refusals even to sell housing to Roma.

Some local authorities have pursued a policy of spatial segregation. This has in some cases been reinforced by the construction of separation walls close to Roma neighbourhoods. Such destructive measures should be terminated.

Many Roma continue to live in sub-standard conditions in most European countries, without heat, running water or sewerage. Vocal international concern has been registered over the situation of Roma in a series of localities in and around Mitrovicë/Mitrovica in Kosovo* where Roma, over a period of more than 10 years, were subjected to housing conditions in very toxic environments.

Roma living in informal settlements or on land they do not own, as well as Roma living in legally recognised housing, lack security of tenure throughout Europe. The lack of adequate recognition of tenure leads directly to threats of forced eviction. In some countries, the number of forced evictions has increased in recent years, often targeting the same migrant Roma families, including children, on several occasions over a short period of time. The repetition of forced evictions, including the destruction of property, in certain western European countries has been described as a strategy to encourage Roma to return to their countries of origin, notably Bulgaria and Romania. In some cases, destruction of entire centuries-old Roma neighbourhoods has taken place. Forced evictions should only be carried out according to international procedural safeguards developed by, among others, the UN Committee on Economic, Social and Cultural Rights (General Comment No. 7).

The Commissioner has observed that in some places a vicious circle prevails in which authorities decline to develop infrastructure because the Roma communities lack formal tenure, and refuse to recognise tenure formally, because of substandard infrastructure. The Commissioner has urged the authorities to find ways to resolve these

* Throughout this text, all reference to Kosovo, whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244 (1999) and without prejudice to the status of Kosovo.

conflicts in accordance with international and European human rights standards.

Travellers are also disproportionately affected by discriminatory patterns in the allocation of planning permission in cases where Travellers or others purchase private land for the purposes of parking caravans, and discrimination in access to campsites, hotels and/or other temporary accommodation. The Commissioner has made his position plain that in countries where there is a migrant Traveller population, there should be a statutory obligation on local authorities to provide short- and long-term caravan sites that meet basic standards of decency.

The Commissioner has emphasised that the right of Roma to live in adequate housing in accordance with international legal standards need to be guaranteed. All public utilities, including water, electricity, waste collection and maintenance of access roads, need to be provided to Roma settlements. The Council of Europe Committee of Ministers Recommendation on improving the housing conditions of Roma and Travellers in Europe called for a review of housing legislation, policies and practices in order to remove all provisions or administrative practices that result in direct or indirect discrimination against Roma.

Access to employment

Challenges affecting the inclusion of Roma in the labour market are numerous and result in the near complete exclusion of Roma and Travellers from decent work in Europe. Endemic discrimination combined with under-education appears to nullify the effect of emerging employment policies targeting Roma and Travellers. Despite positive efforts in some countries, levels of unemployment among Roma and Travellers in Europe are invariably at levels significantly higher than among non-Roma.

In a number of countries, Roma and Travellers are denied employment on discriminatory grounds – due to their ethnicity or the perception of their affiliation with Roma or Traveller communities or groups. Patterns in Europe also show that employed Roma are more inclined to face discrimination in the workplace. Discrimination

also affects educated Roma who are constrained from progressing upwards. Throughout Europe, while perceptions of discrimination are widespread, data is lacking, partly because discrimination in the labour market is frequently covert. Racial and ethnic discrimination in the labour market is in contravention of the European Social Charter, as well as the European Union Racial Equality Directive. Measures to address Roma and Traveller unemployment must include assistance to victims of discrimination in claiming their rights.

Gender discrimination problems have also arisen. European employers have discriminated against Roma women on the grounds of both ethnicity and gender. Special attention should be paid to Roma women who suffer from double discrimination, including efforts to improve their socio-economic status and to ensure their access to education and health as preconditions for employment.

The Commissioner has called for specific measures, including the allocation of funds, to develop programmes to increase employment and private enterprises in Roma communities – for instance, through specific training programmes.

The right to the highest attainable standard of physical and mental health

Throughout Europe, the average life span of the Roma and Travellers is shorter than that of non-Roma and non-Travellers. Roma and Traveller infant mortality rates are higher. Factors precluding Roma and Travellers' access to health care include a lack of funds to pay for insurance or treatment, a lack of identification documents, and a lack of means of transportation from remote areas to health care facilities.

Health care providers also reportedly discriminate against Roma, including in the provision of emergency services. Some hospitals regularly segregate Roma patients from non-Roma patients, especially in maternity wards. Very few Roma or Traveller persons work in health care provision in Europe. In some countries, Roma have been excluded from health care schemes, as they cannot afford to pay health insurance contributions or are not formally employed or registered in employment agencies.

Existing provisions on the right to the highest attainable standards of physical and mental health should be applied to Roma and Travellers, as was recommended by the Council of Europe Committee of Ministers in 2006. Geographically accessible and affordable health care should be provided to Roma and Travellers without discrimination. Efforts should be made by member states in the field of preventive care and awareness-raising campaigns regarding Roma and Travellers, particularly in the area of sexual and reproductive health of Roma women.

The right to social security

Factors negatively impacting the ability of Roma and Travellers to access social services reportedly include discrimination against Roma and Travellers by social service workers. The Commissioner has received reports about complete denial of access to services or reduced amounts of assistance. There have also been reports of the discriminatory application of social assistance programmes (such as means-tested social assistance); the use of regulations and/or policies that have the effect of rendering Roma and Travellers ineligible for regular social services; territorial segregation of Roma and Travellers making social services difficult to access; communication barriers between social service offices and Roma or Traveller individuals; a lack of information about such services in Roma and Traveller communities; and other barriers. Non-citizen Roma have also been subject to different treatment on arbitrary grounds. Some authorities have announced that they will not provide social services to “itinerant Roma”. Measures should be taken to address such discriminatory attitudes among social services employees, including specific training on Roma and Travellers needs in terms of social security. Information on existing social services should be made available to Roma and Travellers, including migrant Roma. Member states must avoid indirect discrimination when considering legislation and policy in the social security sphere.

Access to goods, services and public places

Roma and Travellers throughout Europe face discrimination in access to goods and services available to the public. Discrimination

is reported in access to hotels, discotheques, restaurants, bars, public swimming pools and other recreational facilities, as well as in access to services crucial for small business activity, such as bank loans. Although government programmes to address such discrimination are currently limited, examples from several Council of Europe member states indicate that action in this area can be important in identifying and challenging patterns and practices of racial discrimination against Roma. Effective and independent equality bodies should be established and their functions may include conducting research and surveys on discrimination in access to good and services and providing guidance and support to service providers on good practice in promoting equality, adjusting for diversity and combating discrimination.

Statelessness and gaps in the personal documentation of Roma

The social exclusion of Roma and Travellers can worsen as a result of their having no formal administrative existence. As the Commissioner noted in the Human Rights Comment, “Stateless Roma: no documents – no rights: tens of thousands of Roma live in Europe without a nationality. Lacking birth certificates, identity cards, passports and other documents, they are often denied basic rights such as education, health care, social assistance and the right to vote.”

Many factors contribute to hindering Roma access to documents and effective citizenship, including armed conflicts and forced migration, extreme poverty and marginalisation and, above all, the lack of genuine interest on the part of authorities to tackle and resolve the issues. These difficulties are amplified when Roma find themselves in a situation of forced displacement.

Moreover, certain consequences of state succession, such as restrictive citizenship laws, have created additional obstacles that disproportionately affect Roma. As a result, many Roma in Europe are stateless: they are not considered as nationals by any state and are frequently denied basic social rights and freedom of movement. The problem exists in many countries in Europe, but it is particularly acute in the western Balkans. Lack of a formal administrative existence, whether in the

form of statelessness or the lack of personal identification documents, has a devastating impact on all persons' ability to enjoy their human rights and fundamental freedoms. In recent years, the United Nations High Commissioner for Refugees (UNHCR) has run programmes in the western Balkans to help Roma accessing personal documents. The European Union has also started similar projects. However, without major state-level commitments to ameliorate conditions so that currently excluded persons can have access to documents, for example via "amnesties" for persons with no birth certificates or similar measures, there is little indication that these pilot projects (or other similar ad hoc projects) are having any major impact.

Enjoyment by Roma and Travellers of freedom of movement and international protection inside and outside state territory

Very few European states are committed to ensuring that Travellers can exercise their freedom of movement, despite the Strasbourg Court case law on the issue. In fact, existing policies in all but a few countries serve to dissuade Travellers from developing regular migration routes. In practice, zoning measures or other rules and regulations are frequently used to discourage Travellers or itinerant Roma from coming and going. Regulatory frameworks can also add additional burdens or create particular limitations of rights for Travellers. In France, for example, Travellers of French nationality are subject to special legislation that does not apply to other French citizens. Elsewhere, the denial of planning permission to Traveller accommodation limits possibilities for Travellers to use their own land to foster Traveller traditions. Countries with a nomadic or semi-sedentary population should comply with the Council of Europe Committee of Ministers recommendation (2005) on improving the housing conditions of Roma and Travellers in Europe to make it possible for all Roma and Travellers to live as they choose.

Even when at risk of serious human rights violations, Roma face discrimination in accessing protection mechanisms on an equal footing with the rest of the population, including in accessing the asylum procedure. In some countries, Roma asylum seekers have been provided

with forms of temporary protection which do not confer residence status or any progressive accrual of rights. The repeated provision of extremely short-term “tolerated” status has effectively prevented tens of thousands of third-country national Roma from integrating into host societies. The right to asylum is recognised by the UN Convention relating to the Status of Refugees (1951) for all refugees without discrimination. Roma asylum-seekers and internally displaced persons should be treated the same way as non-Roma asylum-seekers and IDPs.

Many European countries have undertaken the practice of expelling Roma from their territory, including to Kosovo, despite the fact that Kosovo is at present unable to provide conditions for the sustainable reintegration of these returnees, according to, amongst other sources, the UNHCR assessment in November 2009. The Commissioner has repeatedly opposed the forced or involuntary return of Roma, Ashkali and Egyptians to Kosovo. The Council of Europe Committee of Ministers’ *Twenty guidelines on forced return* provide standards on procedural safeguards which member states should respect when proceeding with forced return. The guidelines note that the collective expulsion of aliens is prohibited.

The freedom of movement of goods, services, capital and people are founding purposes of the European Union. However, Roma have repeatedly been treated differently from non-Roma in the exercise of this freedom. Efforts to expel EU citizens in contravention of EU law, as well as other discriminatory measures aimed at hindering access to territory, should be stopped. The Commissioner has suggested that the resources being used by EU member states to repatriate Roma who are EU citizens would be better spent facilitating their social inclusion.

Participation of Roma and Travellers in public life and decision-making processes

Many Roma and Travellers are in practice unable to vote, in many cases because of administrative obstacles or their lack of personal documentation or permanent residence. Governments should repeal

any laws and regulations that discriminate against Roma minorities in terms of political representation. More outreach efforts are needed to ensure voter registration. Again, it is important to reach women.

With a few noteworthy exceptions, Roma are also broadly missing from elected bodies at local, regional, national and supra-national level. Participation of Roma in the parliaments of Europe is extremely limited. Only in certain countries in central and south-east Europe are Roma present at all in Parliament. There are currently no Roma in any parliaments in western Europe. In some countries, the numbers of local representatives – including mayors and local councillors – appear to have been rising over the past decade. However, even in these countries, the proportion of Roma elected to public office at local level is extremely low by comparison with their representation among the population-at-large.

The Commissioner has noted that reserved seats have had positive results, as has the focus on participation of Roma at the local level. It is important that elected minority representatives participate in decision-making processes, including in fields that are not strictly related to national minorities, and that their role is not confined to a mere observer status.

Mechanisms encouraging equal, direct and open communication with Roma have been set up in some countries. At all levels, organised consultation should be encouraged, in accordance with the principles of representativeness and transparency detailed in the 2008 Advisory Committee of the Framework Convention on National Minorities' Commentary on the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs. The representation of Roma and Travellers in public life would be considerably improved were Roma and Travellers visibly represented among the ranks of civil service, including among teachers and the police at local, regional and national level. At present, however, inclusion in public employment remains low, and for the most part of low visibility. The development of special internship programmes for Roma in the civil service should be encouraged, in order to increase Roma representation within state and local administration.

The Commissioner hopes that member states will choose to give high and genuine priority to the inclusion of Roma and Travellers. The continued exclusion of more than 10 million human beings can only lead to the increase of inter-ethnic tension in Europe. Member states have to take concrete steps to counter anti-Gypsyism and put an end to discrimination and marginalisation. Efforts to secure the human rights of Roma and Travellers are urgently required.

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Introduction

The Roma and related minority communities constitute Europe's largest and most vulnerable minority, conservatively estimated at around 10 million people living throughout the Council of Europe area. Roma are present in nearly all member states. Most Roma live in central, eastern and south-eastern Europe, Russia, Turkey and Spain, with large communities also in France, Italy and Germany. The origins of many of them can be traced back to the Indian subcontinent from where their ancestors left, most likely around the 10th century. The Roma in Europe are a very diverse group in terms of religion, language, occupation, economic situation and way of living; today the vast majority of Roma and related groups are sedentary. Dozens of Romani language dialects are spoken throughout Europe, and a number of groups frequently affiliated or associated with Roma also speak other European minority languages, such as Shelta and Yenish.

The various Traveller minorities of Europe are primarily distinguished by their travelling lifestyle, although many members of this minority are nowadays semi-sedentary or completely sedentary. Most Travellers live in northern and western Europe. Historically, authorities tended to limit the movement of these populations. The end of the 20th and the first decade of the 21st century saw first a liberalisation of policies to provide for Traveller accommodation and policies, followed by a general rollback of such policies, coupled with new restrictive security measures in several countries.

In some countries, groups subjected to negative treatment as “Gypsies” reject both the terms “Roma” and “Traveller” and use more specific terms, including the various translations of the term “Gypsy”, as well as self-identifiers such as “Egyptian”, “Ashkali” and others. Increasingly, the term “Gypsy” in various languages has come to be seen by many Roma groups as pejorative. However, this view of the term is not yet universally held. In the former Soviet Union, the term “Gypsy” is the only one available for official use, even where Roma may object to its use.

It is not always clear who should be included and who should be excluded from these categories. The minorities labelled “Roma”, “Gypsies” and “Travellers” in fact comprise a multitude of ethnicities and distinct linguistic communities, heterogeneous groups that are viewed as a unit primarily by outsiders. This report uses the term “Roma and Travellers”. This umbrella grouping is not intended to deny the self-identification of any person or group and is used solely for the purposes of not repeatedly using long chains of group and subgroup names.

As a result of the particular depth and strength of the stigma associated with Roma and Travellers, no European government can claim a fully successful record in protecting the human rights of the members of these minorities. As the Council of Europe Commissioner for Human Rights (hereafter “the Commissioner”) notes in his Position Paper on Roma, “Roma continue to suffer from widespread discrimination and anti-Gypsyism which feed the cycle of disadvantage, exclusion, segregation and marginalisation”.

The fall of communism was accompanied by a deterioration of the situation of Roma in employment, housing and social protection, as well as a renewal of anti-Gypsyism throughout the European continent. Hate speech and, with it, new patterns of discrimination against Roma in public and social life became more apparent and widespread. In western Europe, a fragile tolerance emerging from the 1960s onward was similarly shattered by new public hostility, sometimes – but not in all cases – driven by the arrival of extremely excluded Roma from eastern Europe. The 1990s ended with the destruction of many Roma settlements and the displacement of about 100 000 Roma, Ashkali and Egyptian from Kosovo, signalling a return of raw persecution of Roma in Europe not seen since the Second World War. The 2008 economic crisis seems to have also aggravated the overall enjoyment of human rights by Roma and Travellers, in both eastern and western Europe.

Not surprisingly, given these troubling developments, the past 20 years have seen a revived international interest in Roma in particular as the process of integrating the former communist countries into international structures brought the plight of central and eastern Europe and

south-east Europe Roma into focus. The Council of Europe has played a central role in the promotion and the protection of Roma rights. A review of the materials produced by Council of Europe bodies such as the Committee of Ministers, the Parliamentary Assembly of the Council of Europe (PACE), the European Commission against Racism and Intolerance (ECRI), the European Committee of Social Rights (ECSR) and the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) reveals that the human rights of the Roma and Travellers have increasingly gained traction in the activities and output of these Council of Europe bodies over time.

The Council of Europe also created specific bodies dealing with the human rights of Roma, such as the Committee of Experts on Roma and Travellers (MG-S-ROM), set up in 1995. Furthermore, since its establishment as an independent international association in 2004, the European Roma and Travellers' Forum enjoys privileged status with the Council of Europe. The MG-S-ROM, replaced in 2011 by the Ad-hoc Committee of Experts on Roma Issues (CAHROM), was the first Council of Europe body responsible for regularly reviewing the human rights situation of the Roma and Travellers in Europe. On 20 October 2010, a high-level meeting of Council of Europe member states adopted the "Strasbourg Declaration on Roma", which oversaw an agreement to set up an European Training Programme for Roma Mediators (ROMED) and the nomination of a Special Representative of the Secretary General for Roma Issues.

In recent years, the European Court of Human Rights (the Strasbourg Court) has – with increasing regularity – found states in violation of various provisions of the European Convention on Human Rights (ECHR) in cases brought by Roma and Traveller applicants. In many instances, the Court has ruled that the non-discrimination provisions of the Convention have been violated due to discrimination against Roma and Travellers. Organisations representing Roma have also brought complaints to the European Committee of Social Rights (ECSR) under the European Social Charter collective complaints mechanism. These have in numerous instances identified failings by states to secure the

fundamental rights of Roma. However, implementation of both the Strasbourg Court judgments and ECSR decisions in many of these cases has been far from ideal, and in some cases has not happened at all.

In the course of his work, the Commissioner has focused extensively on human rights issues relating to Roma and Travellers. An early highlight of the Commissioner's output was Commissioner Gil-Robles' Recommendation on the coercive sterilisation of Roma women in Slovakia. Since taking office in 2006, Commissioner Hammarberg has issued many reports and statements on Roma and their human rights, in particular on stigmatising public and political discourse, the protection of human rights in the context of migration and freedom of movement within the European Union (EU), statelessness, the segregation of Roma in education, the circumstances of Roma women, housing rights of Roma people, and the need for increased political participation on the part of the Roma and Travellers. He has also repeatedly called for the lead-contaminated camps in Kosovo housing Roma, Ashkali and Egyptian displaced persons to be closed and for their residents to be provided with treatment.

European Union institutions and agencies have begun to address the situation of Roma with increasing vigour in recent times. The European Commission's 2005 Framework Strategy on Non-discrimination and Equal Opportunities for All and the establishment of the European Union Fundamental Rights Agency in 2007 address all minorities, Roma and Travellers included. The European Parliament has issued resolutions specifically on Roma, and the EU held Roma summits in 2008 and 2010. The Commission issued a communication on the social and economic integration of Roma in 2010, followed by an April 2011 communication on a EU Framework for National Roma Integration Strategies up to 2020. The European Council approved the latter on 24 June 2011. The EU Framework sets up goals in education, health, housing and employment and notes that EU governments must prepare, update or develop their national Roma inclusion strategies by the end of 2011. Other major developments at the EU level include the 2010 amended rules for the European Regional Development Fund.

These rules allow funding to be made available for housing, a move motivated in particular by the identified need to improve housing in Roma slum communities.

The Organization for Co-operation and Security in Europe (OSCE) created the Roma and Sinti Contact Point as part of its Office of Democratic Institutions and Human Rights (ODIHR) in 1994. The Contact Point's specific focus is crucial to the ongoing assessment of the state of human rights for the Roma in Europe, and Roma civil society participation at the periodic meetings of the ODIHR has been consistently high. Roma are also a constant focus for the OSCE field missions in east and south-east Europe. The OSCE High Commissioner on National Minorities has also played a role in monitoring and making recommendations to OSCE participating states in the field of Roma rights.

More recently, the Decade of Roma Inclusion 2005-2015 was launched in 2005. This World Bank/Open Society Institute initiative has reached its halfway point with limited results, largely due to rather weak participating state involvement.

The United Nations (UN) human rights machinery has, since the mid-1990s, increasingly addressed the situation of Roma and Travellers in Europe and endeavoured to provide guidance to states regarding human rights-based policies. In particular the UN treaty bodies – the supervisory organs of the international human rights treaties – now regularly examine the position of Roma when they review the human rights situation in European countries. The UN Committee on the Elimination of Racial Discrimination (CERD) has been particularly active in this regard, adopting in 2000 a General Recommendation on Discrimination against Roma, which laid out a general framework in this area. A number of the UN Special Procedures of the Human Rights Council, such as the Independent Expert on Minority Issues, the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, and the Special Rapporteur on Adequate Housing, to name only three, have also focused extensively on cases and human rights issues facing Roma. Roma have featured prominently in the review of states under the new UN Human Rights

Council Universal Periodic Review mechanism. Various agencies of the UN system and the World Bank have produced studies on Roma development issues. Five UN treaty bodies consider individual communications, some of which have been submitted by Roma.

Despite these extensive supra-national efforts, improvements at national, regional or local level are not present on a wide scale. Statistical data on the situation of Roma in key sectors remains of limited scope and availability, as well as of poor quality. Without comprehensive and long-term data disaggregated by ethnicity to inform policy development, implementation and monitoring, and without the fair use by public authorities of such data in particular respecting data protection systems, it is virtually impossible to assess the effectiveness of measures taken or progress achieved. In this situation, securing durable advances in the human rights situation of Roma and Travellers becomes all the more difficult.

The present report is intended to identify areas where further efforts are needed, with a view to consolidating achievements and reaching genuine equality for Roma and Travellers in Europe. It can be used by stakeholders, including communities and NGOs, to inform, engage and advocate for the political commitment necessary in member states to achieve this goal. The report summarises the range of areas in which human rights concerns related to Roma and Travellers have been identified by Council of Europe monitoring bodies, researchers, civil society organisations and other international institutions. The Council of Europe human rights framework offers the best structure available to assess the requirements of dignity, and to thereby map the way forward on the path to Roma inclusion. Member states have committed themselves to the Council of Europe standards described in this report and their authorities should fill the gaps that remain in the implementation of these standards, taking into account specific national contexts as well as the situation of different Roma and Traveller communities and individuals. The authorities should also be guided by these principles when planning and designing their national Roma inclusion strategies or any other policies targeting Roma and Travellers.

The report covers the period from the previous Council of Europe Commissioner for Human Rights report on this topic in February 2006 until 22 September 2011. The basic documentary sources were the reports produced by the Committee of Ministers of the Council of Europe, the European Commission against Racism and Intolerance, the Advisory Committee on the Framework Convention for the Protection of National Minorities, the Committee of Experts on Roma and Travellers (MG-S-ROM), the European Committee of Social Rights and the Commissioner for Human Rights. Use was also made of reports by the OSCE, the EU Fundamental Rights Agency, the International Organization on Migration, the United Nations Development Program, the Office of the United Nations High Commissioner for Human Rights (OHCHR), UNESCO, UNHCR and the Department of State of the United States of America. Research by national and international civil society organisations was consulted. A number of Roma and Traveller civil society organisations were directly contacted for input, as were other experts.

The report is divided into chapters focused on specific themes. The first chapter looks at anti-Gypsyism in Europe. The second examines violent hate crime against Roma and Travellers. The next chapter examines issues related to the treatment of Roma and Travellers by law enforcement authorities and the judiciary. Chapter 4 examines the forced and coercive sterilisations of Roma women and the forced removal of Roma children from the care of their biological parents, and Chapter 5 looks at trafficking in human beings as it affects Roma. Chapter 6 examines the situation of Roma in relation to key economic and social rights to education, employment, housing, health and social assistance, as well as the ability of Roma to access goods and services available to the public. The chapters that follow examine statelessness and related status issues; migration, asylum, expulsion and freedom-of-movement issues; and participation of Roma and Travellers in decision-making processes.

MILANO ZINGAROPOLI CON PISAPIA

- + CAMPI NOMADI
- LA PIÙ GRANDE MOSCHEA D'EUROPA

1. Anti-Gypsyism

Anti-Gypsyism, a term indicating the specific expression of biases, prejudices and stereotypes that motivate the everyday behaviour of many members of majority groups towards the members of Roma and Traveller communities, is deeply rooted in Europe. Many Europeans who have never interacted with Roma or Travellers volunteer detailed, stereotypical descriptions of Roma or Traveller appearance and behaviour as a result of having absorbed this general cultural understanding.¹ Anti-Gypsy stereotypes that are prevalent throughout Europe – such

1. Dosta! Campaign, “Aspects of anti-Gypsyism”, 22 November 2006.

During the campaign for Mayor of Milan in the Spring of 2011 posters were put up by the Northern League warning that opposition candidate Giuliano Pisapia would turn Milan into a gypsytown: “Milan Gypsy town with Pisapia + Roma camps. The biggest European mosque”. (Pisapia won the election.) © Photo: Rosi Mangiacavallo/ERRC

as the idea that Roma or Travellers are disproportionately reliant on welfare, or are the exclusive perpetrators of various kinds of crimes – pose significant obstacles to overcoming negative attitudes towards these persons. The Commissioner has repeatedly highlighted that anti-Gypsyism is a crucial factor preventing the inclusion of Roma in society and that resolute action against it must therefore be central to any efforts to promote their integration. As a consequence, the Commissioner has noted that “without changes in attitudes within the majority population, all programmes aimed at improving the situation of the Roma people are bound to fail”.² In addition, all efforts made by the Roma communities themselves to break out of their marginalisation and relate positively to the rest of society will remain in vain. Efforts that are made towards the inclusion of Roma and Travellers should also be accompanied by measures to eradicate anti-Gypsyism within the majority of the population. Recognising that anti-Gypsyism must be eradicated from European society if discrimination against Roma and Travellers is to be eliminated, the Council of Europe and the European Commission launched the “*Dosta! Go Beyond Prejudice, Discover the Roma!*” campaign in 2006. The Commissioner has supported the launch of the “*Dosta!*” Campaign in many countries.

Anti-Gypsyism is reflected in the use of stigmatising anti-Roma rhetoric in public, notably political and media, discourse. The Internet is increasingly used as a platform for both expression of anti-Gypsyism and the organisation of groups that promote it. The widespread lack of knowledge of Roma history and culture, both amongst the general public and at the political level, including the lack of recognition of Roma as victims of genocide during the Second World War, further fuels anti-Gypsyism across Europe.

1.1. Public leaders and anti-Gypsy rhetoric

In recent years, public leaders, including elected representatives, religious representatives and even national-level court officials,

2. Commissioner for Human Rights, “Positions on the human rights of Roma”, Position Paper, Strasbourg, 30 May 2010.

have publicly used racist or stigmatising rhetoric against Roma and Travellers. ECRI has expressed concern at incitement to racial hatred or other forms of expression by public officials heightening anti-Roma or anti-Traveller sentiment in Belgium, the Czech Republic, Italy, Latvia, Portugal, Slovenia, Switzerland, the United Kingdom and other countries. Other organisations have documented anti-Roma statements in Austria, Bulgaria, Denmark, Greece, Lithuania, Moldova, Slovakia, Spain and Turkey – and this is not an exhaustive list of the places where such statements have been recorded. Anti-Roma public and political speech can take various forms, from incitement to hatred or discrimination, to reiterating stereotypes or generalisations about criminality. Some anti-Roma or anti-Traveller messaging is coded.³

In France in 2010 a wave of anti-Roma and anti-Traveller statements by high-ranking officials in the French Government included prejudicial generalisations about the Roma and Travellers as a collective. For example, French Interior Minister Hortefeux in 2010 stated to the French media, “in all three cases – Roma, sedentary Travellers and other Travellers – the consequence is the same: an increase in crime.” These statements were uttered in the context of efforts to expel Roma from France, as well as to dismantle informal settlements. The Commissioner has in particular denounced the fact that “during the ongoing government campaign in France against crime, Roma from other EU countries have been targeted as a ‘threat against public security’. ... This is all the more serious as there is widespread anti-Gypsyism in many European countries today and extremist political groups are trying to exploit these tendencies. ... Any political statement or action which encourages such thinking must be avoided.”⁴

3. “Coded” means euphemisms or indirect references are used which do not explicitly name “Gypsies”, Roma or Travellers as the subject of the message but which are understood as references to members of these groups. The use of coded communications enables speakers to claim they are not engaged in obviously racist discourse.

4. Commissioner for Human Rights, “Anti-Roma rhetoric in Europe: politicians should avoid feeding prejudice”, 9 September 2010.

In Hungary, in September 2010, Member of the European Parliament Csanad Szegedi, the vice-chair of Jobbik (“Movement for a Better Hungary”), a party which won three seats in the European Parliament elections in 2009 and 16.7% of the national parliamentary vote in 2010, making it the third-strongest party in the Hungarian Parliament, said that those Roma considered a “threat to public safety” should be forcibly evicted and housed in camps under close surveillance, “for life” if necessary. He declared: “We would force these families out of their dwellings ... Then, yes, we would transport these families to public order protection camps ... No doubt there will be people who show no improvement. They can spend the rest of their lives in these camps.”⁵ In October 2009, the Commissioner was particularly concerned by the public use of anti-Roma hate speech by public figures and the lack of any strong official condemnation of such speech in Hungary. He appealed to all party leaders to refrain from such language during political debates and from anti-Roma or xenophobic statements in the 2010 elections. In 2010 the Advisory Committee on the Framework Convention for the Protection of National Minorities reported with respect to Hungary that “the deterioration in the social climate is exacerbated by the racist statements of one extremist and xenophobic political party [i.e. Jobbik], which exploits people’s prejudices towards Roma.”

ECRI noted with respect to Italy in 2006 that the use of anti-Roma rhetoric in politics was intensifying and had taken the form of “propaganda aimed at holding non-citizens, Roma, Sinti, Muslims and other minority groups collectively responsible for a deterioration in public security in Italy.” On 4 November 2007, Gianfranco Fini, then head of the National Alliance party, was quoted in *Corriere della Sera* as saying that Roma believe “theft to be virtually legitimate and not immoral”. He also said Roma felt the same way about “not working because it has to be the women who do so, often by prostituting themselves.” He added that Roma “have no scruples about kidnapping children or having children for the purposes of begging.” Lastly,

5. Dunai M., “Hungary’s far-right wants to round up Roma in camps”, Reuters, 1 September 2010.

he said: “To talk of integration with people with a ‘culture’ of that sort is pointless.”⁶ In 2008, the UN Committee on the Elimination of Racial Discrimination (CERD) expressed serious concerns about politicians’ hate speech targeting Roma in Italy. In 2008 and in 2009, the Commissioner recommended that the Italian authorities “ensure a prompt reaction to condemn strongly and publicly all statements, irrespective of their origin, that generalise and stigmatise certain ethnic or social groups, such as Roma and Sinti or migrants”. In a 2011 Human Rights Comment on the use of stigmatising anti-Roma rhetoric in the political discourse, the Commissioner described as “an extreme display of xenophobia” certain posters displayed in Milan during the 2011 municipal election campaign warning against the risk of the city turning into a ‘Gypsy town’. Following his 2011 visit to Italy, the Commissioner reported that:

... [e]ven outside election periods, anti-Roma attitudes have regrettably continued to taint political speech on many occasions. In one such instance, in the context of the expulsions of Romanian and Bulgarian Roma from France of the summer of 2010, the Corriere della Sera reported the Italian Minister of Interior as expressing regret at the fact that since many Roma and Sinti have Italian nationality “they have a right to stay and nothing can be done about it”.

In Romania in 2010 members of the Roma community demanded the resignation of the Romanian Foreign Minister Baconschi over remarks he made in a conversation with the French EU Affairs Minister about the “crime issues” of the Romanian Roma minority. The minister used the terms “physiological” and “natural”, implying that Roma are genetically predisposed to criminality. Romanian President Traian Basescu defended Baconschi, saying Romania’s image abroad was harmed by Roma beggars “on every street corner”.⁷ A previous anti-Gypsy remark of President Basescu (namely, calling a journalist a “stinking Gypsy”) was

6. ERRC, “Italian politician and media brought under scrutiny for anti-Romani speech”, 12 November 2007.

7. HotNews.ro, “Roma ethnics protest in Bucharest, requesting Romanian Foreign Affairs Minister to resign”, 24 February 2010, and ERRC, “Factsheet: Summit-to-Summit Roma Rights Record”, 20 April 2010.

reported by Amnesty International in 2008, as was a statement by then-Foreign Affairs Minister Adrian Cioroianu who, in the context of Italy's declared intention to expel Romanian Roma back to Romania in 2008, stated that he had considered "buying a piece of land in the Egyptian desert to send there all the people who tarnish the country's image".⁸

The Commissioner has repeatedly stressed that there is a close link between hate crimes and hate speech. Rhetoric from some politicians and xenophobic media has revived age-old stereotypes about the Roma and this in turn has "legitimised" actions, sometimes violent, against Roma individuals. Anti-Gypsy speech in many cases precedes acts by vigilantes such as mob violence and pogroms. Election campaigns can be a period during which local politicians in particular feel they must 'play' the anti-Gypsy "card" in order to secure victory at the polls. The Commissioner noted that the anti-Roma rhetoric used by some candidates in the 2008 elections in Italy was followed by ugly incidents of violence against Roma individuals and camps. He has also cited the series of murders of Roma in Hungary in 2008 and 2009 as an example of the fact that "distorted minds" can and do understand such political messages "as an encouragement for action".

The ECRI 2005 Declaration on the use of racist, antisemitic and xenophobic elements in political discourse emphasises that public leaders, including mainstream politicians, opinion leaders and religious leaders, are not above the law. ECRI suggests practical measures, including the signature and implementation by European political parties of the Charter of European political parties for a non-racist society;⁹ the adoption and implementation of provisions penalising the leadership of any group that promotes racism or supports such groups and participates in their activities; and the establishment of an obligation to suppress public financing of organisations which promote racism, including through public financing of political parties. ECRI, in its 2011 General Recommendation No. 13 on combating anti-Gypsyism

8. National Council on Combating Discrimination, 2009 Annual Report, Romania, p. 66.

9. Charter of European political parties for a non-racist society, 26 February 1998.

and discrimination against Roma, recommends that member states “condemn all public discourse which publicly incites direct or indirect discrimination, hatred or violence against Roma”. Anti-Roma speech, including during electoral campaigns, must be strongly condemned in all cases and punished when it breaks laws against incitement to hatred, in accordance with the Strasbourg Court case law. For example, in the case *Féret v. Belgium*, following complaints concerning leaflets distributed by the party during election campaigns the Court did not find a violation of Article 10 (freedom of expression) in respect of the conviction of the applicant, the chairman of the *Front National* political party, for publicly inciting discrimination or hatred, following complaints concerning leaflets distributed by the party during election campaigns.¹⁰

1.2. Extremist groups

Hate speech by individuals is only one aspect of anti-Gypsyism in Europe. In an increasing number of European countries, extremist organisations explicitly target Roma and Travellers, in some cases significantly reshaping or galvanising segments of the public against Roma and Travellers. Such groups are increasingly active on the Internet, a medium which has also allowed for enhanced cross-border cooperation among extremist groups. These groups are active in recruiting youths, including through, for example, the organisation of hate music concerts. Members of these extremist groups have been found to be at the root of a number of hate crimes targeting Roma.

In Bulgaria, the Bulgarian National Guard (BNG) was established in 2007. Its mission is to be “the guardian of Bulgarians against Gypsy terror” in response to what it describes as “rising Gypsy criminality”. Its uniformed members are trained in paramilitary techniques. The organisation runs a weekly television show on a major channel and publishes a monthly newspaper. Its members are also members of the Bulgarian National Union (BNU), established in 2001 “for the protection and furthering of Bulgarian culture and spirit.” ECRI has

10. European Court of Human Rights, *Féret v. Belgium*, Application No. 15615/07, Judgment of 16 July 2009.

condemned the fact that this particular far-right group makes regular speeches against the Roma on a private television channel that it owns and is only rarely penalised by the authorities.¹¹

In the Czech Republic, the now-defunct Workers' Party has employed aggressive anti-Gypsyism during its election campaigns in recent years. Its public gatherings were regularly attended by neo-Nazi groups whose members repeatedly committed violence against Roma and others, including the police. The party intimidated Roma in key areas of its electoral support by sending uniformed party members to "patrol" Roma communities.¹² As the Commissioner said in a report following his 2010 visit to Czech Republic, "a particularly disturbing illustration of this phenomenon" was the repeated attempt by the Workers' Party and neo-Nazi groups to march on the Roma-inhabited neighbourhood in Litvinov from October 2008 to January 2009 with the support of local non-Roma residents. The Commissioner reported that "the marches led to violent clashes with the police, whose physical intervention was required to prevent demonstrators from reaching the Janov neighbourhood." As a result of its activities, the party was disbanded by the Supreme Administrative Court in 2010 at the request of the government, on the grounds that its programme posed a threat to democracy. Its leaders then regrouped as the Workers' Social Justice Party (the Czech acronym of which was "DSSS") and once again began "citizen patrols" to target Roma in June 2010. During 2011, the DSSS organised rallies in several Czech towns featuring marches through Roma neighbourhoods; these rallies were also promoted, supported and attended by neo-Nazi groups. The events of spring 2011 in Nový Bydžov and Krupka in particular raised serious human rights concerns, as the Czech Government Human Rights Commissioner subsequently noted.¹³ In September 2011,

11. ECRI Fourth report on Bulgaria, adopted 28 June 2008, published 24 February 2009, p. 27.

12. ECRI Fourth report on the Czech Republic, adopted on 2 April 2009, published on 15 September 2009, p. 8, and Albert G. and Redlová P., European Network against Racism Shadow Report 2008, "Racism in the Czech Republic", pp. 25-6.

13. Romea, "Czech Government Human Rights Commissioner: Roma people faced unprecedented pressure from extremists in Krupka", Prague, 13 March 2011.

the group also organised anti-Roma marches in several towns in the Šluknov foothills, leading to clashes with the police, after a group of Roma allegedly attacked other youths in Rumburk.¹⁴

Another party that was organised around anti-Gypsyism in the Czech Republic was the National Party, now defunct, which drew an expression of concern from the Secretary General of the Council of Europe in 2009 over its television advertisement aired during the European Parliament campaign calling for “the Final Solution to the Gypsy Question in the Czech Lands”. That “Final Solution” proposed deporting Roma to India. The Secretary General issued a statement saying that such a call fell “well outside” the limits on the right to freedom of expression established by the ECHR. The Commissioner has noted that in October 2010 the author of this publication was sentenced to a prison term for inciting racial hatred. In mid-2008, the party advertised that it was establishing a uniformed paramilitary organisation called the National Guard and organised patrols outside a school to “protect” non-Roma children from Roma ones.¹⁵ Party members had also disrupted a 2007 commemoration of Roma victims from the Second World War. In its 2009 report on the Czech Republic, ECRI advised the Czech authorities to take a “broad approach to combating racist discourse, not focusing exclusively on criticizing the views of actions of right-wing extremists themselves but also addressing other factors that create favourable conditions for such discourse to take root”, including “long-standing prejudices against the Roma”.

In Hungary, the far-right paramilitary Hungarian Guard organisation (Magyar Gárda) was established in August 2007. In October 2007, a public swearing-in was held of several hundred new Hungarian Guard members wearing uniforms with insignia very similar to that of the Arrow Cross, an openly Nazi party that briefly held power in Hungary during the Second World War, deporting and murdering tens of thousands of Jews and Roma during its administration. The

14. Romea, “Czech President: Unrest must end, state must intervene with force”, 12 September 2011.

15. ECRI Fourth report on the Czech Republic, op. cit. p. 20.

Hungarian Guard has organised numerous public rallies throughout the country, including in villages with large Roma populations. One of the organisation's themes is "protecting" ethnic Hungarians against "Gypsy crime".¹⁶ The Supreme Court dissolved the Hungarian Guard in December 2008, ruling that it curtailed the freedoms and rights of others and "triggered a risk of violence" during its rallies. In May 2010, Gábor Vona, the chair of the Jobbik Party,¹⁷ made good on his threat to wear the uniform of the banned Hungarian Guard to the swearing-in of the new parliament, prompting sharp criticism from Hungarian President Laszlo Solyom. In March and April 2011, paramilitary organisations like the Civil Guard Association for a Better Future (Szebb Jövőért Polgárőr Egyesület) organised patrols intimidating Roma inhabitants in Hajdúhadház and Gyöngyöspata, northeast of Budapest. This civil guard is reportedly linked to the Hungarian National Guard (Magyar Nemzeti Gárda), which has the same aims and leadership as the banned Hungarian Guard, and the Jobbik Party.¹⁸ Vigilante groups wore uniforms and used flaming torches, whips and axes. The Red Cross organised the transport of Roma women and children from the Gyöngyöspata village over Easter weekend in April 2011, when one such vigilante group had planned a paramilitary training exercise. Soon after, the Hungarian Parliament passed an amendment to the penal code in an accelerated procedure introducing the concept of "uniformed criminality" as a label for the activities of various illegal vigilante "guard" movements.¹⁹

In Turkey in 2006 the Social Pan-Turkist Budun Association (Türkçü Toplumcu Budun Derneği), an ultra-nationalist organisation, passed out leaflets in İzmir reading: "Dear Turkish women and men! Make another child for Turkishness, because you are being marginalized

16. ECRI Fourth report on Hungary, adopted on 20 June 2008, published on 24 February 2009, pp. 8 and 24.

17. "Movement for a Better Hungary". See above, p. 42 in section 1.1.

18. Joint letter from Amnesty International, ERRC and four NGOs to Hungarian authorities, 14 April 2011.

19. OSCE/ODIHR, "Violence, discrimination faced by Roma in Europe unacceptable", Warsaw, 6 May 2011.

compared to the betrayers, pickpockets, drug dealers, who are spreading. We are the Social Pan-Turkist Budun People who can give the deserved reply to the Kurdish and Gypsy gangs and bigots.” Police halted the distribution but the campaign continued online. The Progressive Lawyers Association filed a criminal complaint against the head of the Budun Association claiming a violation of Article 216 of the Criminal Code, prohibiting incitement to racial hatred and enmity. In January 2008, the Chief Prosecutor issued an indictment against the Association, the first time Article 216 has been invoked in connection with hate speech against Roma in Turkey.²⁰

The Parliamentary Assembly of the Council of Europe (PACE) has recently expressed concern “at the upsurge of certain forms of extremism in Europe which, taking advantage of the framework of rights and freedoms guaranteed by European democracies, pursue objectives which contravene Europe’s democratic and human rights values and, in the worst cases, condone or even promote violence. Among these forms of extremism, racism and xenophobia are a major source of preoccupation, in the light of the rise in electoral support for parties inspired by racist ideas – as has been the case in a number of recent national elections, as well as in the elections to the European Parliament – and the non-negligible risk that mainstream political parties tend to rely on racist discourse in order to avoid losing part of their electorate.”²¹

The Commissioner has recommended establishing an obligation to suppress public financing for organisations promoting racism, including political parties, in accordance with ECRI General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.²² The European Court of Human Rights has in

20. Edirne Roma Association, ERRC, Helsinki Citizens Association, *We Are Here! Discriminatory Exclusion and Struggle for Rights of Roma in Turkey*, p. 107.

21. Council of Europe, Parliamentary Assembly, Resolution 1754 (2010): Fight against extremism: achievements, deficiencies and failures, adopted on 5 October 2010.

22. Letter addressed to Mr Gordon Bajnai, Prime Minister of Hungary, from Thomas Hammarberg, Council of Europe Commissioner for Human Rights, Strasbourg, 26 November 2009.

a number of cases upheld the actions of states in dissolving extremist political parties.²³ In its jurisprudence, the Court has examined whether the dissolution of these parties violates Article 11 of the European Convention on Human Rights (freedom of assembly) and noted that the:

... overall examination of the question whether the dissolution of a political party on account of a risk of democratic principles being undermined met a 'pressing social need' must concentrate on the following points: (i) whether there was plausible evidence that the risk to democracy, supposing it had been proved to exist, was sufficiently imminent; (ii) whether the acts and speeches of the leaders and members of the political party concerned were imputable to the party as a whole; and (iii) whether the acts and speeches imputable to the political party formed a whole which gave a clear picture of a model of society conceived and advocated by the party which was incompatible with the concept of a 'democratic society'.²⁴

1.3. Media

Traditional and new media play an important role in forming public opinion. However, the media are not always human rights-sensitive. In particular, in many countries throughout Europe, the media are failing to live up to their responsibility to counter stereotypes against Roma and Travellers.

There are some recent examples of thoughtful journalism on Roma issues, some of it international, as in the case of the documentaries “Trial of a child denied” (2008) and “Scars of racism” (2010) aired on the *World's Untold Stories* programme on CNN International. In France, some major newspapers have helped to improve the general public's understanding of the Roma through extensive, well-researched reporting, such as the 4 September 2010 report in *Le Monde*, “Les Roms, Parias de l'Europe”.

23. See for example European Court of Human Rights, *Refah Partisi (The Welfare Party) and Others v. Turkey* Applications Nos. 41340/98, 41342/98, 41343/98 and 41344/98, Judgment (Grand Chamber) of 13 February 2003.

24. *Ibid.*

In Austria, Germany and Switzerland, recent television reporting has also shed light on the troubling situation of Roma.²⁵ Training for journalists in several European states has helped to improve reporting on minorities, including the Roma and Travellers, and there are several media outlets that serve the Roma community and report on Roma-related issues to the outside world as well, such as the news server Romea, based in the Czech Republic, and the Romedia Foundation in Hungary.

Such examples, however, remain limited and few in number. Even media reporting which does not include outright hate speech can perpetuate stereotypes by, for example, unnecessarily referring to the Roma or Traveller ethnicity of alleged perpetrators of crime, or by only reporting on Roma and Travellers in the context of articles on social problems such as begging or drug addiction. Sensationalist coverage of these and other issues promotes stereotypes of the Roma as living perpetually outside the law or as responsible for their own exclusion, because they have – supposedly – chosen to be different. Such coverage is not limited to tabloids alone.

In many countries of the Commonwealth of Independent States and other former Soviet republics, anti-Gypsy stereotypes continue to be perpetuated in the media, with the terms “Roma” and “beggars” or “drug dealers” becoming essentially interchangeable. Reviewing Russia’s compliance with the International Convention on the Elimination of All Forms of Racial Discrimination in 2008, the UN CERD noted with concern “the increase in the number of racist and xenophobic statements in the media, including in mainstream media and publications by established publishing houses, targeting ethnic minorities such as Roma.” In Ukraine, the media frequently stereotype Roma by mentioning the Roma ethnicity of those suspected of crimes more often than any other ethnicity; this reflects information released by police which is then republished without further analysis.²⁶

25. 3sat, “Kulturzeit”, 7 September 2010.

26. ECRI, Third Report on Ukraine, adopted on 29 June 2007, published 12 February 2008, p. 23.

The perpetuation of anti-Roma prejudices by media has also been reported in, amongst other places, the Czech Republic, Denmark, Estonia, Germany, Italy, Latvia, Lithuania, Poland, Romania, Serbia and the United Kingdom. For example, according to ECRI, in the Czech Republic, the tabloid press often stereotype the Roma as rent defaulters, thieves or violent criminals who deliberately avoid employment. In Germany, media coverage of the Roma and Sinti perpetuates stereotypes about them. The Central Council of German Sinti and Roma sent complaints to the German Press Council regarding 39 newspaper articles published during 2007 which unnecessarily referred to the ethnicity of crime suspects as being Sinti/Roma or some other euphemism understood to refer to this minority; the labelling is usually suggested by police and then repeated by the media.²⁷

In Romania, anti-Roma sentiment is frequently reflected in the media. For example, a car company advertisement recently ran with the slogan “If you won’t buy a [car company name] on the grounds that ‘every Gypsy has one’, it means the Gypsies have won”. The National Council for Combating Discrimination (NCCD) warned the advertiser that the advertisement was discriminatory.²⁸ The NCCD has also imposed sanctions against numerous publications for perpetuating the stereotype that Roma are criminals.²⁹ In the United Kingdom, hostile reporting about Roma and Travellers is reported to be prevalent, particularly in some editorials of the tabloid press. Roma and Traveller representatives say the Press Complaints Commission has failed adequately to take action against such acts.³⁰

The European Convention on Human Rights sets out, in Article 10(2), limitations on the right to freedom of expression, noting that the

27. Zentralrat Deutscher Sinti und Roma (Central Council of German Sinti and Roma), “Informations for Council of Europe’s Commissioner for Human Rights, Mr Thomas Hammarberg”.

28. National Council on Combating Discrimination (Romania), 2009 Annual Report, pp. 48-49.

29. Nicolae V., “The enemy within – Roma, the media and hate speech”.

30. ECRI Fourth report on the United Kingdom, adopted on 17 December 2009, published on 2 March 2010, p. 46.

right may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society for the protection of the rights of others. In the case *Jersild v. Denmark*, the Court examined whether Denmark had violated Article 10 of the ECHR by imposing criminal penalties on a journalist who had given a platform to a racist group. The Court made clear that: (1) journalists acting in the public interest are to be distinguished from neo-Nazi skinheads and other racist persons or groups aiming at the destruction of fundamental rights in assessing the kinds of speech acts they undertake (and journalists enjoy much higher protection); and (2) when presenting material about extremists promoting violations of human rights, it is important that this is not presented “neutrally”, as if the extremist views in question constitute legitimate opinions.³¹ The Court paid particular attention to the aim pursued by the journalist in providing a platform to a racist group, which, in the case in question, “could not objectively have appeared to have as its purpose the propagation of racist views and ideas”.³² In *Aksu v. Turkey*,³³ the Court concluded that the applicant, who alleged that two government-funded publications (an academic study and a dictionary) included remarks and expressions that reflect anti-Roma sentiment, was not discriminated against (that is, there was no violation of Article 14 in conjunction with Article 8). The Court paid again particular attention to the aim pursued by the authors of the publications in question and noted that the study had no intention of insulting the Roma community and that the dictionary was prefaced with the comment that the definitions were of a metaphorical nature. The case was referred to the Grand Chamber.

According to the Council of Europe/European Commission *Dosta!* (‘Enough!’) campaign, it is incumbent on editors and media providers to guard against promotion of stereotypes or encouragement of hate

31. European Court of Human Rights, *Jersild v. Denmark*, Application No. 15890/89, Judgment of 23 September 1994, paragraph 34.

32. *Ibid.*, paragraph 33.

33. European Court of Human Rights, *Aksu v. Turkey*, Applications Nos. 4149/04 and 41029/04, Judgment of 27 July 2010, not final.

crime or other harms. In its General Policy Recommendation No. 13 on Combating anti-Gypsyism and discrimination against Roma, ECRI recommends that member states combat anti-Gypsyism in the media, and accordingly:

- a. ensure that the legislation is indeed applied to those media that incite discrimination, hatred or violence against Roma;*
- b. encourage the media not to mention the ethnic origin of a person named in articles or reports when it is not essential for an good understanding of events;*
- c. encourage the media to adopt a code of conduct for preventing, inter alia, any presentation of information that conveys prejudice or might incite discrimination, hatred or violence against Roma;*
- d. encourage the media to refrain from broadcasting any information likely to fuel discrimination and intolerance towards Roma;*
- e. support all initiatives taken to impress the dangers of anti-Gypsyism upon media professionals and their organisations;*
- f. encourage the professional bodies of the media to offer journalists specific training on questions relating to Roma and anti-Gypsyism;*
- g. promote the participation of Roma in the media sector in general by taking steps for journalists and presenters from among Roma communities to be recruited and trained.*

In a 2011 Human Rights Comment on European media and anti-Gypsy stereotypes, the Commissioner reaffirmed the great need for self-regulation and ethical journalism. He stated: “though reporters and editors should not be megaphones for particular interests, they can contribute to a more fair society though genuine professionalism.”

1.4. Promotion of hatred on the Internet

Anti-Gypsy hate speech is also flourishing on the Internet, contributing to an atmosphere of tension that can precipitate violence in the real world. The Internet is used not only to perpetuate anti-Gypsy rhetoric, but also to organise the anti-Roma movement and its activities.

For instance, in the Czech Republic, organised groups including political parties have made use of the Internet to organise events like the attempted pogroms on Roma in Litvinov in 2008.³⁴ ECRI reported in 2009 that news websites offering their readers the option of online discussions reveal readers' "overwhelmingly negative" attitudes toward the Roma. In September 2010, an online daily reporting on Roma children who had been hospitalised with jaundice referred to them as a "Gypsy litter" in the headline.³⁵ Anonymous misinformation campaigns about the Roma have also been waged through the Internet or SMS messaging. Czech Facebook users have recently established groups through that social network in aid of various anti-Gypsy causes, such as criticising the sentences handed down to neo-Nazis who have targeted Roma with violence or protesting against the introduction of Romani language instruction in the Czech school system. These projects have garnered tens of thousands of Facebook fans.³⁶ Internet games targeting recognisably Roma victims with violence are also part of the Czech online landscape.

In Germany, the Central Council of Sinti and Roma reports that the aggressive practices of racist, radical right-wing Internet campaigns are its primary concern today. The online "Forum for the Pan-German Fatherland", for example, has called for the *Sonderbehandlung* ('special treatment') of "Gypsies", language used by the Nazi regime as a euphemism for death in the gas chambers; a video on YouTube shows neo-Nazi groups beating Roma people up with baseball bats and other weapons. Criminal charges filed in this matter by the Central Council were reportedly suspended within a few days by the Department of Public Prosecution, who said that the perpetrators could not be traced.³⁷

34. Repeated attempts by extremists groups to march over the Roma neighbourhood. See above p. 46.

35. Ryšavý Z., "Commentary: Neo-Nazi vulgarities increase in mainstream Czech media", 25 September 2010.

36. Romea, "Facebook group against Romanes language in Czech schools: 40 000 strong", 24 March 2010.

37. Zentralrat Deutscher Sinti und Roma (Central Council of German Sinti and Roma), "Informations for Council of Europe's Commissioner for Human Rights, Mr Thomas Hammarberg".

ECRI reported in 2008 that in Lithuania the Roma community is among those most frequently targeted by racially inflammatory material posted by individuals on the Internet. Despite cases having been reported to the Prosecutor-General's Office, no action has been taken and the material has remained available online for very long periods of time. In Turkey, four racist organisations and their websites have been increasingly spreading intolerance, racism and xenophobia. These groups sometimes associate the Roma with Kurds as examples of the "vile races". Some websites call for attacks on both Kurds and Roma, labelling the Roma an "equally inferior" group as the Kurds.³⁸

Some countries have begun taking legal action against persons using the Internet for anti-Roma purposes. The Czech media, for example, reported in May 2011 that Mr Martin Kubák was sentenced by the Prague 5 District Court to a four-month prison sentence, suspended for one year. Starting in August 2009 Mr Kubák sent dozens of threatening e-mails to Mr Patrik Banga, a Roma man who is an online discussion administrator for a news server. In addition to racist vulgarities, the e-mails included death threats against Banga and his son.³⁹

The Additional Protocol to the Convention on Cybercrime on the criminalisation of acts of a racist and/or xenophobic nature committed through computer systems specifically addresses ethnic and racial discrimination and the dissemination of racist and xenophobic content through the Internet. Article 4 of that Protocol provides for the adoption of legislation to make it a criminal offence to use a computer system to threaten to commit a crime against an individual or a group distinguished by race, colour, descent, national or ethnic origin, or religion. It calls for international co-operation and for states parties to adopt legislative and other measures to criminalise the distribution of such content. As of 22 September 2011, however, 15 Council of Europe member states have neither signed nor ratified this protocol. Member

38. Edirne Roma Association, ERRC, Helsinki Citizens Association, "We Are Here! Discriminatory Exclusion and Struggle for Rights of Roma in Turkey", p. 104.

39. Romea, "Online debater convicted in Czech Republic of death threats against Roma moderator", 11 May 2011.

states should accelerate their acceptance of this protocol in recognition of the danger posed by permitting racist hate speech to flourish online.

ECRI 2000 General Policy Recommendation No. 6 on combating the dissemination of racist, xenophobic and antisemitic material via the Internet also provides relevant standards such as the need to encourage self-regulation by the Internet industry, to set up mechanisms to monitor and racism on the Internet, and to “pay special attention to awareness-raising among young Internet-users”. As a general principle, what is illegal offline is also illegal online.

1.5. Anti-Gypsyism and recognition of the genocide of the Roma during the Second World War

Anti-Gypsyism involves not just targeting the Roma in the present, but also failing to recognise their history of past suffering, particularly during the Second World War. This usually takes the form of ignorance and silence about Roma victims of genocide, whether by neglecting to mention Roma victims at commemorations and memorials, in media coverage of this history, or in official history and textbooks. As the Commissioner stated in a 2008 Viewpoint, this “could not have been surprising to the Roma themselves, as for generations they had been treated as a people without history. The violations they had suffered were quickly forgotten, if even recognised.”⁴⁰

There are no clear data on how many Roma fell victim to persecution by the Nazis and their eastern European allies. As mentioned in the Council of Europe *Factsheets on Roma History*, “research has to rely on estimations; whatever their testimony, a number of at least 250 000 victims is considered highly probable.”⁴¹ Other credible studies indicate that more than 500 000 Roma lost their lives, perhaps many more. A number of terms for “Holocaust” exist in

40. Commissioner for Human Rights, “The shameful history of anti-Gypsyism is forgotten – and repeated”, Viewpoint, August 2008.

41. *Factsheets on Roma History*, University of Graz and Council of Europe, <http://romafacts.uni-graz.at>.

various dialects of the Romani language, such as *Pharrajimos* (the official term used by the European Roma and Travellers Forum) or *Porrajmos* (often translated as “the Devouring”), *Samudaripen* (“Mass Killing”), *Kali Traš* (“Black Fear”) or *Berša Bibahtale* (“The Years of Misfortune”). Nevertheless, the term *Holocaust* or *Xolokaust* is perhaps the one most frequently used in spoken Romani.

In Germany, the extermination of Roma during the Second World War was only formally recognised by the authorities in 1982, by the government of Helmut Schmidt. The Commissioner noted in his Viewpoint on the matter that Roma survivors of the genocide “faced enormous difficulties when trying to build up their lives again, having lost so many of their family members and relatives, and having had their properties destroyed or confiscated. Many of them had their health ruined. When some of them tried to obtain compensation, their claims were rejected for years”. The Roma communities of other countries – including the territories of what are today Austria and the Czech Republic – were also nearly completely destroyed by German authorities and their collaborators in central and eastern Europe.

Anti-Roma measures in some countries – such as Croatia, Hungary, Romania and Slovakia – were implemented independently of actions by Nazi Germany. For example, Roma throughout Romania were rounded up and deported across the Nistru River where they lived in conditions of extremity in camps and other harsh conditions on the territory between the Nistru and the Bug. Many died of typhus and other diseases, starvation and exposure as a result of the conditions forcibly imposed by authorities acting on racist doctrines.⁴²

Recently, efforts to commemorate Roma suffering during the Second World War have been made throughout Europe. Austria, the Czech Republic, Germany, the Netherlands and Ukraine have begun public education projects on the topic. In March 2011 the Czech

42. Ioanid R., *The Holocaust in Romania: The Destruction of Jews and Gypsies Under the Antonescu Regime, 1940-1944*, Ivan R. Dee Publishers, Chicago, 1999.

Government adopted a resolution on the establishment of a memorial for Roma in Hodonín, at the site of a former concentration camp for Roma. The main aims of the memorial will be to commemorate the Roma victims of genocide in former Czechoslovakia and create an information and education centre for children, youth and the general public, offering detailed information on Roma history, especially during the Second World War.⁴³ In the Netherlands, the Second World War Compensation Fund has been in operation since 2001. The government has negotiated with Roma and Sinti to allocate resources to individual victims and their direct descendants, and toward Roma and Sinti community goals. As a result, in January 2010 the Netherlands Institute for Sinti and Roma opened. The Institute is meant to support municipalities with legally resident Roma and Sinti communities (irrespective of their countries of origin) and to promote education, employment and housing initiatives.⁴⁴ In Ukraine, the President issued the “Roma Holocaust Commemoration Decree”, which is reportedly being implemented to the satisfaction of Roma representatives.⁴⁵

In Germany, the Central Council of German Sinti and Roma has been petitioning government at all levels to preserve and protect in perpetuity the burial places of Roma and Sinti survivors of the genocide. Recently, relatives of Roma and Sinti survivors have been encountering increasing problems with respect to the expiration of burial places. Authorities have been asking for fees to extend the leases, which the families concerned cannot afford. Ordinarily, burial places for which leases are not renewed are destroyed. The Central Council argues that the Federal Republic of Germany bears an historical responsibility to grant a permanent right of rest to the graves of Roma and Sinti survivors of the Second World War and should

43. Romea, “Construction of Roma Holocaust memorial in Czech Republic delayed”, Hodonín u Kunštátu, 25 July 2011.

44. Jorna P., “Recent Developments in the Netherlands: a short Update for MG-S-ROM Spring 2010”, contribution to the 29th MG-S-ROM Meeting in Strasbourg (25-26 March 2010).

45. ECRI, Third Report on Ukraine, p. 23.

declare them memorial sites.⁴⁶ In 2007 the Committee of Ministers of the Council of Europe called on the German Government to “continue to raise public awareness of the history and culture of the Roma/Sinti.”⁴⁷

Some efforts to provide dignified recognition of Roma victims of genocide during the Second World War have not yet met with success. Key among these is the effort to remove an industrial pig farm from the site in Lety near Písek, Southern Czech Republic, where Roma families perished during the Second World War. The presence of this farm is offensive to those whose relatives perished at Lety. The first official memorial was unveiled there in 1995. In 1998 the Czech Government resolved to remove the pig farm from the site but has yet to do so. The need to remove the pig farm from the site was specifically mentioned in a European Parliament resolution on the Roma as early as 2005.⁴⁸ In 2010 the Czech Government invested in improvements to the existing memorial at Lety to make it more accessible, dignified and educational.⁴⁹ At the time of publishing, the pig farm remains in place, and the government announced in October 2010 that its removal is unlikely.⁵⁰ In his report following a visit to the Czech Republic in 2010, the Commissioner expressed the opinion that the “removal of the pig farm from the Lety concentration camp would be an important gesture. It would symbolise society’s acknowledgment of

46. Zentralrat Deutscher Sinti und Roma (Central Council of German Sinti and Roma), “Informations for Council of Europe’s Commissioner for Human Rights, Mr Thomas Hammarberg”.

47. Committee of Ministers Resolution CM/ResCMN(2007)4 on the implementation of the Framework Convention for the Protection of National Minorities by Germany, adopted on 7 February 2007, p. 2.

48. “Whereas the Romani Holocaust deserves full recognition, commensurate with the gravity of Nazi crimes designed to physically eliminate the Roma of Europe, and calling in this connection on the Commission and the authorities to take all necessary steps to remove the pig farm from the site of the former concentration camp at Lety u Písku and to create a suitable memorial”, European Parliament Resolution on the situation of the Roma in the European Union, adopted on 28 April 2005.

49. Official website managed by the Lidice Memorial, “Reverent area Lety”.

50. Romea, “Czech Government to leave smelly pig farm on the Lety Holocaust site”, 8 October 2010.

the human dignity of the Roma, and thereby contribute to countering anti-Gypsyism, which feeds precisely on denial of or carelessness towards equal human dignity for this part of the Czech population.”

As the Commissioner noted in his Viewpoint on the question, the factsheets prepared by the Council of Europe underline that there is a need for further research on Roma history:

However, already the published factsheets do make a difference. My hope is that many people will read them and that governments in Europe will support and facilitate this through translating these texts into national languages and disseminating them to teachers, politicians and others. Roma organisations should be assisted in circulating them widely within their communities.

The extermination of Roma during the Second World War must not be forgotten. Teaching about Roma history, raising awareness of Roma during the war, and building and maintaining memorial sites are the least member states can do to honour Roma victims.

Truth commissions should also be introduced in a number of European countries to establish the historical facts concerning the atrocities committed against the Roma people. Ideally, this should be a Europe-wide undertaking. By helping to establish and acknowledge the truth, such an inquiry would hopefully help to restore trust amongst the Roma towards the wider society and lay the groundwork for a Europe where anti-Gypsyism is consciously rejected by its citizens.



2. Racially motivated violence against Roma and Travellers

Racially motivated attacks against Roma and Travellers have been prevalent in post-1989 Europe. Reports by human rights organisations have reflected the general trends in this violence, especially with respect to central and eastern Europe, where there was a particularly noticeable peak of such violence in the mid-1990s. There has been a further spike in such violence since 2006, but this rise is not limited to central and eastern Europe alone.

The home of a Roma family in Camp Casilino 900 in Rome, Italy, was burned down during the night. When the Commissioner for Human Rights visited the camp Roma representatives expressed anxiety about local residents' intolerant stance towards their community. June 2009. © Council of Europe.

In some contexts, violent attacks against Roma and Travellers and their property are perpetrated by organised skinhead or neo-Nazi groups and involve planning and preparation. However, in some instances, non-Roma communities have engaged more or less spontaneously in vigilante violence against Roma and Travellers, while in other cases the violence has been performed by individuals motivated simply by racist hatred. In some countries such as Italy, anti-Roma violence has been committed by a combination of all three kinds of perpetrators. Arson attacks have been carried out, often at night while people have been sleeping. Firearms have been used in incidents in Hungary, the Russian Federation and Slovakia. Moreover, common throughout the continent is inadequate investigation and prosecution of violent hate crimes, including crimes targeting Roma and Travellers, as well as a lack of comprehensive monitoring of the relevant incidents and the response to them from the justice system as a whole.

In Austria in August 2009, a group of travelling French Sinti were chased from their campsite by at least four youths in the village of Ainet in East Tyrol following a concert by a “right-leaning” rock band. The assailants beat on the Sinti caravans with clubs, breaking at least one window, calling them names and telling them to leave. Police were called and accompanied the Sinti to another site, but reportedly did nothing to bring the perpetrators to justice.⁵¹

In 2007, a Roma teenager was beaten to death in the town of Samokov, Bulgaria, by non-Roma teenagers.⁵² In the same year, six Roma were attacked by approximately a dozen skinheads in Sofia. Four of the Roma sustained injuries, one of whom had to undergo two life-saving operations. The victims claimed to have called the police for help and to have had their requests for help refused. The attack provoked protests by Roma in Sofia which degenerated into riots during which they attacked persons whom they believed to be skinheads, set dumpsters

51. Romano Centro, “Was Geschah in Ainet”, No. 65/66, June/September 2009, p. 12.

52. ERRC, “Romani Teenager Beaten to Death”, AFP, Mediapool, Romea, 20 November 2007.

on fire, and damaged cars; police were criticised for not intervening.⁵³ In its 2009 report, ECRI recommended that the Bulgarian authorities take into account the European Court of Human Rights case law⁵⁴ when it comes to investigating violent crime and take all reasonable steps to unmask any racist motivations involved.

According to the 2009 ECRI report on the Czech Republic, as a result of violence resulting in fatalities or maiming Roma victims for life, many Roma in the Czech Republic live in fear for their safety. Examples of the violence included the following: an unidentified perpetrator shot and wounded four Roma with an air rifle, two of them children, at a large housing estate over the course of a month in 2006. In 2007, a Roma man had both arms and legs destroyed while trying to remove a Molotov cocktail from in front of his home, where the graffiti “He steals” had been painted. That same year a Roma man was beaten up by four attackers who took the toluene he had been sniffing, poured it over him, set him on fire, and photographed the incident. The man died. One perpetrator was sentenced to 13 and a half years in prison; the others were given suspended sentences. In 2008, a separate arson attack on a different Roma family elsewhere in the country was reported every weekend during the month of September. In 2009, neo-Nazis threw three Molotov cocktails into a house occupied by a nine-member Roma family in Vítkov, injuring three of them. The most seriously injured was an infant who was not quite two years old when she suffered extensive second- and third-degree burns over 80% of her body. Three of her fingers have since been amputated. Four right-wing extremists were found guilty of racially motivated attempted murder in this case in October 2010 and given extraordinary sentences of more than 20 years in prison. In his report following a two-day visit in November 2010, the Commissioner stressed “the importance of the response made by the Czech authorities in the Vítkov case” and expressed his strong hope “that such a response will

53. ERRC, Romani Baht, Bulgarian Helsinki Committee, “Skinhead Attack of Roma Sparks Unrest”, 20 November 2007.

54. European Court of Human Rights, *Angelova and Iliev v. Bulgaria*, Application No. 55523/00, Judgment 26 July 2007.

mark the policy direction that will be followed by the Czech authorities against hate crimes in the future.” During 2010, another Molotov cocktail was thrown into a Roma home, but victims managed to put the fire out before the bottle, which contained ether, could explode. Police arrested the non-Roma neighbours of the family and charged two of them with attempted murder. Other attacks on Roma in 2010 have involved air rifles, and arson attempts with the use of Molotov cocktails and battery. In his 2010 Report on the Czech Republic, the Commissioner “encourages the Czech authorities to consider broadening their approach to hate crimes so as to take more fully into account the dimensions of this phenomenon ... The Commissioner believes that effective prosecution of hate crimes that involve the use of violence should be given absolute priority by the authorities”.

Between January 2008 and July 2010, nine Roma (two of them minors) were killed in racially motivated, targeted attacks on their homes in Hungary.⁵⁵ During 2008 and 2009, attacks included a pattern of firebombing houses on the periphery of villages at night, and then shooting at inhabitants as they attempted to escape the burning house. In one such case, in February 2009, a father and son were both killed during the attack. Molotov cocktails and guns have been used in twelve incidents, hand grenades were used in two and Roma property was vandalised in at least nine cases. In July 2010, unknown perpetrators shot up the outer front wall of a Roma home while the family was asleep. In its 2010 Third Opinion on Hungary the Advisory Committee on the FCNM reported that “there is an alarming increase in violence towards the Roma minority who have been victims of displays of intolerance, insults and racist acts.” March 2011 marked the beginning of the trial of four suspected perpetrators of some of the 2008-2009 crimes (resulting in the death of six persons), arrested in August 2009. The crimes were investigated by Hungary’s National Bureau of Investigations. The State Prosecutor’s charges did not mention racial motivation. Amnesty International and the ERRC have criticised the Hungarian authorities

55. ERRC, “Attacks against Roma in Hungary: January 2008-July 2010”, last updated 6 July 2010.

for the “lack [of] procedures for investigating racially motivated crimes” and for not properly investigating all of the attacks which took place in 2008 and 2009.⁵⁶ In 2009, ECRI recommended that the Hungarian authorities “introduce systematic and comprehensive monitoring of all incidents that may constitute racist violence”.

Racially motivated violence by vigilantes has repeatedly taken place in Italy. In December 2006, several camps inhabited by Romanian Roma were set on fire by locals.⁵⁷ In August 2007, extremists claimed responsibility for an arson attack against Romanian Roma in Livorno, in which several children died. In a letter to the Italian newspaper *Il Tirreno*, a previously unknown group calling itself the Armed Group for Ethnic Cleansing (GAPE) claimed to have been behind the deaths and said Roma people had 20 days to leave Italy starting 25 August 2007 before more serious attacks would take place. On 11 May 2008, the Via Novara camp in Milan was burned to the ground in a Molotov cocktail attack. On 13 May 2008, roughly 60 people perpetrated Molotov cocktail attacks on five Roma camps near Naples. The most publicised attack that day was in Ponticelli, where 800 Romanian Roma, including women and children, were attacked by locals with truncheons as they fled. Victims of another attack in the area said the assailants included youths and children throwing rocks and wielding bats.⁵⁸ On 28 May 2008, the Ponticelli camp was set on fire a second time following the alleged kidnap attempt of a baby by a teenaged Roma girl from Romania.⁵⁹ After some Roma families returned, the camp was set on fire a third time in July 2008. In June 2008, activists reported a

56. Amnesty International, “Hungary trial over Roma attacks set to begin”, 24 March 2011; and Amnesty International, “Violent attacks against Roma in Hungary, time to investigate racial motivation”, November 2010.

57. ERRC, “Romanian Roma targeted by extremists in Italy”, 20 November 2007.

58. ERRC, Open Society Institute, Romani CRISS, Centre on Housing Rights and Evictions and others, “Security a la Italiana, Fingerprinting, Extreme Violence and Harassment of Roma in Italy”, July 2008, p. 28.

59. Human Rights Watch, *Everyday Intolerance, Racist and Xenophobic Violence in Italy*, 21 March 2011, p. 47.

settlement of roughly 100 Romanian Roma in Catania, Sicily, had been burned to the ground.⁶⁰ In November 2009, a mob of up to 300 people vandalised Roma homes in the town of Alba Adriatica.⁶¹ After Italy's review at the UN Human Rights Council in May 2010, authorities committed themselves to a series of measures to combat racist violence. However, Human Rights Watch has documented in a 2011 report the state failure to investigate and prosecute attacks as hate crimes.⁶² In the report following his visit to Italy in 2011, the Commissioner noted that:

*... prosecutions for racist and xenophobic violence are rare in Italy. ... Accordingly, the statute establishing racist motivation as an aggravating circumstance of any offences is interpreted only to apply to cases where racial hatred was the sole motivation of the offence, leaving racist crimes prosecuted as though they were ordinary offences.*⁶³

In July 2010 in Poland a mob of local residents attacked a Roma family in the southern town of Limanowa, allegedly after a dog belonging to the Roma family had attacked a pregnant woman living in the neighbourhood. Armed with stones and Molotov cocktails, between 40 and 100 people gathered outside the family's apartment and attempted to drag them outside but were prevented from doing so by riot police. Although some 30 people were questioned by the police, no one was ever charged with the attempted lynching. After residents continued to threaten further violence, the local authority responded by announcing plans to evict the Roma family and relocate them to temporary "container" housing in an isolated location.⁶⁴

60. Cahn C. and Guild E., "Recent Migration of Roma in Europe", 2nd edition, October 2010, Council of Europe Commissioner for Human Rights and OSCE High Commissioner on National Minorities, p. 67.

61. ERRC, "Factsheet: Summit-to-Summit Roma Rights Record", 20 April 2010.

62. Human Rights Watch, *Everyday Intolerance, Racist and Xenophobic Violence in Italy*, p. 56.

63. Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy from 26 to 27 May 2011, 7 September 2011, p. 11.

64. Tegnerowicz J. "Poland: Anti-Roma mob attack legitimised", Institute of Race Relations, 2 September 2010.

In the Russian Federation in 2006 a Roma man and a non-Roma woman were killed by 20 skinheads at a family gathering. Nine assailants were detained; the prosecutor investigated eight for murder and one for assault but indicted only two as having been “motivated by national, racial or religious hatred”.⁶⁵ That same year a Roma woman was attacked by her neighbours, who inscribed obscene graffiti on her home, called her anti-Roma epithets, and beat her up. In July 2006, she filed criminal charges for racially motivated assault; the complaint was rejected.⁶⁶ In 2008, a 24-year-old Roma man and his infant daughter were brutally shot in their home; the murder suspects were detained the next day and reportedly confessed, but three days later one was released and went on to threaten other local Roma, saying “We will burn you all while you sleep”.⁶⁷ That same year Roma rights activist Arthur Vinogradov was murdered. Eye-witnesses said a group of about 15 young men murdered him in a bar. One suspect, aged 17, was detained.⁶⁸

In Slovakia, a shooting spree took place in the capital Bratislava on 30 August 2010. In the attack, an unemployed member of a club of reservist soldiers committed suicide after using a machine gun and two pistols to kill a family (including a 12-year-old boy) who were his neighbours in an apartment building in Bratislava; two of the family members were Roma. Another 15 people were injured, three of them critically, in random gunfire as the shooter sought to escape, three of them critically.⁶⁹ In 2009, ECRI expressed concerns over “the rise in racially-motivated physical attacks against members of ethnic minorities such as Roma” and recommended that authorities “ensure that the police and prosecutors carry out investigations and prosecutions of

65. ERRC, “Two Roma killed in racist pogrom in Russia”, 14 April 2006.

66. ERRC, “Written Comments of the European Roma Rights Centre concerning the Russian Federation for consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 73rd Session, 28 July-15 August 2008”, p. 8.

67. *Ibid.*, p. 9.

68. *Ibid.*

69. Romea, “Bratislava massacre: Allegedly problematic woman said not to be Roma”, 2 September 2010; Bilefsky D., “Killing spree in Slovakia taps into a troubled vein”, *New York Times*, 2 September 2010; Romea, “Graffiti in Bratislava celebrates the August massacre shooter”, 22 September 2010.

racially-motivated crimes”, and that perpetrators be punished accordingly.⁷⁰ The media have continued to report very mild sentences for perpetrators of anti-Roma violence in Slovakia.⁷¹

In Turkey in 2006, a crowd of non-Roma attacked a Roma family and burned down several Roma homes in Afyon province. No one was ever arrested for the crimes committed against the Roma.⁷² In January 2010, approximately 1 000 people attacked Roma neighbourhoods in Selendi, burning down houses, tents and vehicles and shouting “No Roma in Selendi”, causing 74 Roma to flee. In 2011, ECRI was deeply concerned at racial violence incidents and urged the Turkish authorities to combat such offences, in particular by fully taking racial motives into account.

In June 2009, three homes in Belfast, Northern Ireland, occupied by Roma families from Romania were attacked with increasing frequency over a period of months, culminating in nine attacks over three days in a single week in June. Victims said drunken attackers smashed in windows and threatened to slit children’s throats; at least one allegedly threatened residents with a gun. When a local rally was held in support of the victims, thugs attacked it, throwing bricks and bottles, giving the Nazi salute, and using other extremist slogans. The victims, 130 in total, moved to emergency accommodation in a church in June and were given police protection and decided to return to Romania at the end of June 2009. The Irish Prime Minister joined regional and local officials in condemning the attacks.

In certain very troubling situations, public officials have been directly involved in organising or instigating vigilante actions against Roma and Travellers. For example, in France, a local court in Strasbourg

70. ECRI Fourth report on Slovakia, adopted on 19 December 2008, published on 26 May 2009, p. 27.

71. See, for example, Romea, “Slovakia: Assailant gets suspended sentence for violent racist attack on Romani boy”, Košice, 16 June 2011.

72. Edirne Roma Association, ERRC, Helsinki Citizens Association, *We Are Here! Discriminatory Exclusion and Struggle for Rights of Roma in Turkey*, Istanbul, April 2009, p. 88.

found Mr Michal Habig, mayor of Ensisheim, guilty in 2006 in connection with the destruction of an informal Roma camp on the town outskirts that January and gave him a six-month suspended sentence. The mayor had ordered his staff to set fire to a deserted camp of 14 caravans and threw a flaming rag to start the fire.

Concern has also been expressed about acts in some countries that have not had such high-profile attacks. For example, in Belgium, some members of the majority population sometimes threaten Travellers with violence in order to prevent them from camping in their vicinity or chase them away.⁷³ In Cyprus in 2010 the Advisory Committee on the Framework Convention for the Protection of National Minorities noted that “instances of hostility and even violence” had been recorded against people belonging to the Roma minority and other groups.

The European Court of Human Rights has dealt on a number of occasions with issues related to attacks by vigilante skinheads, other organised racist groups, or gangs of organised civilians on Roma, as well as with states’ obligations in this regard. In *Moldovan and Others v. Romania*, which concerned an attack resulting in the death of three Roma persons, the destruction of a number of Roma houses and their subsequent inability to live in their homes, the Court could not examine the killings in question, the destruction of the houses or the expulsion of the applicants from the village. However, it found that the living conditions in which the applicants were forced to live following the events, combined with the racial discrimination they had been subjected to in the way the various authorities had dealt with their grievances, amounted to degrading treatment and accordingly concluded for a violation of Article 3 (prohibition of torture). Noting that the applicants’ Roma ethnicity appeared to have been decisive for the length and the result of the domestic proceedings, the Court also found a violation of Article 14 (prohibition of discrimination) in conjunction with Articles 6 (right to a fair trial) and 8 (right to respect for private and family life). In *Šečić v. Croatia*, which concerned officials’ failure to investigate an

73. ECRI Fourth report on Belgium, adopted 19 December 2008, published 26 May 2009, p. 35.

attack on a Roma person by neo-Nazi skinheads, the Court found that although the police had been aware that the event was most probably induced by ethnic hatred, they allowed the investigation to last for more than seven years without undertaking any serious steps to identify or prosecute the perpetrators; there had therefore been a violation of Article 14 taken in conjunction with the procedural aspect of Article 3.⁷⁴ The Court has located its engagement in this area in the idea that “[r]acial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence.”⁷⁵ The Court emphasised that “[t]reating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.”⁷⁶

Other international bodies have extended such assessments to examine additional consequences of hate crime such as loss of livelihood. For example, in the first international ruling on a case of racially motivated mass violence, which concerned the destruction of an entire Roma settlement in the town of Danilovgrad, Montenegro, the UN Committee Against Torture, although not directly ruling on the issue, mentioned that the victims had been unable to return to work (because they were hiding in the woods in terror) and were therefore summarily fired from their factory jobs. Eight years after the pogrom, no due remedy had been provided to dismissed Roma, despite civil complaints for unfair dismissal.⁷⁷

The climate of impunity that the lack of proper investigation, prosecution, penalty and monitoring of acts of violence against the Roma

74. European Court of Human Rights, *Šečić v. Croatia*, Application No. 40116/02, Judgment of 31 May 2007.

75. European Court of Human Rights, *Stoica v. Romania*, Application No. 42722/02, Judgment of 4 March 2008, paragraph 117.

76. European Court of Human Rights, *Šečić v. Croatia*, op. cit., paragraph 67.

77. UN Committee Against Torture, *Hajrizi Dzemajl et al. v. Yugoslavia*, 2 December 2002.

creates has been noted repeatedly by European and international monitoring bodies. ECRI in particular has highlighted these shortcomings and provided detailed guidance on how to address them in its 2007 General Policy Recommendation No. 11 on combating racism and racial discrimination in policing. The OSCE stressed the need to “collect, maintain and make public reliable data and statistics” on hate crime in its report “Hate Crime in the OSCE Region, Incident and Response Annual report for 2009”. In a report published in March 2011 concerning states’ responses to anti-Roma violence in the Czech Republic, Hungary and Slovakia, the ERRC identified several shortcomings in this field, ranging from the lack of identification or persecution of perpetrators to the non-recognition of racial motivation in attacks against Roma and the lack of guidance to law enforcement authorities on how to address hate crime. The report also shows that “greater media attention and/or international attention in some ways influence the State response to anti-Roma violence”, such in the Vítkov case in the Czech Republic.⁷⁸

The Commissioner deems a redoubling of efforts in this area necessary at all levels in order to deliver a clear message to perpetrators of all the attacks and to encourage victims to report more incidents. Member states should take the specific measures identified by ECRI with respect to racially motivated offences generally in each of the following areas:

- *ensure that the police thoroughly investigate racist offences, including by fully taking the racist motivation of ordinary offences into account;*
- *establish and operate a system for recording and monitoring racist incidents, and the extent to which these incidents are brought before the prosecutors and are eventually qualified as racist offences;*
- *encourage victims and witnesses of racist incidents to report such incidents;*
- *to these ends, to adopt a broad definition of racist incident.*⁷⁹

78. ERRC, “Imperfect justice: anti-Roma violence and impunity”, March 2011.

79. ECRI General Policy Recommendation No. 11 on combating racism and racial discrimination in policing.

As recommended by ECRI, steps must be undertaken to provide Roma victims of racist violence with necessary legal assistance throughout criminal proceedings.⁸⁰ States' law and practice can also usefully draw upon the 2011 Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations.⁸¹

80. ECRI General Policy Recommendation No. 13 on combating anti-Gypsyism and discrimination against Roma, adopted on 24 June 2011.

81. Committee of Ministers, Guidelines on eradicating impunity for serious human rights violations, adopted on 30 March 2011.



3. Treatment of Roma and Travellers by law enforcement and judicial authorities

The interface between Roma and law enforcement and judicial authorities in Europe is another subject area where serious shortcomings are said to affect profoundly the enjoyment by Roma and Travellers of their human rights. In the course of his work, the Commissioner has been repeatedly confronted with questions related to systemic bias in policing and mutual suspicion between police and Roma – in some cases

Roma rights activists cover their faces with enlarged fingerprint copies during a protest in front of the French embassy in Bucharest, Romania. They protest against the French authorities' decision to expel the Roma of Romanian and Bulgarian origin from France to their countries of origin during the Summer of 2010. © AP Photo/Vadim Ghirda

leading to violence – as well as troubling patterns of anti-Roma bias in the courts. The sub-section below explores some of these issues in detail.

3.1. Police abuse of Roma and Travellers

Reports received by the Commissioner from around Europe indicate certain repeated patterns of discrimination and ill-treatment by police towards Roma and Travellers. First of all, Roma have been subjected to police violence both in public places, such as in Roma settlements during police raids, and in detention facilities. In these instances, criminal investigations of racially motivated misconduct by police frequently appear to be manifestly biased or discriminatory. Second, where isolated Roma settlements exist, the people living in them may be subjected to particular attention by police, often in the form of intrusive raids. In addition to the particular attention paid to Roma residential areas, Roma persons, notably in cars or other vehicles, have been targeted for ethnically-profiled stops and searches or other discriminatory measures by police. Third, Roma representatives have also reported arbitrary seizure or destruction of property. Fourth, Roma appear to have been disproportionately subjected to arbitrary detention.

Police violence

Physical abuse or harassment of Roma and Travellers by the police has been reported in countries including Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Cyprus, the Czech Republic, France, Georgia, Greece, Hungary Italy, Portugal, Romania, the Russian Federation, Serbia, Slovakia, “the former Yugoslav Republic of Macedonia”, Turkey and Ukraine. These reports show that there is a pattern of excessive use of force by police against Roma during police custody and in the course of police raids, which sometimes have led to the death of the victim. In some cases, physical or emotional abuse, or the threat of physical abuse, is apparently operative in the course of a criminal investigation. Sexual harassment by police has been reported in Austria⁸² and Slovakia

82. ZARA – Zivilcourage und Anti-Rassismus-Arbeit, “Racism Report 2008: Case Report on Racist Incidents and Structures in Austria”, p. 37.

where in April 2009 police officers in Košice abused and humiliated six Roma boys in their custody. Video footage of the incident was released showing that the boys had been forced to kiss, to strip and to violently attack each other, while the officers shouted anti-Roma statements at them and sent police dogs after them. At least two of the policemen were threatening the boys with loaded guns. Government and police officials called for the immediate dismissals of those involved and a full investigation. According to media reports, police investigators did not find evidence of racial motivation in this incident but the prosecutor included racial motivation in the indictment. Nine police officers were temporarily suspended immediately after the incident, and six of them were definitively dismissed shortly afterwards. As for the three remaining, the ERRC reported that in August 2010 “three of the officers were still employed by the police”. Four senior officials (superior to the nine policemen involved) were reportedly dismissed in April 2009. The trial in the case opened in November 2010, with all of those charged claiming their innocence. The court hearing planned for 16 February 2011 was postponed because none of the accused showed up.⁸³

Over the past two decades, the European Court of Human Rights has been repeatedly confronted with cases in which Roma people were physically abused by police, including cases in which Roma people died in police custody. A number of cases have involved violations of Article 2 (right to life) or Article 3 (prohibition of torture) of the European Convention on Human Rights.⁸⁴ In some cases where police misconduct and abuses were obviously and explicitly driven by racial animus, the Court also found violations of Article 14 (prohibition of discrimination), in combination with Articles 2 and 3.

83. ERRC, “Imperfect justice, anti-Roma violence and impunity”, March 2011, p. 30.

84. See for example *Vasil Sashov Petrov v. Bulgaria* (Application No. 63106/00, Judgment of 10 June 2010), *Carabulea v. Romania* (Application No. 45661/99, Judgment of 13 July 2010), *Jasar v. “the Former Yugoslav Republic of Macedonia”* (Application No. 69908/01, Judgment of 15 February 2007), *Stefanou v. Greece* (Application No. 2954/07, Judgment of 22 April 2010).

Indeed, from the mid-2000s, beginning with the judgment in the case of *Nachova and Others v. Bulgaria*, the Court has identified racial discrimination in these issues.⁸⁵ In this case, the Court found a violation of Article 14 in conjunction with Article 2 in its procedural aspect. In March 2008, the Court held that there had been a violation of Article 14 in conjunction with Article 3 ECHR in the case of *Stoica v. Romania*. The case concerned a conflict arising between several police officers and other public officials, and around 20-30 Roma, after the officials entered a bar known to be frequented by Roma, apparently for the purposes of checking the owner's documents. Ruling on the case, the Court noted:

*... the villagers claimed the police officers were asking F.L. whether he was 'Gypsy or Romanian' before beating him, at the deputy mayor's request, to teach the Roma 'a lesson'. ... Likewise, C.C.'s dispute with the deputy mayor that evening had at its core racist elements. Furthermore, the Court considers that the remarks from the ... Police report describing the villagers' alleged aggressive behaviour as 'pure Gypsy', are clearly stereotypical and prove that the police officers were not racially neutral, either during the incidents or throughout the investigation. The Court finds thus no reason to consider that the applicant's aggression by the police officers was removed from this racist context.*⁸⁶

Other noteworthy cases include *Bekos and Koutropoulos v. Greece*,⁸⁷ *Cobzaru v. Romania*⁸⁸ and *Petropoulou-Tsakiris v. Greece*,⁸⁹ all concerning ill-treatment of Roma by police and, in particular, the failure by the authorities to remedy these abuses effectively.

The established case law of the Court therefore clearly indicates that member states are under an obligation to carry out an investigation

85. European Court of Human Rights, *Nachova and Others v. Bulgaria*, Applications Nos. 43577/98, 43579/98, Judgment of 6 July 2005 [Grand Chamber].

86. European Court of Human Rights, *Stoica v. Romania*, Application No. 42722/02, Judgment of 4 March 2008, paragraphs 126-131.

87. European Court of Human Rights, *Bekos and Koutropoulos v. Greece*, Application No. 15250/02, Judgment of 13 December 2005.

88. European Court of Human Rights, *Cobzaru v. Romania*, Application No. 48254/99, Judgment of 26 July 2007.

89. European Court of Human Rights, *Petropoulou-Tsakiris v. Greece*, Application No. 44803/04, Judgment of 6 December 2007.

into the possible racist motives behind the conduct of law enforcement officials when there are indications of the existence of such motives. Without a satisfactory investigation into this point, the state may be responsible for violating Article 14 of the Convention (prohibition of discrimination) in combination with another article, for instance Article 2 (right to life), or Article 3 (prohibition of torture) from the point of view of their procedural aspects.

To assist member states in complying with this obligation, in General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, ECRI has called on member states:

- *To ensure that legislation prohibiting direct and indirect racial discrimination covers the activities of the police;*
- *To train the police in human rights, including the right to be free of racism and racial discrimination, and in the legal provisions in force against racism and racial discrimination;*
- *To take measures to make the police aware of the fact that acts of racial discrimination and racially-motivated misconduct by the police will not be tolerated;*
- *To provide for support and advice mechanisms for victims of racial discrimination or racially-motivated misconduct by the police;*
- *To ensure effective investigations into alleged cases of racial discrimination or racially-motivated misconduct by the police and ensure as necessary that the perpetrators of these acts are adequately punished;*
- *To provide for a body, independent of the police and prosecution authorities, entrusted with the investigation of alleged cases of racial discrimination and racially-motivated misconduct by the police.*

ECRI has recalled that, to be effective, an investigation must in particular be “adequate, comprehensive, thorough, prompt, expedient and independent”. In relation to the need to ensure that police officers who are responsible for racial discrimination and racially motivated misconduct are adequately punished, the Council of Europe – and in particular the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) – has done extensive work on independent police complaints

mechanisms. In an Opinion Concerning the Independent and Effective Determination of Complaints against the Police, the Commissioner also elaborates on the five effective police complaints investigation principles developed in the Strasbourg Court jurisprudence: independence, adequacy, promptness, public scrutiny and victim involvement.⁹⁰

Racial discrimination in policing has proved notoriously difficult to combat, despite the fact that police are under the direct control of the state authority. Law enforcement authorities, as part of the state authorities, should be particularly vigilant about racial discrimination and comply with developed standards. Lack of public trust in law enforcement authorities has adverse effects on the rule of law and democracy. The Council of Europe Committee of Ministers approved, on 19 September 2001, a Recommendation on the European Code of Police Ethics. This Code elaborates a number of objectives, including the protection of and respect for the individual's fundamental rights and freedoms.⁹¹

Racial profiling, including stop-and-search, raids and profiling at the border

ECRI defines racial profiling as “the use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities”.⁹² In its document on “understanding and preventing discriminatory ethnic profiling” of October 2010, the EU Fundamental Rights Agency has noted that “profiling can become problematic if there is no specific intelligence to help identify individual suspects, and profiles are based

90. Commissioner for Human Rights, Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police, Strasbourg, 12 March 2009.

91. Committee of Ministers Recommendation Rec(2001)10, 19 September 2001, on the European Code of Police Ethics.

92. ECRI General Policy Recommendation on combating racism and racial discrimination in policing, paragraph 1.

on broad characteristics, such as race, ethnicity or religion rather than behaviour”.⁹³ The European Network Against Racism (ENAR) provides the following definition of ethnic profiling: “Police and law enforcement officers are using ethnic profiling when they view people as suspicious because of who they are, what they look like, or where they pray, rather than because of what they have done.”⁹⁴ These definitions appear to capture many of the practices that target Roma specifically in the course of law enforcement. These practices, which are often cumulative, include: systematically targeting known Roma settlements or residential areas for specific, invasive policing measures, while also using video surveillance to monitor public spaces; racially discriminatory stop-and-search practices; racially discriminatory checks in the context of border control; the negative use by police of crime statistics broken down by ethnicity; and, increasingly, the creation of biometric databases targeting Roma.

Ethnic profiling has been reported as prevalent throughout the European Union.⁹⁵ In the case of Roma, the Commissioner has received credible reports of such practices in Bosnia and Herzegovina, Bulgaria, Finland, Germany, Hungary, Italy, Latvia, Lithuania, the Republic of Moldova, Poland, Portugal, the Russian Federation, Serbia, Spain, Switzerland, Turkey and Ukraine, as well as other countries. The creation of biometric databases has particularly affected Roma in France, Italy and Ukraine. In Italy in 2008 the government carried out a high-profile campaign to fingerprint and document Roma living in “nomads camps”, including migrant Italian citizens and other EU citizens in three regions. The measures drew widespread criticism from domestic civil society as well as a range of institutions in other countries. In practice, throughout the continent, the identification of “Gypsies” appears to be a regular part of the investigation and prevention of crime.

93. European Union Fundamental Rights Agency, *Towards More Effective Policing, Understanding and Preventing Discriminatory Ethnic Profiling: A Guide*, Publications Office of the European Union, Luxembourg, 2010, p. 12.

94. ENAR, “Fact Sheet 40, Ethnic Profiling”, June 2009, p. 3.

95. Open Society Justice Initiative, *Ethnic Profiling in the European Union: Pervasive, Ineffective, and Discriminatory*, Open Society Institute, New York, 2009.

Sudden and unannounced police raids have extensively targeted Roma settlements in particular and subjected Roma to a “collective form of guilt”. Reports show that Roma settlements have often been targeted by police raids without a legitimate goal and so constitute a form of harassment. Raids have targeted whole settlements even if only some individuals were suspected by the police. The population is often not informed about the reason for the raids, which sometimes involve destruction of property and are accompanied by racist comments and the use of force.

Profiling is also evidently used – overtly or covertly – to monitor the movement of Roma across international borders, and in some cases for measures to stop or deter Roma from arriving on the territory. In 2009, the EU Fundamental Rights Agency randomly sampled Roma communities in the Czech Republic to see how many Roma had travelled abroad during the previous year. While the percentage found was low (5%), 80% of those who had travelled and returned reported having been stopped at the border when trying to re-enter the country, and 48% believed they had been stopped due to their ethnicity, more than in any other country sampled.⁹⁶ In its 5th and 6th periodic report to the United Nations Committee on the Elimination of Racial Discrimination (CERD) submitted in 2006, the Czech Government reported that “[t]he police headquarters of the Police of the Czech Republic monitors the migration of Roma from Slovakia. The chief aim of the monitoring is to obtain prompt information on increased attempts by members of the Roma community in Slovakia to settle in the Czech Republic and to prevent this happening in an uncontrolled fashion.”

Ethnic profiling by police is dangerous to society not only because it generates discriminatory treatment. As a practice, it fosters distrust of the authorities among the minorities concerned, as their expectation is that those charged with enforcing the law are predisposed to disbelieve them. This distrust creates obstacles to the effective investigation of crime: witnesses to crimes who are members of the targeted

96. European Union Fundamental Rights Agency, “Summary Report: The situation of Roma EU citizens moving to and settling in other EU Member States”, November 2009, p. 12.

communities are unlikely to come forward, as they do not expect police to believe them. Police forces across Europe generally employ few Roma or Traveller members, further reinforcing the distrust of law enforcement among members of these minorities.

On a positive note, in Spain several municipal police forces have developed projects to fight ethnic profiling. During his visit to Spain in April 2011, the Commissioner met with representatives of the police in Fuenlabrada which is implementing a programme to improve police accountability with regard to stop-and-search activities. The initiative follows a six-month pilot project implemented with the Open Society Institute in 2006 and 2007. Since then, in order to restrict possibly discriminatory identification controls, whenever the police officers of Fuenlabrada carry out an identification control for security reasons, they have to fill in a form containing the personal details of the person controlled, the reason for identification and the results of the identification control. The programme, also developed in Girona and Catalonia, is reportedly successful both in terms of decreasing ethnic profiling and in making the police more effective.

The practice of ethnic profiling must stop. Roma should not be subjected to any kind of policing that would differ from that encountered by the general population. In a 2009 Viewpoint the Commissioner observed that “there should be an objective reason why a certain individual is stopped and searched, a reasonable and individualised suspicion of criminal activity. The colour of your skin, your dress or visible religious attributes are not objective reasons.”⁹⁷ The Council of Europe has elaborated standards against racial profiling. In particular, ECRI General Policy Recommendation No. 11 on combating racism and racial discrimination in policing recommended the establishment of a clear prohibition of racial profiling in law and of a “reasonable suspicion standard, whereby powers relating to control, surveillance or investigation activities can only be exercised on the basis of a suspicion that is founded on objective criteria.” Police

97. Commissioner for Human Rights, “Stop and searches on ethnic or religious grounds are not effective”, Viewpoint, 2009.

activities should be monitored in order to identify racial profiling practices, in particular by collecting data broken down by grounds such as national or ethnic origin, language, religion and nationality in respect of relevant police activities, such as identity checks, vehicle inspections, personal searches, home/premises searches and raids. Police should be trained on the issue of ethnic profiling and the use of the reasonable suspicion standard.

Arbitrary seizure or destruction of property

Roma in countries including Bulgaria, Georgia, Greece, Italy, Luxembourg, Russia and Turkey have reported arbitrary confiscation and/or destruction of property by police or other authorities. Arbitrary seizure of property is reported as occurring in stops on the street or at border controls, during searches in the context of begging, as well as during raids on Roma settlements. Large-scale destruction of Roma property, including housing structures, has been documented during police raids on Roma communities. The Commissioner has been particularly concerned about such practices in France and Italy, taking place in particular from 2008.

In some cases, abuses by police extend far beyond the individual incident or case and appear to be related to front of mobilised state action targeting Roma and Travellers. Between November 2006 and May 2009, for example, 14 different cities in Italy adopted “Security Pacts” which empowered officials to target Roma for removal from the areas where they had settled. On 18 May 2007, national and regional level officials in Milan and Rome signed such pacts and granted municipal authorities special powers to forcibly evict more than 10 000 Roma living on those territories. In Milan, the Mayor and the Prefect signed a pact promising to rid the city of crime by addressing unauthorised settlements. The pact required the authorities to “define a strategy in which extraordinary power will be given to the Prefect to implement a strategic plan for solving the Roma problem in Milan” within three months; it also necessitated “intensification of controls” on the town outskirts, where many Roma live. The Prefect was given “special unlimited authority” to act within the scope of

the pact.⁹⁸ These measures were significantly amplified following the declaration in May 2008 of a state of emergency in relation to “nomad settlements” in the regions of Campania, Lazio and Lombardy. In Milan, the Commissioner received reports of destruction of residents’ property, such as tents and beds.⁹⁹ In the period since 2006, Italian police and other authorities have destroyed the housing and property of thousands of Roma and forcibly evicted Roma from municipal and urban areas, despite repeated and extensive European and international efforts to urge Italian authorities to desist from the measures. Destruction of property has been described as a strategy to encourage Roma to return to their countries of origin, notably Romania.¹⁰⁰

The arbitrary destruction of property can violate Article 8 (right to respect for private and family life and home) and Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights.¹⁰¹ The Commissioner is also concerned by the consequences of these practices on the enjoyment by Roma of other human rights of Roma, including the rights to adequate housing and personal security.

Arbitrary detention

Arbitrary detention practices concerning Roma have been reported to the Commissioner from countries including Bulgaria, Greece, the Russian Federation, Turkey and Ukraine. In some cases, police have used the detention of groups of Roma males – usually youths – as a criminal investigation method even where no particular evidence against any of those detained may exist.¹⁰² These practices evidently

98. Written Comments of the ERRC, COHRE, Osservazione and Sugar Drom Concerning Italy for Consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 72nd Session, pp. 10-12.

99. Report by Thomas Hammarberg, Commissioner for Human Rights, following his visit to Italy from 26 to 27 May 2011, Strasbourg, 7 September 2011, p. 9.

100. Cahn C. and Guild E., “Recent migration of Roma in Europe”, p. 79.

101. See European Court of Human Rights, *Moldovan and Others v. Romania*, Applications Nos. 41138/98 and 64320/01, Judgment No. 2 of 12 July 2005.

102. See for example, ERRC, “Romani man released from Ukrainian prison after serving six years for crime he didn’t commit”, 18 May 2007.

violate Article 5 of the European Convention on Human Rights (right to liberty and security). According to the European Court of Human Rights, which found a violation of Article 5 in the case of the unlawful detention of Roma in the case of *Anguelova v. Bulgaria*, “any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect the individual against arbitrariness.”¹⁰³ The Commissioner believes that an end should be put to such an excessive use of police power and that independent judicial scrutiny is necessary to ensure that Roma are not subject to arbitrary detention.

The Commissioner is of the opinion that re-establishing trust between Roma and Travellers communities and the police is a priority if the abuses by law enforcement authorities mentioned in the present section are to be stopped. ECRI’s 2011 General Policy Recommendation No. 13 on combating anti-Gypsyism and discrimination against Roma provides concrete steps towards this goal and in particular points out that member states should:

- *take measures to promote Roma recruitment to the police force by conducting, to that end, information campaigns in Roma communities;*
- *ensure that Roma enjoy equal opportunities for career development within the police;*
- *recruit and train adequate numbers of mediators, in particular from the Roma population in order to ensure a liaison between Roma and the police.*

3.2. Roma and Travellers in the justice systems of Europe

Problematic issues related to policing are frequently not corrected by prosecutors and judges. Indeed, in a number of countries, differences between Roma and non-Roma in areas such as decisions to remand into custody, rates of prosecution and sentencing are sufficiently marked to merit the conclusion that domestic judicial systems are often perpetuating and in some cases possibly amplifying bias in

103. European Court of Human Rights, *Anguelova v. Bulgaria*, Application No. 38361/97, Judgment of 13 June 2002.

policing. Some of the issues facing Roma in the field of criminal justice include lack of adequate legal representation when facing criminal charges, lack of genuine standing as witnesses or lack of interpretation services. The principle of presumption of innocence is not always respected when Roma individuals are put to trial. These problems are compounded by the failure of justice systems to respond adequately to complaints by Roma of racial discrimination and/or other abuses.

Treatment of Roma and Travellers by criminal justice authorities in Europe

Basic due-process rights such as effective legal representation or interpretation and translation are frequently missing in criminal proceedings in Europe concerning Roma as victims, perpetrators or witnesses. For example, in Bulgaria, Roma accused of crimes or taken into custody also report being denied access to counsel.¹⁰⁴ In Hungary, due to their disproportionate poverty, Roma defendants are more likely to rely on defence counsel appointed by the investigating authorities, attorneys who are less motivated because they are poorly paid.¹⁰⁵ In Lithuania, during legal proceedings, interpretation or translation into a language Roma participants understand is not always available.¹⁰⁶

In the Russian Federation, criminal investigations and trials of Roma defendants have been conducted in ways that are incompatible with fair trial standards. Roma have been sentenced on the basis of controversial, inconclusive evidence, with courts admitting evidence obtained in violation of procedural rules, even when faced with allegations that evidence was fabricated. Official abuses against the Roma are further exacerbated by corruption. Criminal justice officials frequently and unashamedly refer to Roma by abusive epithets as a matter of course.¹⁰⁷

104. ECRI Fourth report on Bulgaria, adopted 20 June 2008.

105. ECRI Fourth report on Hungary, adopted 28 June 2008, p. 49.

106. ECRI Third report on Lithuania, adopted 24 June 2005, published 21 February 2006.

107. ERRC, *In Search of Happy Gypsies: Persecution of Pariah Minorities in Russia*, p. 97.

Disparate sentencing of Roma is also evidently an issue. In Spain, for example, ECRI has repeatedly identified as a priority area of investigation the disproportionate representation of Roma women in prisons as well as the discrepancies between sentences handed down to Roma and those handed down to Spanish defendants. In *Paraskeva Todorova v. Bulgaria*, the European Court of Human Rights found a violation of Article 14 in conjunction with Article 6(1) of the Convention in a case involving a Roma woman whom domestic courts refused to sentence to anything less than imprisonment for a non-violent crime due to her ethnic origin.¹⁰⁸

In many cases, it is difficult to identify one particular moment at which inequality of treatment occurs vis-à-vis Roma, but overall procedures involving them are conducted differently – and more poorly – than those concerning non-Roma. Thus, for example, in Greece, ECRI has received reports that cases brought against Roma defendants are investigated promptly, while those in which Roma are plaintiffs often take longer to solve and/or yield results which are not always in full respect of the Roma plaintiff's rights. The excessive length of criminal proceedings and detention on remand of Roma has been noted in Bulgaria, as has the lack of effective judicial review of the lawfulness of their pre-trial detention.¹⁰⁹

As a result of these bias issues in criminal justice systems, Roma are in many cases over-represented – in some countries extremely so – among prison and penitentiary populations. For example, in Hungary, studies indicate that Roma constitute about 45% of the prison population (and only 6% of the overall population).¹¹⁰

In addition, there are reports of abuse of Roma in prisons. Monitoring of Roma prisoners' correspondence has been an issue in Bulgaria.¹¹¹

108. European Court of Human Rights, *Paraskeva Todorova v. Bulgaria*, Application No. 37193/07, Judgment of 25 March 2010.

109. See Kanev K., "Non-execution of European Court judgments involving Romani victims in Bulgaria", in *Roma Rights 1/2010*, ERRC, 2010.

110. ECRI Fourth report on Hungary, op. cit., p.48.

111. See Kanev K., "Non-execution of European Court judgments involving Romani victims in Bulgaria", op. cit.

In the Czech Republic, the Czech Helsinki Committee report for 2009 indicated that Roma prisoners have been subjected to racially-motivated verbal harassment by prison staff. The Czech Ombudsman's 2009 report stated that Roma prisoners speaking on the telephone to their preschool-aged children are in some cases not allowed to speak in Romani. In Finland, Roma inmates are reportedly segregated, with the justification that they need to be protected from attack by other prisoners.¹¹²

Human rights and fundamental freedoms in the context of justice sit at the core of the international human rights legal order. The European Convention on Human Rights elaborates the guarantees included in the International Covenant on Civil and Political Rights by including explicit guarantees of fair trial (Article 6 and 7), as well as the right to an effective remedy (Article 13). The International Convention on the Elimination of All Forms of Racial Discrimination explicitly sets out bans on discrimination in areas including justice in Articles 5 and 6 of the treaty. The Committee on the Elimination of Racial Discrimination (CERD), the arbiter of the International Convention on the Elimination of All Forms of Discrimination, has adopted General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, elaborating standards in this area in detail, including steps to be taken to prevent racial discrimination with regard to accused persons who are subject to judicial proceedings. CERD recommends that states parties “ensure that the courts do not apply harsher punishments solely because of an accused person’s membership of a specific racial or ethnic group.”¹¹³

The core rule of law issues described above are profoundly degrading of all efforts aimed at Roma integration. The current lack of trust by Roma in the possibility of just outcomes in legal proceedings undermines the basic legitimacy of public authorities, and creates a context

112. ECRI Third report on Finland, adopted on 15 December 2006, published on 24 May 2007, p. 22.

113. UN CERD General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, 2005.

where efforts to secure a just and fair society for all are nullified. Other policy measures are unlikely to have sustained impact unless undertaken in an environment where access to justice for all prevails.

Challenging racial discrimination against Roma and Travellers in court

Even as Roma and Traveller defendants and plaintiffs are being treated differently than non-Roma and non-Traveller defendants and plaintiffs in criminal justice systems, in many countries domestic courts are currently taking only a minimal role in acting to challenge racial discrimination occurring in the administration of justice, or indeed anywhere in society.

Shortcomings in the implementation of anti-discrimination legislation, notably in cases where Roma and Travellers are the victims of racial discrimination, have been highlighted by international monitoring bodies, including ECRI, in a large number of countries. The Commissioner has also frequently examined these issues, for instance in Bosnia and Herzegovina (where he considered that awareness-raising measures on antidiscrimination legislation and the legal remedies available “would be highly beneficial for disadvantaged groups of the population, in particular Roma”), Bulgaria, Croatia the Czech Republic, Italy, Portugal, Romania, Serbia and Spain. With respect to Serbia, the Advisory Committee on the FCNM reported in 2009 that:

... courts are not sufficiently addressing problems of discrimination as evidenced inter alia by the relatively few number of cases referred to them. This can be explained by a limited confidence of persons belonging to national minorities, in particular the Roma, in judicial remedies and it is therefore important that steps are taken to strengthen such confidence.

Recently some European countries have begun developing important processes making it easier for members of disadvantaged groups, Roma and Travellers included, to access justice. For example, low-threshold equality bodies are issuing opinions which are being given significant weight by some courts. Thus, for example, the Swedish

Ombudsperson Institution has focused on discrimination against the Roma since 2002, performing outreach to Roma communities and developing a relationship of trust with them. The number of complaints filed with the institution by Roma has increased. Their awareness of their rights and confidence in the authorities has also improved, primarily because complaints to the body have resulted in recognition of discrimination facing Roma in various sectoral fields, as well as in court awards of compensation. Similarly, the Irish Equality Authority recommended Travellers be recognised as an ethnic group, researched affirmative action measures in employment for Travellers, and promoted dialogue with Travellers' organisations. Romania's National Council for Combating Discrimination is another example of an equality body that combines victim assistance with mediation or quasi-judiciary functions and has worked extensively on Roma. Poland is also now providing legal aid specifically to Roma through the government's Programme for the Benefit of the Roma Community.

Improving the position of Roma and Travellers who challenge discrimination requires special efforts targeting the specific situation of these persons: for instance, awareness-raising initiatives for Roma and Travellers on their right to non-discrimination and the remedies available and for the legal community on discrimination faced by Roma and Travellers. It also requires more efforts aimed at improving the effectiveness of the justice system's response to discrimination generally. In particular, these include the establishment of effective anti-discrimination legislation and equality bodies that would offer a low-threshold mechanism to deal with complaints and assist with the implementation of the legislation. Extensive guidance has been given on these matters in this last decade, including by ECRI in its General Policy Recommendations No. 2 and 7 and by the Commissioner in his Opinion on equality bodies.¹¹⁴ It is also necessary for member states that have not done so to ratify Protocol No. 12 to the ECHR.

114. Commissioner for Human Rights, Opinion on national structures for promoting equality, Strasbourg, 21 March 2011.



4. Respect for private and family life of Roma and Travellers

4.1. Forced and coercive sterilisations of Roma women

From the early 1970s, under the influence of resurgent eugenics considerations in late communism, sterilisation as a birth control method was, as a matter of national and regional policy, disproportionately promoted to members of the Romani minority by social workers. These practices were an early and continuing part of human rights concerns raised by the Czechoslovak dissident group

Inhabitants in the Roma village of Barbulesti, Romania, October 2010.
© Council of Europe.

Charter 77.¹¹⁵ Following the fall of communism, the new government ended state financing of incentives promoting female sterilisation as contraception. However, some health professionals appear to have acted outside the law, continuing the practice of sterilising Roma women without their full and informed consent throughout post-communism in both the Czech Republic and Slovakia. Cases have also been documented in post-communist Hungary.¹¹⁶

This practice very disproportionately targeted Roma women. During communism, social workers overwhelmingly targeted Roma living in social exclusion whose families were considered likely to contribute to what was referred to as the “high, unhealthy” birth rate of Roma women. In the post-communist era in the Czech Republic and Slovakia, social workers were no longer involved, but a recurrent scenario involved doctors sterilising Roma women either during or shortly after a second caesarean-section delivery. In some cases, consent was reportedly not provided at all prior to the operation. In other cases, the woman’s signature was secured during delivery or shortly before delivery, during advanced stages of labour, i.e., in circumstances in which women can be in great pain and under intense stress. A further set of cases involved consent provided on the basis of a mistaken understanding of the terminology used to describe the tubal ligation sterilisation procedure, sometimes after the provision of inaccurate information, and/or absent explanations of the consequences and/or possible side effects of sterilisation or adequate information on alternative methods of contraception. Frequently, especially during communism, social workers put pressure on Roma women to undergo sterilisation, including through the use of financial incentives or threats to withhold social benefits

115. As provided in Commission on Security and Cooperation in Europe, Congress of the United States, “Human Rights in Czechoslovakia: The Documents of Charter 77: 1977-1982”, Washington, DC, July 1982, p. 158.

116. On 29 August 2006, the United Nations Committee on the Elimination of Discrimination against Women found Hungary in breach of the Convention in the matter of *A.S. v. Hungary*. Ms A.S., a Roma woman, had been sterilised during emergency obstetrical services without her informed consent.

(one such case was also reported in the Czech Republic in 2007).¹¹⁷ In some of these cases, racial motives appear to have played a role during doctor-patient consultations and the ethnic origin of the patients was referred to in medical documentation. Many of these women still suffer serious negative physical and psychological consequences as a result of having been sterilised without their full and informed consent.

In November 2009, the late Czech Ombudsperson Otakar Motejl, whose 2005 report on the subject¹¹⁸ is one of the most important studies of the legacy of coercive sterilisation in Czechoslovakia and its successor states, stated that as many as 90 000 women may have been sterilised on the territory of the former Czechoslovakia since the beginning of the 1980s.

Of the three countries where unlawful sterilisations after 1990 have been documented, only the Czech Republic has issued a general recognition and expression of regret “over instances of error” in November 2009. The Czech Government’s 2009 recognition has been important, whereas Slovakia’s has repeatedly denied the existence of these practices. Hungary has not expressed regret in this regard.

None of the three countries have adopted a general remedy mechanism for victims of these practices. Czech courts have issued various forms of remedy to a handful of victims, including monetary compensation in one case and orders of apology by hospitals. However, during the period in which lawsuits concerning coercive sterilisation have been brought, Czech courts have also rendered more stringent interpretations of statutes of limitations for civil claims for damages such as the three-year time limitation, making the possibility of remedy for all victims significantly more difficult. Additional difficulties have arisen because the medical records of many of the victims appear to

117. ERRC, Letter to Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, 18 February 2008.

118. Otakar Motejl, Public Defender of Rights, “Final Statement of the Public Defender of Rights in the Matter of Sterilizations Performed in Contravention of the Law and Proposed Remedial Measures”, Brno, December 23, 2005 (official translation).

have been destroyed by hospitals or in floods or fires. A particularly important obstacle is that the three-year time limitation is considered to start from the time at which the sterilisation took place, not from the time the victim became aware of it, which often happens at a later stage. Women also have to overcome shame and lack of awareness over possible avenues for redress.¹¹⁹

All three of the countries have, in recent years, strengthened their laws, regulations or general policies with a view to avoiding a recurrence of these practices. However, for instance, the possibility of performing “emergency” sterilisations on women without their informed consent remains legally possible in Hungary.¹²⁰ New cases have continued to be reported in the Czech Republic, Hungary and Slovakia, most likely because of the general impunity surrounding the cases.¹²¹ No doctors or social workers have ever been punished in any of the three countries for carrying out coercive sterilisations.

The shortcomings in the remedies available for Roma women victims of forced sterilisation have been addressed by several international human rights bodies. Both the former and the current Commissioner have dealt with the forced sterilisation of Roma women. Former Commissioner Alvaro Gil-Robles, in his 2006 report on Roma, noted serious areas of concern with respect to the Czech Republic and Slovakia, concluding:

The sterilisation of women without informed consent is a serious violation of human rights. All allegations of such sterilisations including a possible ethnic bias must be effectively investigated. While victims may seek redress through the court system, in these types of cases, litigation has its practical shortcomings. These include the slow and costly nature of obtaining legal counsel, the extremely high evidentiary standards, and the possible difficulties of the investigators and the court system to deal sensitively with

119. Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe Following his visit to the Czech Republic from 17 to 19 November 2010, p. 18.

120. ECRI Fourth report on Hungary, p. 39.

121. ERRC, “Factsheet: Summit-to-Summit Roma Rights Record”, 20 April 2010.

*the needs of the Roma people. It is therefore important to provide other remedies as well, for example in the form of an independent commission of inquiry to provide compensation or an apology to the victims.*¹²²

Commenting on sterilisation matters following his November 2010 visit to the Czech Republic, Commissioner Hammarberg stated:

The Commissioner welcomes the Czech Government's expression of regrets in November 2009 for unlawful sterilisations of women, a phenomenon that affected Roma women in particular. He notes however, that most of the recommendations made by the Czech Ombudsman in 2005, when he investigated the issue, remain to be implemented. The Commissioner finds it particularly unfair that women affected by this practice are presently without an effective remedy to obtain reparation, including compensation, a situation that should be urgently remedied in line with international law standards.

The Commissioner also stressed that sterilisation of women without their full and informed consent as a state-backed policy constitutes a type of gross or systematic human rights violation which needs to be redressed.

In October 2010, the UN Committee for the Elimination of Discrimination against Women (CEDAW) called for the Czech Government to compensate Roma women who were subject to coercive sterilisation and to take adequate steps to prevent coercive sterilisations in the future. Regarding Slovakia, on 25 March 2010, the UN Committee on the Elimination of Racial Discrimination (CERD) urged the Slovak authorities to:

... establish clear guidelines concerning the requirement of 'informed consent' and to ensure that these guidelines are well-known among practitioners and the public, in particular Roma women ... The Committee also recommended that all reports of sterilization without informed consent be duly acknowledged and that victims be provided with adequate remedies, including apologies, compensation and restoration, if possible.

122. Commissioner for Human Rights, Final report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on the human rights situation of the Roma, Sinti and Travellers in Europe, Strasbourg, 15 February 2006.

The UN Committee Against Torture (CAT) made similar recommendations to the Slovak authorities in December 2009.

A number of cases concerning coercive sterilisation are currently pending before the Strasbourg Court against the Czech Republic and Slovakia, and some have been declared admissible. The Court has accepted to examine cases under Articles 3 (prohibition of torture), 8 (right to private and family life), 12 (right to marry), 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the European Convention on Human Rights.¹²³ The Court has already held Slovakia in violation of the Convention in a case concerning access to their medical files by Roma women sterilised by Slovak doctors.¹²⁴ On 29 August 2006, CEDAW found Hungary in breach of the Convention in the case of *A.S. v. Hungary*. Ms A.S., a Roma woman, had been sterilised during emergency obstetrical services without her informed consent. In 2009, Hungary compensated her on the basis of the Committee's findings.

Czechoslovakia and its successor states and Hungary are not the only countries facing these issues. The elevation of eugenics to a state programme in Nazi Germany made coercive sterilisation a key element in the Nazi programme, particularly prior to the start of the Second World War and the shift to a programme of full-scale efforts to kill all Jews, "Gypsies" and others deemed "unworthy of life".¹²⁵ Sweden and Switzerland issued public apologies in the 1980s and 1990s for sterilisation programmes and related practices carried out from the 1920s

123. European Court of Human Rights, Decision as to the admissibility of Application No. 15966/04 by *I.G., M.K. and R.H. v. Slovakia*, 22 September 2009.

124. European Court of Human Rights, *K.H. and Others v. Slovakia*, Application No. 32881/04, Judgment of 28 April 2009.

125. See Bock G., *Zwangssterilization im Nationalsozialismus: Studien zur Rassenpolitik und Frauenpolitik*, Opladen: Westdeutscher Verlag, 1986. Victims of forced sterilisation during the Nazi regime have never been granted recognition as official victims of Nazism after Germany passed its Federal Indemnification Law in 1953. (See Herrmann S.L. and Braun K., "Excluded victims: the role of civil society in the politics of reparations for victims of Nazi sterilisation policy in post-war Germany", paper given at a conference on "Civil Society and Reconciliation in Comparative Perspective", 4 June 2009, London School of Economics and Political Science, Centre for Civil Society p. 2 and p. 6).

to the early 1970s. Sweden approved a compensation mechanism, but national discussion proceeded on the basis that the practices had not particularly targeted Roma, when in practice it appears that they very frequently did. The *ex gratia* compensation mechanism established in Sweden in 1999 allowed the compensation of victims even though the sterilisations were considered lawful at the time they were committed and a long period of time had elapsed since then. In Norway, a 2003 working group reporting on the issue of compensation to Roma and Travellers subjected to forced sterilisation during a similar historical period concluded that the Norwegian authorities should also implement a compensation arrangement, including resources for extended guidance and legal aid during the claims period.¹²⁶

As a result of these and other cases reported worldwide, the International Federation of Obstetrics and Gynaecology (FIGO) adopted new guidelines on the performance of contraceptive sterilisation in 2011.¹²⁷ These guidelines state *inter alia* that sterilisation must be considered an irreversible procedure and patients must be so informed; that sterilisation for prevention of future pregnancy cannot be ethically justified on grounds of medical emergency; and that consent to sterilisation should never be a condition for access to medical care or to benefits such as medical insurance or social assistance.

The Commissioner believes that the member states concerned should publicly acknowledge that these gross human rights violations have taken place, express regret and accept their responsibility. The Commissioner recalls the 2011 Guidelines of the Council of Europe Committee of Ministers on eradicating impunity for serious human rights violations and stresses the need for member states to set up effective remedy mechanisms. When it comes to compensation claims in court, time limits should take into account existing obstacles such as the destruction

126. Norwegian Ministry of Labour and Social Inclusion, Report of Working Group, “Compensation to Roman/Taters subjected to coercive sterilization”, submitted to Ministry of Local Government and Regional Development, August 2003.

127. FIGO, “Female Contraceptive Sterilization”, Executive Board Meeting, June 2011, pp. 192-4.

of medical records and the fact that women are not always immediately aware of the procedures they have been subjected to, or of the possibilities for redress. They may also have to overcome feelings of shame in order to complain. Any time limit should start from the time when the victim first became aware of the sterilisation. Assistance should be provided to victims accessing their medical records. Authorities should also consider establishing *ex gratia* compensation procedures for victims of coercive sterilisations whose claims have lapsed. In order to prevent the recurrence of coercive sterilisations, it is also important to adopt legislative changes clearly defining a requirement of free, prior and informed consent with regard to sterilisations, including a reflection period for the patient. Judicial and administrative sanctions must also be upheld against those persons liable for sterilising women without their full and informed consent.

4.2. Removal of Roma children from the care of their biological parents

Roma children are over-represented among the children placed in out-of-family care, including institutional and foster care. In some cases, this situation also has an impact on the over-representation of Roma children amongst adopted children. A particular important factor in determining this situation is the fact that children are removed from their families on the sole grounds that their parents' economic and social conditions are unsatisfactory, frequently following scrutiny by social workers which may be discriminatory on ethnic grounds. In some cases, high levels of institutionalisation of Roma children result from legacies of communist-era policies in which the state was promoted as superior to raising children than parents, particularly in cases where children come from deprived or vulnerable backgrounds or have some form of disability. School absenteeism and the lack of school enrolment were noted to be significant factors influencing the institutionalisation of Roma children in Bulgaria, Czech Republic, Hungary, Italy, Romania and Slovakia. In some cases, single Roma mothers or Roma girls who give birth before the age of 16 "may leave their children in institutions voluntarily or may be targeted for child removal by child protection

departments”.¹²⁸ In all the aforementioned countries, there is a lack of “preventative measures by child protection authorities in relation to the needs of Roma families at risk of separation”.¹²⁹

Thus, in its 2008 report on Bulgaria ECRI reported that, rehabilitation facilities there house a disproportionate number of impoverished Roma children. Roma children account for around 50% of the children in the state-run children’s homes and about 33% of the children in state-run homes for children with intellectual disabilities there, according to official data.¹³⁰ According to a 2011 report published by the ERRC, 63% of the children in the 15 institutions visited were Roma. In the Czech Republic, around 40% of the children in the 17 children’s homes that were sampled in five different regions around the country were Roma.¹³¹ In 2009 ECRI noted that a disproportionately high number of Roma children continued to be placed into institutional care in this country. In his 2010 Report on Czech Republic, the Commissioner also stresses that:

... once a child is placed in an institution, it also becomes comparatively more difficult for Roma families to get the child back, because poverty affects this possibility, too. For instance, although the law provides that the child should be placed close to the family, this is reported to often not be the case in practice. It then becomes impossible for poor parents to visit the children far away, and as a result the latter may lose their parental rights altogether.

In Georgia, Roma parents from the Samgori quarter of Tbilisi report that their children are periodically taken away by authorities and placed in “children’s colonies”; parents must then pay to retrieve their children.¹³² ECRI reported in 2009 that in Hungary, Roma

128. ERRC, Bulgarian Helsinki Committee, Milan Šimečka Foundation and Osservazione, *Life sentence, Romani children in institutional care*, June 2011, p. 44.

129. *Ibid.*

130. ERRC, Factsheet: Roma Rights Record 2011, 8 April 2011.

131. ERRC, Bulgarian Helsinki Committee, Milan Šimečka Foundation and Osservazione, *Life sentence, Romani children in institutional care*, p. 35.

132. Szakonyi D., “No way out: an assessment of the Romani community in Georgia”, European Center for Minorities Issues (ECMI) Working Paper 39, Flensburg, February 2008, p. 10.

are over-represented in the child welfare system. Research conducted by the ERRC in 2007 found that 58% of institutionalised children in Hungary are Roma and some residential homes are 100% Roma. In 2011, the percentage of Roma children in institutions was estimated at 65.9%, while only 13 % of the child population in Hungary is of Roma origin.¹³³ Compared to non-Roma children, the reasons given for removing Roma children from their families included more subjective interpretations by child welfare assessors as opposed to hard evidence of neglect.¹³⁴ In Italy, about 10% of children in institutions visited by ERRC partners were Roma, and the figure reached 45% in one family centre in Rome, while Roma are estimated to represent only 0.23% of the population in the country.¹³⁵ Public and religious authorities justify the institutionalisation of Roma children or their placement in foster families by referring to “unsanitary living conditions”, “exploitation of minors” and “abandonment”, criteria which are often not used for non-Roma families.¹³⁶ Most of the institutionalised children in Romania, up to 80% in some regions, are reportedly of Roma origin.¹³⁷ According to the US-based Center for Adoption Policy, international adoption from Romania ended in 2004 and the EU has funded the development of a Romanian foster care programme. However, over the past two years the global recession has reportedly ended this financial support and Romanian foster parents are now unable to afford to continue to support these children.¹³⁸ In Slovakia, the ERRC reports

133. ERRC, Bulgarian Helsinki Committee, Milan Šimečka Foundation and Osservazione, *Life sentence, Romani children in institutional care*, p. 35.

134. ERRC, *Dis-interest of the child: Romani children in the Hungarian child protection system*, Budapest, December 2007, p. 43.

135. ERRC, Bulgarian Helsinki Committee, Milan Šimečka Foundation and Osservazione, *Life sentence, Romani children in institutional care*, p. 35.

136. Carlisle K., “Stealing children: Institutionalising Romani children in Italy”, ERRC, 3 October 2000.

137. ERRC, Bulgarian Helsinki Committee, Milan Šimečka Foundation and Osservazione, *Life sentence, Romani children in institutional care*, p. 36.

138. Center for Adoption Policy, “What happened to the some of the children who could not be adopted in Romania”, 25 October 2010.

that Roma children compose 70% to 95% of the children in institutional care.¹³⁹ In 2010, Amnesty International criticised the Slovak Prime Minister's announced plan to remove Roma children from their families and send them to boarding schools at the start of their primary education as an official policy of segregation amounting to an attack on the children's identity.¹⁴⁰

These practices may encroach upon a range of rights established in international human rights law, including the Convention on the Rights of the Child and Article 8 (right to private and family life) of the European Convention on Human Rights. In *Wallová and Walla v. the Czech Republic*, the Strasbourg Court found that the Czech Republic had violated Article 8 by institutionalising children solely on the grounds that the family was large and unable to find adequate housing. Child protection authorities were found to have offered no form of assistance other than institutionalisation of the children to help the family overcome its difficulties.¹⁴¹

The Commissioner is particularly concerned about discriminatory practices of removal of Roma children from their parents and their disproportionate representation among children placed in institutional care. In accordance with the case law of the Strasbourg Court, member states should ensure that no child is placed in institutional care solely on grounds relating to the poor housing conditions or financial situation of his or her family. Exploring solutions for supporting families in special need must be the priority and member states should provide prevention services, in co-operation with NGOs. Institutional placement of a child should remain the exception and should have as the primary objective the best interests of the child, in accordance with the Council of Europe Committee of

139. ERRC, Bulgarian Helsinki Committee, Milan Šimečka Foundation and Osservazione, *Life sentence, Romani children in institutional care*, p. 39.

140. Amnesty International, "Slovakia plans to remove Romani children from their families", 9 March 2010.

141. European Court of Human Rights, *Wallová and Walla v. The Czech Republic*, Application No. 23848/04, Judgment of 26 October 2006.

Ministers' Recommendation (2005) on the rights of children living in residential institutions.¹⁴² Adoption, placement in foster families or institutional care should respect clear procedures according to applicable international standards and should not “be subject to discrimination on the basis of gender, race, colour, social, ethnic or national origin, expressed opinions, language, property, religion, disability, birth or any other status of the child and/or his or her parents”.¹⁴³ When circumstances allow, the placement selected should be as close as possible to the child's home environment and organised so as to maintain parent–child contacts on a regular basis. Social workers and judges of guardian courts should be trained in order to discontinue unlawful practices. The Commissioner invites member states to collect disaggregated data in this field, with sufficient data-protection safeguards.

4.3. Common law and customary marriage among certain Roma groups

Some Roma groups in Europe maintain practices of common-law and customary marriage. These practices, which involve no formal contact with the public authority, implicate human rights law in several contexts, most notably: (1) when they involve minors; or (2) when a lack of recognition as marriage by the public authority leads notably to discrimination in access to rights provided to wedded couples or families.

Child marriage is an issue in some Roma communities. These communities maintain that the arrangement of a marriage between a boy and girl at the age of puberty belongs to the core Roma traditions. In some cases, the formalisation of a customary marriage is a way of ensuring that early sexual experience does not take place out of

142. Council of Europe Committee of Ministers, Recommendation 1698 (2005), The rights of children in institutions: follow-up to Recommendation 1601 (2003) of the Parliamentary Assembly, 21 January 2006.

143. Ibid.

wedlock. However, in the vast majority of cases, the marriage appears to be a formalisation of the subjugated position of women.

Although the issue is not very well-explored in human rights literature, a recent study carried out in Banloc, Timis County, Romania, found that, among the around 245-person local Roma community, there were 37 customary weddings in the period 1986-present. These involved brides between the ages of 12 and 16 and grooms between the ages of 14 and 18.¹⁴⁴ A report commissioned by Romani CRISS and UNICEF noted that the factors influencing early marriages in some Roma communities in Romania include “social status, isolation, urban or rural area, parents’ level of education, family models, or belonging to a certain Roma kind”.¹⁴⁵

The practice of child marriage implicates different international human rights law standards. Article 16(2) of CEDAW states that: “the betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.” Parents arranging marriage for their children are also arguably not acting in their children’s best interests, one of the central requirements of the Convention on the Rights of the Child (CRC). Where authorities fail to intercede to stop child marriage, a state’s compliance with the Convention may be in question.¹⁴⁶

Compliance with human rights standards must be ensured. However, it is also crucial to avoid generalisations and the stigmatisation of entire communities while doing so. Education and awareness-raising

144. Novacovici C., “Child marriage in the Roma community before and after 1989 in Romania”, 20 April 2007, unpublished.

145. Bitu N. and Morteau C., *Are the Rights of the Child Negotiable? The Case of Early Marriages within Roma Communities in Romania*, Romania Criss/Unicef, Bucharest, 2010, p. 32.

146. Article 19(1) of the CRC states: “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

activities in some Roma communities are also needed to change prevailing attitudes and practices which result in child marriages. Empowerment of communities and peer-to-peer education will also be valuable. Member states should encourage research and documentation on this issue.

A different set of harms flows from the failure of state authorities to recognise common-law marriage in the Roma community when it takes place between consenting adults. The European Court of Human Rights' 2009 judgment in *Muñoz Diaz v. Spain* showed the difficulties facing Roma whose marriages are not recognised by the state. The case concerned a Roma widow who was refused a survivor's pension in 2001 by the National Social Security Institute on the grounds that her marriage, performed in the Roma community, was never officially registered. She won a judgment in the Labour Court in 2002 recognising her entitlement to a survivor's pension and that she had been discriminated against on the basis of her ethnicity. This judgment was overturned on appeal, on the grounds that her marriage had not been legal. Before the Strasbourg Court, the applicant claimed that this refusal contravened Article 14 in conjunction with Article 1 of Protocol No. 1 (protection of property) and that the Spanish authorities' failure to recognise her marriage as having civil effects contravened Article 14 in conjunction with Article 12 (right to marry).

The Court noted that the applicant's husband had been covered by social security and that his benefit card, an official document, had indicated that he had supported the applicant and their children. The Court also emphasised the importance of the applicant's beliefs based on her membership in the Roma community and the fact that at the time of her marriage in 1971 she would have had to infringe her right to religious freedom to avail herself of state sanction for her marriage, as the only kind of marriage available at that time was under canon law. The applicant had believed in good faith that her marriage was bona fide, especially as official documents listed her as a spouse; it was therefore disproportionate for the state to refuse

to grant her the survivor's pension. The Court accordingly found a violation of Article 14 taken together with Article 1 of Protocol No. 1. It did not find a violation of the applicant's right to marry.¹⁴⁷

This case illustrates the need for adjustments in law and practice in order to avoid indirect discrimination in access to social rights such as pensions arising because of a lack of recognition of alternate marriage practices among minority groups. The European Court of Human Rights in the above case noted that “the vulnerable position of Roma means that some special consideration should be given to their needs and different lifestyle, both in the relevant regulatory framework and in reaching decisions in particular cases.”¹⁴⁸

147. European Court of Human Rights, *Muñoz Diaz v. Spain*, Application No. 49151/07, Judgment of 8 December 2009.

148. *Ibid.*



5. Roma and trafficking in human beings

The definition of trafficking in human beings (THB) given by the Council of Europe 2005 Convention on Action against Trafficking in Human Beings (CATHB) is as follows:

... the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The vulnerability of Roma must be taken into account in national policies regarding trafficking in human beings. According to the organisation ERRC/PiN Roma victims of trafficking have limited access to protection – at the same time a low level of victim identification by relevant authorities is reported. © Photo by Yves Leresche.

In accordance with the 2000 UN Protocol to prevent, suppress and punish trafficking in persons, especially women and children (the Palermo Protocol) and the CATHB, the core elements of trafficking in human beings are:

- acts: “the recruitment, transportation, transfer, harbouring or receipt of persons”;
- means: “the threat or use of force or other forms of coercion, of abduction, of fraud, of deception or the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person”;
- purpose: exploitation, including “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

Under both texts, the recruitment, transportation, transfer, harbouring or receipt of a child (i.e a person under 18 years of age) for the purpose of exploitation is to be considered as “trafficking in human beings” even if this does not involve any of the above-mentioned means (threat or use of force, etc.).

The list of exploitative purposes contained in both texts is non-exhaustive. Such purposes may also include, for instance, the exploitation of begging, forced marriages and illegal adoption. For instance, the EU Directive on preventing and combating trafficking in human beings and protecting its victims refers to trafficking for forced begging as a form of trafficking

*forced begging should be understood as a form of forced labour or services as defined in the 1930 ILO Convention No. 29 concerning Forced or Compulsory Labour. Therefore, the exploitation of begging, including the use of a trafficked dependent person for begging, falls within the scope of the definition of trafficking in human beings only when all the elements of forced labour or services occur.*¹⁴⁹

149. European Union, Directive of the European Parliament and the Council on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision 2002/629/JHA, 5 April 2011.

The Council of Europe Convention on Action against Trafficking in Human Beings (CATHB) states in its preamble that THB constitutes a violation of human rights and an offence to the dignity and integrity of the human beings, and one of the purposes of this Convention is to protect the human rights of the victims of trafficking (Article 1(b)). The CATHB entered into force in 2008. As of June 2011, 34 Council of Europe member states have ratified the CATHB, nine have signed but not ratified it, and four member states have neither signed nor ratified it (the Czech Republic, Liechtenstein, Monaco and Russia). The CATHB applies to “all forms of trafficking in human beings, whether national or transnational, whether or not connected with organized crime.”

The European Court of Human Rights has also stressed that THB constitutes a human rights violation, and namely a violation of Article 4 of the European Convention on Human Rights which holds that “no one shall be held in slavery or servitude” and “no one shall be required to perform forced or compulsory labour”. On 7 January 2010, in an historic first judgment concerning cross-border human trafficking in Europe, *Rantsev v. Cyprus and Russia*,¹⁵⁰ the Strasbourg Court found that THB within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the CATHB falls within the scope of Article 4 of the Convention and that Cyprus and Russia had committed a number of human rights violations. The case concerned a woman who was allegedly trafficked from Russia to Cyprus.

The Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and its victims (replacing Council Framework Decision 2002/629/JHA) refers to THB as a gross violation of fundamental rights in its preamble and provides for relevant standards for EU member state.

Compliance with these human rights standards must be ensured. It is also important to avoid stigmatisation and generalisations while combating THB. Member states must adopt an adequate legal framework,

150. European Court of Human Rights, *Rantsev v. Cyprus and Russia*, Application No. 25965/04, Judgment of 7 January 2010.

in accordance with the aforementioned standards, allowing the prosecution of trafficking as such. They must ensure co-operation between law enforcement and judicial authorities, and social services and NGOs at the local and the international level.

As in other areas, documentation of the situation of Roma within broader human trafficking concerns is neither comprehensive nor particularly illuminating as to the scope and nature of the issues. Research published in March 2011 by the European Roma Rights Centre (ERRC) and People in Need (PiN) in Bulgaria, the Czech Republic, Hungary, Romania and Slovakia indicated that trafficking in persons affects Roma disproportionately. Estimates provided for these countries indicate that Roma represent “50-80% of trafficked persons in Bulgaria, up to 70% in parts of the Czech Republic, at least 40% in Hungary, around 50% in Romania and at least 60% in Slovakia”.¹⁵¹ According to the ERRC/PiN research, 68% of the Roma trafficked persons interviewed had been trafficked to another EU country, while 32% had been trafficked to another location within their own country; 20% of the trafficked persons interviewed in this study were minors at the time they were trafficked. According to the study, Roma had been trafficked for various purposes, including sexual exploitation, labour exploitation, domestic servitude, organ trafficking, illegal adoption and begging. Roma women and children were the most represented regardless of the purpose of trafficking.

According to the ERRC/PiN¹⁵² study, vulnerability factors of Roma to trafficking include “structural forms of ethnic and gender discrimination, poverty and social exclusion which result in low educational achievement, high levels of unemployment, usury, growing up in state care, domestic violence affecting predominantly women and children and substance abuse.” Many of the vulnerability factors such as domestic violence, high school dropout rates, homelessness or being in state care affect children and youth exclusively or disproportionately.

151. European Roma Rights Centre (ERRC) and People in Need (PiN), *Breaking the Silence: Trafficking in Romani Communities*, Budapest, March 2011, pp. 11-12.

152. ERRC/PiN, *Breaking the Silence: Trafficking in Romani Communities*, op. cit., p. 12.

In addition, the research points at links between certain activities or practices, such as prostitution/sex work, begging (particularly when it involves minors) and child marriages, and trafficking of Roma. In Bulgaria for example, the ERRC received reports of “an increase over the past five years in the number of Roma who leave Bulgaria knowing that they will be involved in prostitution/sex work, but who agree to go for the sake of a better future and end up trafficked”. Links between child marriage and trafficking have also been documented, in particular when young brides manage to escape and end up in very vulnerable situations.

The ERRC/PiN study identifies problematic elements of domestic law and/or implementation in all five of the countries surveyed. Roma victims of trafficking in human beings are also reported to have a limited access to protection mechanisms. There is reported to be a low level of victim identification by relevant authorities, which is reinforced by the lack of trust between some Roma and the law-enforcement authorities. In addition, only 5 out of 37 respondents in the above-mentioned research had had access to victim support services.

The vulnerability of Roma must be taken into account in national policies regarding trafficking in human beings. Roma-specific preventive and protective measures should be adopted in order to improve victims’ protection, including training of law enforcement officials and awareness-raising campaigns targeting Roma communities, in particular segregated and socially excluded communities, to change (amongst other things) prevailing attitudes and practices which result in child marriages. Empowerment of communities and peer-to-peer education will also be valuable.

Finally, the ERRC/PiN study identifies a dearth of adequate data on the involvement of Roma in trafficking. The European Union Fundamental Rights Agency recently noted the following with respect to the involvement of Roma as perpetrators of trafficking:

... media sources have often made references to ‘Roma criminality’, usually in the context of trafficking or petty crime. Given the paucity of relevant criminal justice data disaggregated by ethnic origin, such

*references raise important questions as to the validity of this type of information and its impact on Roma stereotypes and prejudice. In light of the vulnerability of the Roma to criminal victimization, particularly in regard to trafficking, further investigation based on robust and reliable information is therefore necessary.*¹⁵³

Member states should start collecting data on trafficking in human beings, including disaggregated data by gender and ethnicity, while respecting the rights to personal data protection of data subjects and avoiding stigmatisation of the relevant groups. Finally, there is an urgent need to reduce Roma vulnerability to trafficking by improving their access to economic and social rights.

153. European Union Fundamental Rights Agency, Summary Report, “The situation of Roma EU citizens moving to and settling in other EU Member States”, November 2009, p. 13.



6. Enjoyment by Roma and Travellers of economic and social rights

6.1. The right to education

The Council of Europe Committee of Ministers Recommendation (2009)⁴ on the education of Roma and Travellers sets out that: “Roma and Travellers should be provided with unhindered access to mainstream education at all levels subject to the same criteria as the majority population”. This objective is far from being reached, however. In some cases, Roma and Travellers are effectively excluded

Roma children have the right to education of the same quality as other pupils – but Roma children are often excluded from mainstream schools. A Roma teacher in a mixed class – something which should be actively fostered. Scoala Generala Nr. 136, Sector 5 Bucuresti, Romania, April 2011. © Council of Europe.

from the education system altogether. Roma and Traveller children also drop out of school disproportionately. Segregation of Roma and Traveller children into separate and/or substandard education is the most widespread violation with respect to the right to education. Sometimes this segregation flows from residential segregation, but only too often it is the result of policies and practices that channel Roma children into education for persons with intellectual disabilities, as well as into other forms of separate, substandard educational arrangements. In some contexts, Roma parents may particularly expect girls to leave school early. In the main, school curriculums do not include sufficient provision of information to all students about Romani language, culture and history. Where these are provided, they frequently are provided only to Roma, depriving non-Roma children of the right to know about the contributions Roma have made to the societies and histories of Europe.

Key data disaggregated by ethnicity on the situation of Roma and Travellers in education is currently missing. This lack of data renders effective assessment of existing policies difficult. Nevertheless, the general contours of the challenges are becoming increasingly visible. The paragraphs below summarise the trends noted above.

Exclusion from formal schooling, including ineffective measures to combat school abandonment

Exclusion from formal schooling is reported in a number of Council of Europe member states and ranges from complete exclusion from mainstream schools to school truancy and abandonment. It is often the result of direct and indirect discrimination.

ECRI reports that in countries including Albania, France, Georgia, Greece, Portugal and Russia, Roma and Travellers have been excluded from or have dropped out of school often as the result of discrimination. In Albania, for example, Roma children have been refused access to schools for lack of vaccinations, an issue that authorities have reportedly not yet fully resolved. A disproportionate

number of Roma in this country drop out early. In Greece, despite the Strasbourg Court judgment in the case of *Sampanis and Others*, some schools continue to refuse to register Roma children, sometimes due to pressure from non-Roma parents. Roma children there also continue to suffer from a high school abandonment rate. ECRI's report regarding Georgia noted that low rates of Roma school attendance can be partly explained by "widespread prejudice" against them and their marginalisation. Bullying by non-Roma at schools is a disincentive to attendance. In Portugal, school abandonment among Roma is very high. Roma children sometimes face hostility from non-Roma parents, who have pressured school officials not to enrol Roma and have posted signs reading "No to Gypsies" in the past.

In some cases, the age limit to enrol in some classes affects Roma children. For example, in Georgia, some Roma children have reportedly been refused enrolment into the appropriate grade level because they were too old. Reportedly in Kosovo, Roma, Ashkali and Egyptian children over nine cannot enrol in school without taking an examination, which represents a considerable challenge for children who have never attended school. Catch-up classes are only sporadically organised by municipal authorities.

In some countries, the fact that Roma lack personal documents has a negative impact on school enrolment. In Serbia, for example, a large number of Roma children are not enrolled in school; the main reasons are reportedly "financial problems (49.8%) and the lack of ... documents such as birth certificates and proof of residence." Some pre-schools preferentially enrol children whose parents both work, which disadvantages most Roma children. Lack of personal documents is also a serious barrier to Roma enrolling in pre-school. According to ECRI, in Serbia, 62% Roma children have either never attended school or have dropped out, and only 9.6% complete post-primary education.

Lack of available public transport or funds for transport, as well as lack of school materials, represents an additional obstacle to Roma

pupils attending school in countries such as Georgia,¹⁵⁴ Greece¹⁵⁵ and Moldova.¹⁵⁶ About half of the Roma in Moldova live in such extreme poverty they cannot afford appropriate clothing, lunches, school materials or transportation for their children. Of Roma children aged 7-15, 43% reportedly do not attend school (compared with 6% of non-Roma). Less than half of all Roma complete secondary school (compared to the near-universal completion rate for non-Roma) and only 4% of Roma attend higher education (compared with 38% of non-Roma).¹⁵⁷

In some countries, Roma children are excluded from mainstream schooling and over-represented in alternative systems such as “home schooling”, like in Hungary via arrangements as “private pupils”. At the secondary level, Roma often attend technical schools or vocational training. In the Netherlands, the Advisory Committee on the Framework Convention for the Protection of National Minorities noted in 2010 that “there is a disproportionately large attendance of Roma and Sinti children in vocational training schools ... as opposed to upper secondary schools.”

Many Roma children with developmental, intellectual or physical disabilities may not be attending school at all in many European countries, including in “the former Yugoslav Republic of Macedonia”. Roma in Europe also suffer from a lack of pre-school facilities or a lack of access to such facilities, such as in Poland, where Roma children continue to either drop out of school early or to underachieve, with more than 50% of school-age Roma estimated to not attend school.¹⁵⁸

154. Szakonyi D., “No way out: an assessment of the Romani community in Georgia”, ECMI Working Paper No. 39.

155. ECRI Fourth report on Greece, adopted on 2 April 2009, published on 15 September 2009, pp. 22-3.

156. ECRI, Third report on Moldova, adopted on 14 December 2007, published 29 April 2008, p. 30.

157. Cace S. et al., *Roma in the Republic of Moldova*, United Nations Development Programme, Chişinău, 2007, p. 61.

158. ECRI Fourth report on Poland, adopted 28 April 2010, published 15 June 2010, p. 7.

The overall result in terms of enrolment in school and school abandonment is alarming throughout Europe. Even at the primary level, Roma children are often not included in mainstream education, such as in Bosnia and Herzegovina, where in 2008, the UN Committee for the Elimination of Racial Discrimination (CERD) estimated that 76% of Roma had never attended or completed primary school.

Some initiatives have been taken in some countries, including in Bosnia and Herzegovina, but the overall effect on Roma children's attendance has been very limited. In his 2010 report on Croatia, the Commissioner noted that the Croatian authorities have taken steps to improve the enrolment of Roma children in pre-school, primary and secondary education. The number of Roma children enrolled in primary schools has risen in Croatia. However, the Commissioner expressed concern that progress on the successful completion of primary education remains unsatisfactory, after being informed that only 10 to 25% of Roma children finish primary school. In 2010 the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) welcomed the information that financial assistance with school fees is being provided to poor families in Cyprus, Roma ones in particular. Other countries, such as Poland, may decide in future to provide children with materials free-of-charge or scholarships, but ECRI received reports that efforts were needed to ensure Roma pre-school attendance so children can be assisted in learning Polish.

Some projects have showed positive results, such as the school mediators in Denmark, Romania, or "socio-cultural mediators" in Portugal to liaise between Roma families and schools. Portuguese public authorities report that Roma attendance rates have risen since the mediators were introduced. However, such mediators should be given the necessary financial support to carry out their job. Their status should also be clearly defined. In Portugal, the role of socio-cultural mediators was often misunderstood by school administrators and local authorities, who frequently perceived the mediators as additional teachers who should take care of the Roma pupils

instead of acting as a link between the Roma families, the majority population, the school and the authorities.¹⁵⁹

Some Council of Europe member states have responded to the issue of the lack of awareness of the language of the country in which Roma children have arrived with their parents. Some countries have designed policies or programmes to assist with language training for migrants and other non-citizens and some of these programmes have targeted Roma. For instance, a 2009 study by European Dialogue noted that “education in many areas of England has played a central role in the social inclusion and wellbeing” of Roma children and families from new EU countries.¹⁶⁰

In the field of higher education, some Council of Europe member states have undertaken the positive practice of providing financial support to Roma. A number of public and private donors are also engaged in this area. Nevertheless, the actual number of Roma university students remains low in many countries, particularly – but not only – in western Europe. For example, NGO sources in Portugal have reported that, as of 2007, there were fewer than 10 Roma students in higher education in Portugal. Finally, only a handful of Council of Europe member states, such as Norway, have adopted the encouraging practice of focusing continuing education and training measures on adult Roma, with a view to labour-market inclusion and overcoming legacies of exclusion.

The right to education is established under Article 12 of the International Covenant on Economic, Social and Cultural Rights, as well as under Article 2 of Protocol No. 1 to the European Convention on Human Rights (ECHR). A number of other treaties elaborate aspects of the right to education, as well as the ban on discrimination in access to education. These include Article 28 of the

159. Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Portugal, adopted on 5 November 2009, p. 19.

160. European Dialogue, “The movement of Roma from new EU member states: A mapping survey of A2 and A8 Roma in England, Patterns of settlement and current situation of new Roma communities in England” a report prepared for the Department for Children, Schools and Families, August 2009, p. 9.

Convention on the Rights of the Child, Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women, Articles 12 and 14 of the Council of Europe FCNM, as well as the UNESCO Convention against Discrimination in Education. As a result of Article 2 of Protocol No. 1 to the ECHR, education is the only internationally recognised social right explicitly included under the protection of the Convention's Article 14 (prohibition of discrimination). Measures relating to the right to education are also included in the European Social Charter and Revised Charter.

The issue of school enrolment has come before the European Court of Human Rights, for example in the case of *Sampanis and Others v. Greece*, involving eleven Roma children who had been refused enrolment during the 2004/2005 school year (and were eventually segregated into “special needs” classes housed in an annex to the main building).¹⁶¹ The Court concluded that the Roma children concerned had suffered discrimination in education constituting a violation of Article 14 of the Convention (prohibition of discrimination) taken together with Article 2 of Protocol No. 1 (right to education).

ECRI has set out detailed guidelines on combating racism and racial discrimination in and through school education, including measures to ensure compulsory, free and quality education for all; combat racism and racial discrimination at school; train the entire teaching staff to work in a multicultural environment; and ensure that all the policies advocated above receive the necessary financial resources and that they are regularly monitored to assess their impact and adjust them when necessary.¹⁶²

In the 2009 Recommendation of the Council of Europe Committee of Ministers' on the education of Roma and Travellers in Europe, the member states are urged to “elaborate, disseminate and implement education policies focusing on ensuring non-discriminatory

161. European Court of Human Rights, *Sampanis and Others v. Greece*, Application No. 32526/05, Judgment of 5 June 2008.

162. ECRI, General Policy Recommendation No. 10: Combating racism and racial discrimination in and through school education, adopted on 15 December 2006.

access to quality education for Roma and Traveller children” as well as to ensure, through local and regional authorities, that Roma and Traveller children are effectively accepted in school”. The Committee of Ministers also recommended that:

access of Roma and Traveller children to compulsory education should be facilitated and subject to the same criteria as the majority population, with particular emphasis on the transition from preschool to primary education, and from primary to secondary education. Special provisions for preventing school drop out and stimulating the return to school of those who did not finish compulsory education should be made available.

The 2010 Council of Europe “Strasbourg Declaration on Roma” invites member states to “ensure effective and equal access to the mainstream educational system, including pre-school education, for Roma children and methods to secure attendance, including, for instance, by making use of school assistants and mediators. Provide, where appropriate, in-service training of teachers and educational staff.”¹⁶³ As of summer 2011, the European Training Programme for Roma Mediators was being carried out in 15 countries (Ukraine, Romania, Bulgaria, Moldova, “the former Yugoslav Republic of Macedonia”, Italy, Germany, Greece, Hungary, Turkey, Czech Republic, Slovakia, Spain, France and Serbia) and Kosovo, with 427 mediators trained, including school mediators. The EU Framework on National Roma Inclusion Strategies up to 2020 also set up some benchmarks to be reached by EU Member States regarding access to education:

*Member States should, as a minimum, ensure primary school completion. They should also widen access to quality early childhood education and care and reduce the number of early school leavers from secondary education pursuant to the Europe 2020 strategy. Roma youngsters should be strongly encouraged to participate also in secondary and tertiary education.*¹⁶⁴

163. Council of Europe “Strasbourg Declaration on Roma”, 20 October 2010.

164. European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, An EU Framework for National Roma Integration Strategies up to 2020, 5 April 2011.

In this context, measures to remove the socio-economic barriers to education, such as additional academic support for some Roma children and financial incentives to overcome poverty, should be implemented, in accordance with UNICEF recommendations.¹⁶⁵ It would also be important to expand initiatives to all school catchment areas in the Council of Europe area with recent non-citizen Roma arrivals. Access to higher education deserves extensive further attention throughout the Council of Europe area. Insofar as generations of Roma are currently under-educated, measures such as training for Roma adults are one way to correct some of the worst aspects of Roma exclusion in Europe.

Measures taken by member states should include not only enrolling Roma children and monitoring their attendance, but also monitoring the quality of the education they receive. Research shows there is a correlation between teachers' attitudes toward Roma students and academic achievement; in one study, teachers who had positive attitudes toward the Roma were more inclined to stress academic content in their teaching.¹⁶⁶

Segregation of Roma children

Policies and practices that separate Roma in education are to be found throughout the Council of Europe member states. Three patterns of segregation of Roma children have been identified throughout Europe, included by UNICEF: segregation between schools (where most Roma children attend Roma-majority schools), segregation within schools (when in mainstream education Roma children are separated from the others in classes and other facilities), and segregation into special schools, including schools for mentally-disabled children. Some countries combine the three types of segregation.

First, segregated housing, as well as the fact that non-Roma parents pull their children out of schools frequented by Roma (the so-called

165. UNICEF, "The Right of Roma Children to Education", Position Paper, 2011, p. 81.

166. Proactive Information Services, *Step by Step Roma Special Schools Initiative: Evaluation Report Year 3*, 2003, p. 15.

“white flight” phenomenon) results in *de facto* segregation of entire schools. In such cases, a “ghetto school” is often materially substandard and/or not adequately staffed, with both Roma and non-Roma pupils deprived of the possibility of equal quality schooling in a multicultural environment. Reports indicate that this trend is especially visible in Bulgaria, Cyprus, Hungary, Moldova, Montenegro, Serbia, Slovakia and Turkey. For example in Hungary, ECRI reported the existence of segregated Roma mainstream schools because of segregation in housing and the fact that parents can choose where to enrol their children. All-Roma mainstream schools have lower-quality infrastructure than others, sometimes lacking heat, running water, or toilets, and often are staffed by teachers who are poorly trained or even unqualified. In some villages, practically all non-Roma children attend church-run schools, leaving only Roma in the public schools. In response to this, the Public Education Act was amended to require church-run schools to provide at least 25% of their places to local children; they also cannot refuse entry to any multiply-disadvantaged child (a category into which many Roma children fall). Despite these improvements, central government efforts to improve Roma access to education are frequently hampered by the way local authorities implement the required measures, and numerous abuses have been reported. In Turkey, schools with a preponderance of Roma have frequently tended to become all-Roma over time as non-Roma parents withdraw their children. All-Roma schools then receive poorer resources, “teachers are less motivated and the cycle of underachievement deepens”.¹⁶⁷

Second, even when Roma and non-Roma children share the same school, Roma pupils are often separated from the majority in classrooms, by being in specific areas of the class, or in entirely separate classes. Remedial classes, separate classes and segregation in the classroom have been reported in Croatia, Czech Republic, Greece, Hungary, Montenegro, Portugal, Russia, Serbia, Slovakia, “the Former Yugoslav Republic of Macedonia” and Turkey, among others.

167. Edirne Roma Association, ERRC, Helsinki Citizens Association, We are here! Discriminatory exclusion and struggle for rights of Roma in Turkey, p. 68.

In Croatia, despite the European Court of Human Rights judgment in *Oršuš and Others v. Croatia*,¹⁶⁸ Roma children are still sometimes educated in separate Roma-only classes at mainstream schools. In his 2010 report on Croatia, the Commissioner for Human Rights noted that in Međimurje County, the locus of the matters at issue in *Oršuš*, the authorities have decreased the number of Roma-only classes from 50 to 37. Despite these measures, the Commissioner has been informed of a number of serious, persisting problems. While the special language classes have been integrated into mainstream programmes, *de facto* segregation of Roma pupils persists in some schools.

In Russia, all-Roma classes are reportedly sometimes created at schools where students of all ages are lumped together and may not advance for years until they finally drop out. In some schools, relatively spacious classrooms and low teacher–student ratios are provided for non-Roma children, while Roma children are educated in cramped, sometimes unsafe, parts of buildings not designed for instruction (like boiler rooms, laboratories or workshops). Roma children may also miss instruction for entire school years due to institutional neglect.¹⁶⁹

Throughout Turkey, non-Roma and Roma children are frequently separated within classrooms. Pervasive anti-Gypsyism means teachers frequently exclude Roma students, behaviour then modelled by non-Roma students. Teachers reportedly beat Roma students and insult their appearance. Non-Roma students also allegedly bully their fellow Roma students.¹⁷⁰

Third, in many countries, Roma children are disproportionately streamed into special schools, in particular schools for children with disabilities. “Superficial examinations and partial examiners, compounded by linguistically and culturally insensitive tests, can and do serve to distort evaluation scores” in placement tests. Once in special schools, Roma students receive a lower standard of education.

168. This case is referred to in more detail later in this section.

169. Anti-Discrimination Centre Memorial, “Discrimination and violation of Roma children’s rights in schools of the Russian Federation”, Saint Petersburg, 2009.

170. Edirne Roma Association, ERRC, Helsinki Citizens Association, *We are here!*, p. 99.

Roma children in Bulgaria who are not intellectually disabled tend to be enrolled in special education either because Bulgarian is their second language or because disadvantaged Roma parents are attracted to free accommodation and meals at special schools run as boarding schools.¹⁷¹

In the Czech Republic, despite the 2007 ruling of the Strasbourg Court in the case of *D.H. and Others v. the Czech Republic*, and the enactment of a new Schools Act in 2004 which restructured the provision of special needs education, racial segregation persists in education, with an estimated 30% of Roma children still in schools designed for pupils with mild mental disabilities, compared to 2% of their non-Roma counterparts.¹⁷² Roma children continue to be placed in schools for children with intellectual disabilities (formerly called “special schools”) on questionable grounds. In March 2010, the Czech School Inspection Authority reported violations of the law with respect to the enrolment of non-disabled Roma children into schools for persons with intellectual disabilities; the legally required parental consent for such enrolment was reportedly often never obtained, nor were the children concerned ever tested for disabilities.¹⁷³ After his visit to the Czech Republic in November 2010, the Commissioner emphasised that “with thousands of Roma children effectively excluded from the mainstream education system in the Czech Republic and condemned to a future as second-class citizens every year ... it is now time to speed up the implementation of the inclusive education agenda.”

With respect to Finland, the Committee of Ministers of the Council of Europe noted in its 2007(1) Resolution on the implementation of the Framework Convention for the Protection of National Minorities

171. ECRI Fourth report on Bulgaria, p. 21; Open Society Institute, “Equal Access to Quality Education for Roma”, Vol. 1, Monitoring Reports 2007, Bulgaria, Hungary, Romania, Serbia, p. 67.

172. Czech Ministry of Education, Youth and Sport, “Sociological research aimed at the analysis of the image and causes of segregation of children, pupils and young people from the socially and culturally disadvantaging environment”, p. 70.

173. Czech School Inspection Thematic Report, “Compendium of results from the thematic control activity in practical elementary schools”, March 2010, English translation by Open Society Fund Prague.

the disproportionate presence of Roma pupils in special education. The Committee of Ministers of the Council of Europe has also called on the German Government to “address the problem of the over-representation of Roma/Sinti and immigrants’ children in special schools for under-achievers (*Sonderschulen*).”¹⁷⁴

In Hungary, despite the fact that the Equal Treatment Act and Public Education Act (1993) expressly prohibit unlawful segregation, schools continue to disproportionately assign Roma to schools for children with intellectual disabilities.¹⁷⁵ In 2009, the Commissioner addressed a letter to the Hungarian Prime Minister urging improvements in educational measures for Roma. Reports indicate that almost 80% of the children enrolled in schools for children with special needs in Montenegro are Roma. Free materials and meals may incentivise that enrolment.¹⁷⁶

In Russia, the NGO Memorial has reported that Roma children who do manage to enrol in school are disproportionately assigned to classes for persons who are developmentally disabled. Roma children in Russia are often reportedly given intellectual development tests without their parents’ knowledge, and the veracity of these test results is dubious, as those testing do not speak Romani and the children do not speak Russian well. In early 2009 a group of Roma parents brought lawsuits against Elementary School No. 66 in the city of Tula claiming their children received an inferior primary education compared to non-Roma, that no secondary education was available to them and that all the Roma students had been assigned to “remedial education” *en masse*. After the claims were dismissed without considering the merits at the first-instance and appellate levels, a complaint was filed with the European Court of Human Rights.¹⁷⁷

174. Committee of Ministers, Resolution (2007)4 on the implementation of the Framework Convention for the Protection of National Minorities by Germany, p. 2.

175. ECRI Fourth report on Hungary, p.27.

176. Open Society Institute, “Equal Access to Quality Education for Roma”, Vol. 2, 2007, Croatia, Macedonia, Montenegro, Slovakia Monitoring Reports, p. 317.

177. Anti-Discrimination Centre MEMORIAL, “Discrimination and Violation of Roma Children’s Rights in Schools of the Russian Federation”.

In some schools in Serbia, Roma are also improperly assigned into “special education”, often because they may not speak Serbian well.¹⁷⁸ Financial incentives for enrolling children in these schools also entice poor Roma parents to select this option; at some special schools, 50-80% of the children are Roma.¹⁷⁹ In his 2011 report on Serbia the Commissioner noted his serious concern at the fact that, despite measures adopted to promote inclusive education, the number of Roma children enrolled in schools for children with mild mental disabilities increased from 26.7% in 2002/2003 to 31% in 2008/2009.

Despite the fact that in May 2008 Slovakia adopted a new School Act prohibiting discrimination and segregation in education, the segregation of Roma children in education persists. Approximately 60% of the children in special education in Slovakia during the 2008/2009 academic year were Roma.¹⁸⁰ Roma are reportedly 28 times more likely to be assigned to a special school than non-Roma, up to 50% of them erroneously.¹⁸¹ The tests for placing children in these schools do not take into account Roma children’s language barriers. The fact that these schools are provided with three times more funding than mainstream schools in direct proportion to the number of registered children is also an incentive for schools to enrol Roma children even when they may not be disabled.¹⁸²

Roma in “the former Yugoslav Republic of Macedonia” are also reportedly over-represented in special classes and schools for children with intellectual disabilities; reports suggest Roma children may be enrolled in special schools without appropriate assessments and that their

178. Roma Education Fund, “Advancing education of Roma in Serbia: country assessment and the Roma Education Fund’s strategic directions”, 2007, p. 28.

179. ECRI First report on Serbia, adopted on 14 December 2007, published on 29 April 2008, p. 24.

180. Friedman E. et al., “School as ghetto: systemic overrepresentation of Roma in special education in Slovakia”, Roma Education Fund, September 2009, p. 8.

181. Open Society Institute, “Equal access to quality education for Roma”, Vol. 2, 2007, Croatia, Macedonia, Montenegro, Slovakia Monitoring Reports, p. 412; ECRI Report on Slovakia, pp. 18 and 30.

182. ECRI Fourth report on Slovakia, p. 19.

supposed learning difficulties are essentially due to the fact that the language of schooling is not their mother tongue. ECRI's 2010 report urges the authorities to "end any practice of improperly sending Roma children to educational facilities for pupils with a mental disability, to identify the children concerned and reintegrate them in mainstream schools and to implement a streaming system which guarantees that only children effectively suffering from a mental disability are guided towards the specialist education sector."

Some positive developments regarding school desegregation have been taking place. In Denmark, following reports of segregated education for Roma children, the government in its 2010 report on the Framework Convention for the Protection of National Minorities noted that the local authority in question has confirmed to them that this sort of schooling no longer exists, that Roma pupils are attending mainstream education on an equal footing with others and that they are offered support measures if necessary.

The European Court of Human Rights has ruled on several cases concerning the discriminatory denial of the right to education arising as a result of measures aimed at the forced separation of Roma children into separate, substandard arrangements. In 2007, in its ruling in the case of *D.H. and Others v. the Czech Republic*, the Court's Grand Chamber held, primarily on the basis of statistical evidence showing dramatic disparities in rates of placement in so-called "special schools" for the mildly mentally disabled, that such measures violated Convention provisions on non-discrimination in education.¹⁸³ The Court was subsequently faced with another case, *Oršuš and Others v. Croatia*, in which authorities had placed children perceived to be "Gypsies" in separate classes, arguing that this had been for reasons of providing them temporarily with measures to improve their knowledge of Croatian, with a view to subsequent reintegration in mainstream classes. In most cases, the children concerned were not in fact reintegrated. The Court found Croatia in violation

183. European Court of Human Rights, *D.H. and Others v. the Czech Republic*, Application No. 57325/00, Judgment of 13 November 2007.

of Convention Article 14 (prohibition of discrimination) in conjunction with Article 2 of Protocol No. 1 (right to education) – it found that Croatia had undertaken discriminatory measures against Roma in the field of education, as a result of these segregating activities.¹⁸⁴

The Council of Europe Committee of Ministers, in its 2009 Recommendation on the education of Roma and Travellers in Europe, recommends that member states:

... ensure that legal measures are in place to prohibit segregation on racial or ethnic grounds in education, with effective, proportionate and dissuasive sanctions, and that the law is effectively implemented. Where de facto segregation of Roma and Traveller children based on their racial or ethnic origin exists, authorities should implement desegregation measures. Policies and measures taken to fight segregation should be accompanied by appropriate training of educational staff and information for parents.

ECRI has called for member states to “abolish the too-frequent placement of Roma children in special schools, making sure that Roma pupils not afflicted with mental disorders are spared such placement and that those already placed are speedily enrolled in ordinary schools”.¹⁸⁵ The Commissioner has also taken a clear position against all forms of segregation in education. In his 2010 Position Paper on the human rights of Roma and Travellers, the Commissioner noted that:

... it is essential that desegregation be combined with the necessary support measures for children in order for them to integrate into mainstream classes. Special classes or curricula for Roma are sometimes presented as a means of overcoming language barriers or remedying the lack of pre-school attendance of Roma children. While it is necessary to respond to such challenges, the systematic placement of Roma children in classes which follow a simplified or a special Romani-language curriculum, while isolating them from other pupils, is an inappropriate response and needs to cease. Furthermore, the practice of improperly placing Roma children in special schools or classes for pupils with intellectual disabilities needs

184. European Court of Human Rights, *Oršuš and Others v. Croatia*, Application No. 15766/03, Judgment of 16 March 2010.

185. ECRI General Policy Recommendation No. 13 on combating anti-Gypsyism and discrimination against Roma, adopted on 19 June 2011.

to cease immediately. Selection tests should differentiate between children with intellectual impairment and children whose knowledge required for school was hindered by their environment but are otherwise fully capable. Proper pedagogical and psychological counselling and assessment should take place prior to any placement of a child in a special class.

Access to school by Roma girls

In some Roma communities – particularly those Roma communities maintaining patriarchal practices – the parents of girls may expect their daughters to leave school early in order to marry and start their own families¹⁸⁶ or out of fear that a girl may have sexual contact with boys.¹⁸⁷ Child marriage may preclude girls from attending school, thereby undermining their right to education and future employment opportunities. The early school drop-out of Roma girls has been reported throughout Europe, including in Albania, Hungary, Lithuania, Portugal, Romania, Serbia and Kosovo.

For example in Albania, almost one third of primary-school age Roma girls did not take part in education, compared to 19 per cent of boys.¹⁸⁸ As a general matter, an Open Society Institute report has noted, with respect to Romania:

There is a gender gap in access to formal education between Romani women (among whom, 23 percent have not received any formal education) and Romani men (among whom, 15 percent have not received any formal education). The gap in access to formal education is even more significant between Romani women and women in the general population. At 23 percent, the number of Romani women who have not received any kind

186. Kocze A., “Missing intersectionality: race, ethnicity, gender and class in current research and policies on Romani women in Europe”, Policy Studies Series, Center for Policy Studies, Central European University: Budapest, 2009, p. 20.

187. Corsi M. et al., “Ethnic minority and Roma women in Europe: a case for gender equality?”, Synthesis report of the Expert Group on Gender Equality, Social Inclusion, Health and Long-term Care (EGGSI) of the European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities, G.1 unit, November 2008, p. 6.

188. UNICEF, *Breaking the cycle of exclusion, Roma children in South East Europe*, Belgrade, February 2007.

of formal education is almost six times higher than among women in the general population (4 percent).¹⁸⁹

In 2008, the United Nations Committee on Economic, Social and Cultural Rights noted with concern with respect to Kosovo the “low enrolment of girls, especially from non-Serbian minority communities, in secondary schools, the low school attendance and high dropout rate among Roma, Ashkali and Egyptian children, especially girls.” The Committee recommended that UNMIK identify funds and advise the relevant Kosovo authorities on the urgent need to alert parents to the importance of education for their children, including for their daughters.

In terms of outcomes, UNICEF reported that in countries of central and eastern Europe “the primary school enrolment rate for Roma girls is just 64 per cent, compared to 96 per cent in non-Roma communities which ... face similar socio-economic conditions”.¹⁹⁰

Special attention should be paid by member states to the education of Roma girls, who suffer from double discrimination as Roma and as females, through the use of – for instance – positive measures and awareness-raising activities around some Roma communities.

Provision for Traveller education

Although some countries in Europe have been developing and implementing policies for Traveller outreach in education since the 1960s, in practice, even in those countries with developed policies in this area, much remains to be done. Indeed, recent years have seen an erosion in some countries of previously existing provisions for Traveller education.

In Belgium, measures to provide Travellers with access to education have been developed in Flanders. However, these have reportedly not yet been sufficient to guarantee equal access. Travellers are currently systematically under-schooled in Belgium, with some children never registering.¹⁹¹

189. Surdu M. and Surdu L., *Broadening the agenda: the status of Romani women in Romania*, Open Society Institute, 2006.

190. UNICEF, “The Right of Roma children to education”, p. 16.

191. ECRI Fourth report on Belgium, p. 35.

The Commissioner noted in 2008 that difficulties for Travellers in accessing education in France are related to the issue of the availability of halting sites, many of which are located far from schools (there are only 15 “field schools” established at or near halting sites). The time limits on halting (a maximum of six months in winter and one or two in summer) also complicated school attendance. The Commissioner noted that some municipalities justified their refusals to enrol Traveller children either by claiming the children are not likely to attend for a long enough time, or that their families are undergoing eviction or that the classes are full. The Commissioner has recommended that the French Education Ministry research the school enrolment rate for members of these minorities and has also recommended that greater flexibility should be offered to families who desire to stay longer at halting sites for reasons of their children’s education.¹⁹² In 2010 ECRI also reported that “the difficulties surrounding enrolment in school constitute a real obstacle to access to equality of opportunity for Traveller children, which must be eliminated as a matter of urgency.”¹⁹³

Only 58% of Traveller children in Ireland make it to post-primary education and their completion of secondary education is far below the national average. Implementation of the Housing (Miscellaneous Provisions) Act of 2002, which has criminalised entering onto either private or public land and limited housing options for Travellers, has also disrupted some Traveller children’s schooling.

In the United Kingdom, the Office for Standards in Education reports that as many as 12 000 such children are not in secondary school. Those who do attend report that they are often bullied and usually attempt to hide their identity in order to “pass” as non-Roma or non-Traveller. Some recent initiatives with respect to educating Travellers are showing promise. The recently piloted E-Learning and Mobility

192. Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to France from 21 to 23 May 2008, 20 November 2008.

193. ECRI Fourth report on France, adopted on 29 April 2010, published on 15 June 2010, p. 32.

Project uses e-learning to enable Traveller pupils to remain in contact with their schools during absences. In February 2009 the outcomes of this project were reported as encouraging: improved achievement, increased motivation and easier re-integration into schools on return. Both parents and teachers were reportedly eager to see it continue. General data show that Roma and Traveller children still severely under-perform academically compared to national averages. The number of such children who never attend secondary school or who drop out early during secondary school is disproportionately high.

Member states where Travellers live should pay special attention to the enrolment of Traveller children in school, in particular for children whose families have a nomadic way of life, are engaged in temporary migration or have been forced to quit their location of unauthorised encampment. Best practice, such as e-learning mechanisms, should be disseminated.

Romani language, history and culture in education, including suppression of anti-Roma stereotypes in the school curriculum

Even those Council of Europe member states with a relatively strong degree of commitment to minority rights have at times balked at providing Romani language education in schools. Where Romani language, history or cultural lessons are provided, frequently they are targeted primarily or solely at Roma children. This deprives non-Roma of the right to know about the contributions Roma have made to their own and other European societies. In the main, the development of school curricula in this area remains in its infancy.

Thus, for example, there is no Romani language instruction offered in Georgia. School children in Moldova learn little or nothing about Roma culture or history in schools, and Romani language instruction is not offered. In Poland, the Advisory Committee on the FCNM found in 2009 that “the knowledge of Roma history, culture and traditions among teachers remains low ... no efforts are made to teach majority students about the Roma and their contribution to Polish society.” Education in the Romani language and/or bilingual education are offered only sporadically in Serbia. The 2010 ECRI report notes that

Roma in “the former Yugoslav Republic of Macedonia” cannot be educated in Romani, although some primary schools offer optional teaching of the language.

Of the countries participating in the Decade of Roma Inclusion, Romania appears to have made the most progress so far in instructing Roma pupils in their mother tongue. However, the Roma contribution to Romanian society is absent from Romanian textbooks. Minorities are only mentioned in curricula for instruction in that minority’s mother tongue; the mainstream curriculum makes no mention of the Roma minority, even in textbooks on the Second World War.¹⁹⁴

The Office of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities reports that it has been playing a key role in the standardisation of the Romani language and authorities informed ECRI that such standardisation will be an important step toward ensuring Roma are able to better benefit from the Law on the Use of Minority Languages. ECRI has been informed that some schools are already piloting instruction in some subjects in Romani. The Pedagogical Faculty of the University of Constantine the Philosopher in Nitra is designing courses for teaching Romani culture, history, language and literature.

In Kosovo, the UN Committee on Economic and Social Rights has reported the very limited opportunities for children from non-Serbian minority communities, in particular Roma, Ashkali and Egyptian children, to receive instruction in or of their mother tongue and on their history and culture.

It is imperative that educational materials used in the schooling context do not promote stereotypical views of Roma and Travellers. The Hungarian National Core Curriculum says the history of minorities, including the Roma, should be taught, starting in ninth grade, but some textbooks reportedly contain anti-Roma bias, and Roma culture and history are not taught to non-Roma children. Education Ministry

194. Open Society Institute, “Equal Access to Quality Education for Roma”, Vol. 1, Monitoring Reports 2007, Bulgaria, Hungary, Romania, Serbia, p. 50.

officials admit that anti-bias courses are not part of teacher training. Some Russian textbooks have promoted the idea that Roma are a source of disease.¹⁹⁵ Textbooks in “the former Yugoslav Republic of Macedonia” also reportedly contain ethnic stereotypes regarding Roma.¹⁹⁶

Improving the quality of the education received by Roma and Traveller children means including Roma and Traveller culture and history in standard curricula. Teaching this culture and history, as part of European culture and history, places the members of these minorities on equal terms with other Europeans. The Commissioner believes it would be appropriate for all national educational authorities to undertake a review of curriculum materials in use in schools, with a view to ensuring that they do not promote anti-Roma stereotypes, bias or ideas.

To conclude, in a 2008 Viewpoint, the Commissioner made it clear that “early and inclusive education” is a key priority “if the vicious cycle is to be broken”.¹⁹⁷ In recent years, improving the situation of Roma in the field of education has been treated as a fundamental precondition for improvements generally of the situation of Roma in Europe, and Roma education has featured prominently in regional policy frameworks,¹⁹⁸ guidance by regional bodies and funding support for Roma inclusion measures, particularly – but not only – in the context of accession to the European Union and post-accession in central and south-east Europe.¹⁹⁹

195. ERRC, *In search of happy Gypsies: persecution of pariah minorities in Russia*, ERRC Country Reports Series No. 14, May 2005, p. 176.

196. ECRI Fourth report on “the former Yugoslav Republic of Macedonia”, adopted 28 April 2010, published 15 June 2010, p. 19.

197. Commissioner for Human Rights, “The key to the promotion of Roma rights: early and inclusive education”, Viewpoint, 31 March 2008.

198. Access to education has been identified by the Decade of Roma Inclusion as a target area. The 2007 Decade Watch report says Decade governments have made more progress on education than in any other priority, particularly with the support of the Roma Education Fund (REF), created in 2005.

199. The EU’s Lien programme, Phare programme, Socrates programme and Youth programme have all funded educational projects for the Roma and some Phare-funded projects have been taken up as part of national education strategies. Roma issues have also been addressed ad hoc by European Social Fund projects and the Community Action Program with respect to education and vocational training.

6.2. Access to adequate housing

The UN Committee on Economic, Social and Cultural Rights has emphasised that “the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or which views shelter exclusively as a commodity. Rather, it should be seen as the right to live somewhere in security, peace and dignity.”²⁰⁰

Under the European Social Charter (Article 31), as interpreted by the European Committee of Social Rights, “[s]tates must guarantee to everyone the right to adequate housing. They should promote access to housing in particular to the different groups of vulnerable persons, such as low-income persons, unemployed persons, single parent households, young persons, persons with disabilities including those with mental health problems. The notion of adequate housing must be defined in law. ‘Adequate housing’ means: 1. a dwelling which is safe from a sanitary and health point of view, i.e. that possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity, etc. and where specific dangers such as the presence of lead or asbestos are under control; 2. a dwelling which is not overcrowded, that the size of the dwelling must be suitable in light of the number of persons and the composition of the household in residence, 3. a dwelling with secure tenure supported by the law.”²⁰¹

Member states bound by the European Social Charter have in particular undertaken to take measures to make the price of housing accessible for those with inadequate resources. The European Committee of Social Rights has noted that states must: adopt appropriate measures for the provision of social housing that should target, in particular, the most disadvantaged; adopt measures to ensure that waiting periods for the allocation of housing are not excessive; make available legal and

200. UN Committee on Economic Cultural and Social Rights, General Comment No. 4, Right to adequate housing, Article 11 of the Covenant.

201. See “Digest of the Case Law of the European Committee of Social Rights”, 1 September 2008, p. 170, http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf.

non-legal remedies when waiting periods are excessive; and introduce housing benefits at least for low-income and disadvantaged sections of the population. The Committee has emphasised that the rights emanating from the above should be guaranteed without discrimination, in particular with respect to Roma or Travellers.

In the course of his work, the Commissioner has identified fundamental human rights issues facing Roma and Travellers in the field of housing in a number of countries. The Commissioner's work in this area indicates a number of areas of concern such as discrimination, segregation, sub-standard conditions, forced evictions and homelessness. The conditions of security, peace and dignity that are constituent parts of the right to adequate housing are far-off for many Roma and Travellers in Europe.

Discrimination in access to adequate housing, as well as in housing policy and practice

Discrimination in access to adequate housing is reported in a number of Council of Europe member states, including the Czech Republic, Finland, Latvia, Slovakia, Slovenia and Sweden. Discrimination against Roma and Travellers in access to housing takes several forms, such as denial of access to public and private rental housing on an equal footing with others and in some cases, refusals even to sell housing to Roma. Other forms of unequal treatment include preferential treatment of non-Roma in the development of infrastructure and systematic failure to develop infrastructure in Roma communities; as a result, a racially discriminatory tolerance of extremely substandard housing conditions can be noted as well as other situations rising to the level of degrading treatment under European Convention Article 3.²⁰² In addition, Roma face discrimination in the provision of public or private housing credit as well as direct or indirect discrimination in decisions to order eviction or other invasive measures.

202. European Court of Human Rights, judgment in *Moldovan and Others v. Romania*, Applications Nos. 41138/98 and 64320/01, Judgment of 12 July 2005.

In his 2011 report on the Czech Republic, the Commissioner noted how the vicious circle of discrimination affects Roma in the field of housing:

[h]ousing is the first area covered by discrimination complaints brought by Roma before the Ombudsman. Typically, Roma families end up being evicted from rental municipal housing on grounds of non-payment of rent or utilities and moved to Roma-only insalubrious housing. Faced with unemployment and discrimination, evicted families are unlikely to be granted leases elsewhere and often end up paying above market rates for temporary accommodation in hostels, which exposes them to exploitation by loan sharks and further indebtedness.

In the Roma-inhabited localities in Kladno, Czech Republic, some families reported to the Commissioner having been forcibly moved there from decent housing inhabited by ethnically mixed communities, although they had little or no outstanding debt.

In Hungary, concerns have been expressed at discrimination by local authorities against Roma in their access to social housing. Over the past 20 years, locals have vandalised houses purchased by Roma, sometimes destroying entire properties; formed human chains to prevent Roma families from moving in; and petitioned local authorities to prevent Roma from moving in. In Norway, Roma and Travellers reportedly experience discrimination in accessing campsites. When they attempt to report the discrimination to police, those complaints are allegedly not followed up.²⁰³

In a 2009 Recommendation on the implementation of the right to housing, the Commissioner noted that discrimination in the field of housing for Roma and Travellers “may concern all aspects of housing: accessibility, quality standards, prevention of homelessness and financial support.” This violates, among other standards, the International Convention on the Elimination of All Forms of Racial

203. ECRI Fourth report on Norway, adopted on 20 June 2008, published on 24 February 2009, p. 30; and Third Report Submitted by Norway Pursuant to Article 25, Paragraph I of the Framework Convention for the Protection of National Minorities, received 1 July 2010.

Discrimination and the EU Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. The Committee of Ministers, in its 2005 Recommendation on improving the housing conditions of Roma and Travellers in Europe, noted that member states “should undertake a systematic review of their housing legislation, policies and practices and remove all provisions or administrative practices that result in direct or indirect discrimination against Roma, regardless of whether this results from action or inaction on the part of state or non-state actors.” In addition, in a decision regarding Bulgaria, the European Committee of Social Rights found that “in the case of Roma families, the simple guarantee of equal treatment as the means of protection against discrimination does not suffice” and that “for the integration of an ethnic minority as Roma into mainstream society measures of positive action are needed”.²⁰⁴

Racial discrimination is at the root of, and also compounds, the disadvantaged position of Roma and Travellers in all housing-related subject areas mentioned below.

Segregation: informal settlements, excluded localities and other separated housing arrangements

A 2010 report by the EU Agency for Fundamental Rights – covering only European Union member states – found that residential segregation of Roma and Travellers is evident in Bulgaria, Cyprus, the Czech Republic, France, Greece, Hungary, Italy, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia and Spain. In countries such as Belgium, Portugal and Sweden, Roma often live in the same areas as other minorities, particularly immigrants, in socially deprived areas of low-quality housing.²⁰⁵ The work of the Commissioner, as

204. European Committee of Social Rights, Decision on the Merits, Collective Complaint No. 31/2005, *European Roma Rights Centre v. Bulgaria*, 18 October 2006, paragraph 42.

205. European Union Agency for Fundamental Rights, “Summary report: the state of Roma and Traveller housing in the European Union, steps towards equality”, March 2010, p. 9.

well as that of other Council of Europe and international review bodies has identified that these issues also exist throughout south-east Europe, in the countries of the former Soviet Union and in Turkey.²⁰⁶

In its May 2008 concluding observations concerning Italy, the United Nations Committee on the Elimination of Racial Discrimination (CERD) expressed “grave concern” at the residential segregation of Roma and said the Italian Government must “refrain from placing Roma in camps outside populated areas that are isolated and without access to health care and other basic facilities.”

In Montenegro, Roma communities are usually located on the outskirts of municipalities, except in the capital Podgorica, where the settlement inside the city is 100% Roma.²⁰⁷

In Portugal, many Roma live in extremely basic encampments on the outskirts of towns. The Commissioner conveyed his serious concern at this situation in his 2009 letter addressed to the Deputy Minister of Justice of Portugal. In 2010, the Advisory Committee on the Framework Convention for the Protection of National Minorities reported regarding Portugal that “many Roma live in segregated areas.” The Advisory Committee noted as a matter “of particular concern that, in some municipalities, Roma settlements are surrounded by walls, often with only one entrance and exit route.”

In Romania, Amnesty International and other NGOs have reported cases of segregation, which is not explicitly prohibited in Romanian housing law, such as in Cluj-Napoca and Piatra Neamț. In July 2011, the town of Baia Mare erected a two-metre-tall wall to separate the Roma neighbourhood from a main road. The mayor reportedly declared that the wall was designed “to prevent traffic accidents”.

206. See, *inter alia* European Roma Rights Centre (ERRC), *Standards do not apply: inadequate housing in Romani communities*, Budapest, December 2010.

207. Open Society institute, “Equal access to quality education for Roma”, Vol. 2, 2007, Croatia, Macedonia, Montenegro, Slovakia Monitoring Reports, pp. 68, 317 and 388.

In Slovakia, Roma often experience extreme residential segregation.²⁰⁸ It is reported that government-implemented housing programmes aimed at providing municipal flats to address the housing needs of Roma living in social exclusion may have contributed to this phenomenon. Although in some cases these programmes have helped to improve living conditions for some Roma families, “much of the housing made available was built for Roma only, often in existing segregated settlements or even further from the town centre than the housing from which the inhabitants were moved.” Spatial segregation is reinforced by the relatively new trend of building walls around Roma settlements. For example, in October 2009, the town of Ostrovany erected a two-metre-high concrete wall between the Roma and non-Roma parts of town. The wall was built with public funds. The experience was repeated in other Slovakian municipalities. At the end of 2009, a wall was erected by the municipality of Michalovce to prevent Roma from walking through a non-Roma neighbourhood. The same happened in Lomnička, Trebišov and Prešov.²⁰⁹

On a more positive note, in Spain long-term financial commitments have managed to raise the levels of residential desegregation for the Roma. During the past 20 years, housing policies have made the elimination of segregated Roma localities a priority and have integrated Roma into standard housing in non-Roma neighbourhoods. The percentage of Roma in substandard housing has reportedly fallen over the past two decades from 31% to 11.7%. Specific examples of good practice include programmes in the municipality of Avilés (Asturias),²¹⁰ the Autonomous Community of Navarra, and the capital, Madrid.²¹¹ Relocation to good-quality accommodation in desegregated areas has promoted Roma social cohesion and reduced social inequalities.

208. ECRI Fourth report on Slovakia, p. 30.

209. ERRC, *Standards do not apply, inadequate housing in Romani communities*, p. 17.

210. European Commission, “Municipal programme of shanty towns eradication in Aviles (Asturias)”, Peer Review in Social Protection and Social Inclusion and Assessment in Social Inclusion.

211. EU Fundamental Rights Agency, “Case study: Improving Roma housing and eliminating slums, Spain”, October 2009.

Follow-up work after such relocations with non-Roma neighbours is crucial to success, as is Roma participation in assessment. The success of these policies depends to a great extent on stakeholder commitment and tailored solutions in consultation with concerned families. Spain's approach of "explicit, but not exclusive, targeting", in which Roma are the target of policies, but non-Roma are not excluded, is increasingly praised as one of the best models existing for addressing the exclusion of Roma in various sectors, including housing. Continuous monitoring of housing projects is needed, however, to ensure that positive practice today does not devolve into segregated housing tomorrow.

In its 1995 General Recommendation 19 on the prevention, prohibition and eradication of racial segregation and apartheid, the United Nations Committee on the Elimination of Racial Discrimination (CERD) elaborated on the ban on racial segregation set out under Article 3 of the International Convention on the Elimination of All Forms of Discrimination as including "the obligation to eradicate the consequences of such practices undertaken or tolerated by previous Governments in the State or imposed by forces outside the State". The CERD noted that a situation of racial segregation can "arise without any initiative or direct involvement by the public authorities" and urged that "all trends which can give rise to racial segregation" be monitored, with a view to "the eradication of any negative consequences that ensue". The Committee of Ministers of the Council of Europe also has a clear-cut position on segregation of Roma and Travellers: "In order to combat the creation of ghettos and segregation of Roma from the majority society, member states should prevent, prohibit and, when needed, reverse any nationwide, regional, or local policies or initiatives aimed at ensuring that Roma settle or resettle in inappropriate sites and hazardous areas, or aimed at relegating them to such areas on account of their ethnicity."²¹²

212. Committee of Ministers, Recommendation Rec(2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe.

Substandard housing conditions

Segregation is usually accompanied by hazardous living conditions for Roma. Even when not formally segregated, many Roma continue to live in sub-standard conditions in most European countries.

In France, many migrant Roma are in “extremely precarious” situations as regards access to decent housing. Migrant Roma live in very rudimentary camps throughout France, mostly on the outskirts of cities. Some municipalities provide “integration housing” consisting of temporary housing in bungalows or mobile homes for Roma who previously lived in slums.²¹³ In 2008, the Commissioner noted²¹⁴ that most Roma in France live in squalor, often without access to electricity, garbage removal services, sewerage or water, a state of affairs unchanged since a previous report on the situation in 2006.

In 2010 the Advisory Committee on the FCNM noted that in Hungary “despite the fact that public funds have been earmarked for the implementation of the ‘Housing and Social Integration Programme for Residents of Roma settlements’ in 30 municipalities, many Roma families still appear to live in substandard housing.”

In Moldova, a large number of Roma live in conditions that are the very worst in the country. Roma are overwhelmingly likely to be deprived of housing, with one-third living in “insecure” dwellings described in a 2007 UNDP report as “ruins”. Their dwellings are also smaller on average than non-Roma housing in terms of living area per member. More than 80% of Roma households lack bathing facilities, potable water, sewerage and toilets, while 42% lack a kitchen.

In Poland, the Advisory Committee on the FCNM reported in 2009 that “efforts undertaken in the framework of the National Programme for the Roma Community to improve the living conditions, in particular the roads, water pipes and sewage facilities in some particularly

213. ECRI Fourth report on France, pp. 8 and 34.

214. Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to France from 21 to 23 May 2008, Strasbourg, 20 November 2008.

disadvantaged settlements in the Małopolskie Region, have not yielded the anticipated results.” ECRI noted in 2010 that the poor state of the Roma community’s housing persists. Roma NGOs have criticised the implementation of the housing measures in the government Programme for the Benefit of the Roma Community, reporting “unwieldy procurement procedures, initiatives lacking in focus and recalcitrant mayors.”

As far as Romania is concerned, following a visit to the country in 2010 the Commissioner noted that, according to estimates, approximately 60% of Roma live in segregated communities without access to basic state services, such as electricity, running water, central heating and waste disposal. Due to lack of infrastructure, many Roma communities are difficult to access, especially in the winter, and as a result of this, ambulances and fire brigades frequently cannot reach Roma settlements. During his 2010 visit the Commissioner went to the Barbulesti village near Bucharest, which is inhabited mainly by Roma. He noted the substandard conditions which prevail there, particularly the fact that the houses in the village did not have access to a sewage system or to running water. Water is drawn from wells, and there is no solid, asphalt road running through the village. He also paid a visit to the Ferentari neighbourhood in Bucharest, inhabited mainly by Roma. There he noted that certain houses are surrounded by heaps of garbage, as the system of waste disposal is not functioning properly.

In his 2011 report on Serbia, the Commissioner noted that the majority of Roma live in very poor housing conditions. The problems that Roma face in this field are related to the overpopulation of settlements due to the small number of available housing units, unresolved property ownership issues and illegal constructions, and lack of access to public infrastructures. The Commissioner was particularly concerned by the housing situation of the Roma displaced from Kosovo, and Roma who are being forcibly returned from western European countries. They are said to make up around 17% of the Roma population in informal settlements and face the harshest living conditions. The Commissioner noted in particular that the living conditions in the

informal Roma settlement in Marija Bursać, Blok 61 in Belgrade, which he visited in June 2011, “are clearly sub-standard and may be qualified as degrading.”

In Slovenia, many Roma live in settlements without heat, running water or sewerage. During his visit to Roma settlements in the region of Dolenjska in April 2011, the Commissioner noted that “there is still no access to running water and electricity and [the] inhabitants continue to live in isolated settlements in sub-standard conditions.” Amnesty International also reported that some settlements, for example in Trebinje and Krsko, have access to piped water but do not have adequate sanitation facilities, as they are not connected to the public sewage and garbage collection system.

In Ukraine, a large number of Roma live in desperately poor conditions, with many facing severe health and safety hazards. Many Roma have no access to communications, electricity, paved roads, running water or transportation, and one in ten Roma individuals lives in unsanitary housing. Studies have also indicated that many Roma dwellings have half the water supply available to the rest of society.

Extreme international concern has been registered over the situation of Roma in a series of localities in and around Mitrovicë/Mitrovica in Kosovo, which have been, over a period of more than ten years, subjected to housing conditions in very toxic environments. Roma expelled from areas south of the Ibar river – and in particular from the Roma Mahalla neighbourhood, burned to the ground by mobs in June 1999 – were first “temporarily” directed by the United Nations High Commission for Refugees (UNHCR) to live in camps for displaced persons in 1999 which proved to be extremely lead-contaminated because they were in the vicinity of a former lead mine. Responsibility for the camps was transferred to the United Nations Interim Administration Mission in Kosovo in 2001 and then to the Kosovo authorities (specifically the Ministry of Communities and Returns) in 2008. In 2009, Human Rights Watch reported the internally displaced persons’ right to life, right to not be subjected to cruel, inhuman or degrading treatment, right to health, right to a healthy environment and right to

adequate housing have all been violated by this treatment.²¹⁵ The Commissioner devoted extensive energy to resolving this issue during and after his visit to Kosovo in March 2009.²¹⁶ In February 2010, an EU-supported project implemented by Mercy Corps started and the Municipality of South Mitrovicë/Mitrovica agreed to allow the relocation to the Roma Mahalla for some families living in the camps of Česmin Lug and Osterode. A USAID project to rebuild 50 houses in the neighbourhood from which Roma fled began in April 2010 and reportedly includes plans for medical treatment for the families after they are resettled. As of February 2011, most Roma and Ashkali families were resettled from the camps to Roma Mahalla. The Česmin Lug camp was emptied and temporarily fenced, before becoming a parking lot. As of late 2011, it was reported that 19 Roma families still remained in Osterode camp. It was further reported that 10 families who live in Osterode camp cannot return to the south of Kosovo for security reasons.²¹⁷

The Commissioner reiterates that the human right of Roma people to adequate housing in accordance with international legal standards needs to be effectively guaranteed. All public utilities, including water, electricity, collection of waste and maintenance of access roads, need to be provided to Roma settlements.

In 2010 the Council of the European Union adopted a regulation allowing the extension of financing from the European Regional Development Fund (ERDF) to house the extremely marginalised, a category that encompasses many Roma communities. ERDF funds may now be used for the first time to renovate rural housing as well as urban housing and to replace any housing irrespective of location. Member states will have to provide co-financing. This measure removes previously existing

215. Human Rights Watch, *Kosovo: poisoned by lead, a health and human rights crisis in Mitrovica's Roma camps*, 23 June 2009.

216. Report of the Council of Europe Commissioner for Human Rights, 'Special Mission to Kosovo on 23-27 March 2009', Strasbourg, 2 July 2009.

217. More details on the impact of this situation on the health of the residents are provided in Chapter 6, section 6.4, "The right to the highest attainable standard of physical and mental health".

obstacles to using EU funding to resolve extreme slum housing conditions in Roma settlements. However, it remains for national authorities to ensure that these new opportunities are fully acted upon. In addition, the Commission and other organs of the European Union will need to remain vigilant to ensure that this funding is not used for projects that result in, or reinforce, segregation.

Security of tenure and forced evictions

In its work clarifying the normative content of Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, the United Nations Committee on Economic, Social and Cultural Rights has held that “notwithstanding the type of tenure, all persons should possess a degree of security of tenure”.²¹⁸

Roma living in informal settlements or on land they do not own obviously lack security of tenure throughout Europe. However, in a report on inadequate housing of Roma, the ERRC highlighted that “the tenure of Roma living in legally recognised housing may also be insecure”.²¹⁹ The problem of a lack of adequate recognition of tenure in the case of Roma accommodation is evident throughout the Council of Europe space. In central and south-east Europe, Roma settlements which are sometimes several centuries old may lack any form of legal recognition, and title for individual dwellings is similarly missing. Problematic titling and tenure recognition is similarly seen in western Europe, particularly – although not only – in cases of recent migrant Roma communities. Lack of adequate recognition of tenure leads directly to threats of forced eviction and for actual acts of forced eviction.

Forced evictions of Roma have taken place since 2008 in Albania, Bulgaria, the Czech Republic, France, Hungary, Italy, Romania, Russia, Serbia, Slovakia, “the former Yugoslav Republic of Macedonia” and Turkey. For example, in September 2009, the municipality of Bourgas, Bulgaria, demolished as many as 50 homes and evicted the residents

218. CESCR, General Comment No. 4: The right to adequate housing, 1991.

219. ERRC, *Standards do not apply, inadequate housing in Romani communities*.

with the assistance of local police. The families included minors and seniors and numbered almost 200 people who had lived there for years; all were rendered homeless without being offered alternative housing or compensation for the personal effects lost during the demolition.

In France, the policy of frequent forced evictions of Roma from Bulgaria and Romania has been denounced by NGOs for undermining the living conditions of already fragile populations instead of ameliorating the issue of informal settlements. The number of evictions has increased since July 2010, when President Nicolas Sarkozy referred to “illegal camps” inhabited by Roma as sources of criminality, calling on the government to dismantle those camps within three months. On 5 August 2010, a circular instructed local authorities to systematically dismantle “illegal camps”, explicitly prioritising those inhabited by Roma. Following numerous criticisms including by the European Commission, the order was rescinded and replaced on 13 September by one that referred to “any illegal settlement, whoever inhabits it”. Médecins du Monde reported that the multiple evictions have had a negative impact on the health status of Roma migrants and on the spreading of infectious diseases such as tuberculosis. Non-governmental organisations have reported that almost 11 000 Roma migrants have been evicted from 116 sites between January 2010 and September 2011, with a notable increase registered in the second trimester of 2011 and no alternative adequate housing proposed in 85% of the cases. In a particularly disturbing eviction that took place on 1 September 2011, about 200 Roma from Saint-Denis were reportedly forced by anti-riot police onto trains, made available for this purpose by the public transport operator RATP, without any indication of the destination. Some children were even separated from their parents.

Following a visit to Italy in January 2009, the Commissioner for Human Rights expressed deep concern about forced evictions of Roma in Italy. He urged the Italian authorities to avoid evictions without offering alternative housing. Since then, the state of emergency, which is still in force in five regions, has provided the basis for widespread evictions of Roma and Sinti from settlements throughout the country.

In the collective complaint against Italy submitted to the European Committee of Social Rights by the Centre on Housing Rights and Evictions (COHRE), in 2010 the Committee of Social Rights found a series of violations of the Revised Charter by Italy. In particular, the Committee found that the practice of evictions of Roma and Sinti as well as the violent acts accompanying such evictions constituted a serious violation of Article E (on non-discrimination) viewed in conjunction with Article 31.2 (on the reduction of homelessness). As the Commissioner noted following his May 2011 visit to Italy, the Municipality of Milan in particular has registered an “unprecedented spate of systematic evictions” in recent years, with the Deputy Mayor announcing on 27 April 2011 that 500 forced evictions of Roma from their settlements had been carried out since 2007. Some families reported having been moved several times in one week.

Amnesty International reported that on 17 December 2010, the authorities of Cluj-Napoca in Romania forcibly evicted 56 Roma families from the city centre, where some of them had been living for approximately 25 years, without notifying the affected individuals and without alternative solutions being tried. ECRI and Amnesty International have reported that local authorities evict Roma without following legal procedures in Romania; some Roma have even been evicted in mid-winter in the presence of media.

In Serbia, some studies have indicated that out of the 593 existing Roma settlements, 72% have not been authorised, while in Belgrade alone there are 137 informal settlements. In 2011 the Commissioner has noted with concern reports of the increased number of forced evictions of Roma from informal settlements in Belgrade and the reported failure by the authorities to comply with legal safeguards during evictions.

In 2010 Roma living in the informal settlement in the village of Plavecký Štvrtok, Slovakia, were threatened with immediate eviction and destruction of their houses if they failed to prove the legality of their homes. Amnesty International drew attention to the fact that nearly 90 Roma families, some with children, were under threat of forcible eviction. According to the ERRC, the immediate threat of

eviction is on hold, “but the situation in Plavecký Štvrtok remains tense, with the mayor continuing to seek ways to demolish the Romani settlement”²²⁰.

In 2006, the United Nations Committee on Economic, Social and Cultural Rights urged the Government of “the former Yugoslav Republic of Macedonia” to ensure that adequate alternative housing would be provided in the event of evictions and to keep annual statistics on the number of forced evictions, arrangements for alternative housing and the extent of homelessness, as well as steps taken to legalise and improve the Roma settlements. ECRI’s 2010 report further urged the authorities to settle “without delay” the issue of the legalisation of Roma settlements and release funding for implementing the country’s national action plan for Roma housing.

Very high-profile destructions of entire Roma neighbourhoods have taken place in recent years in Turkey. Perhaps the most high-profile – although by no means the only – destruction of a complete Roma settlement in Turkey was the several-year effort by the Istanbul municipality of Fatih to destroy the Roma neighbourhood of Sulukule, an action which triggered a European Parliament hearing on the matter, as well as extensive other communications of concern to the Turkish Government. In the end, international concern was to no avail and the neighbourhood was razed in 2009 to make way for middle-income housing, its inhabitants displaced far from the centre and some of them compelled into forced nomadism.²²¹

Complaints concerning forced eviction of Roma and the destruction of their housing are currently pending before the European Court of Human Rights against Russia.²²²

Frequently, evicted Roma are forced into deeper states of social exclusion, as landlords are unlikely to provide leases to people who have

220. ERRC, *Standards do not apply, inadequate housing in Romani communities*.

221. ERRC, “ERRC report on Turkey for the 2010 EU Progress Reports”, 1 June 2010.

222. European Court of Human Rights, *Bagdonavichus v. Russia*, Application No. 19841/06.

previously been evicted from housing. For example, in the Czech Republic and elsewhere, evicted families often end up paying above-market rates for temporary accommodation in hostels. This kind of housing often does not entitle the persons concerned to register as permanent residents with municipalities, leading to other forms of exclusion including difficulties with school enrolment. Exorbitant rents in such housing arrangements exacerbate poverty.²²³

Some authorities in Europe have led the way in developing positive models of housing for Roma. In Croatia, an example of good practice in legalising informal Roma settlements comes from Medimurje County, where 9 out of 12 existing settlements have been legalised and several infrastructure programmes have been launched since 2005. In 2006, 17 Roma families were relocated from areas at risk of flooding into newly purchased, safer housing in the Donja Dubrava settlement. The Commissioner has observed in 2010 that the legalised settlements of Pribislavec and Loncarevo (in Medimurje) now provide decent living conditions for their residents, in sharp contrast with the situation in the illegal settlements around the capital (such as Struge), where the Commissioner has described living conditions as “degrading”.

Under Article 31 of the European Social Charter, security of tenure supported by law is part and parcel of the notion of adequate housing. The European Committee of Social Rights has noted that in addition to a housing policy for all disadvantaged groups of people to ensure access to social housing, states must set up procedures to limit the risk of eviction. Procedural safeguards have been developed by, among others, the European Committee of Social Rights and the UN Committee on Economic, Social and Cultural Rights in General Comment No. 7. These include genuine consultation with those affected, reasonable notice and access to legal remedies. Adequate alternative housing and compensation for all losses must be made available to those affected, regardless of whether they own, occupy or lease the land or housing in question. When they take place, evictions must be carried out under conditions which respect the dignity of the persons concerned. The

223. ECRI Fourth report on the Czech Republic, p. 35.

law must prohibit evictions carried out at night or during the winter period. Evictions must not render individuals homeless or vulnerable to the violation of other human rights. Compensation for illegal evictions must also be provided. The alternative housing should not result in further segregation.²²⁴

In his 2010 Position Paper on the human rights of Roma and Travellers, the Commissioner has encouraged member states to “bring their legal protection against forced evictions into line with international law, notably with the case law of the European Court of Human Rights and of the European Committee of Social Rights.” The Commissioner observed that in some places a vicious circle prevails in which authorities decline to develop infrastructure because the communities at issue lack formal tenure, and refuse to recognise tenure formally, because of substandard infrastructure. The Commissioner urged the authorities to find all possible ways to resolve these conflicts, with a view to ensuring the housing rights of the persons affected.

Enjoyment of the right to adequate housing by Travellers

Travellers in Europe are also particularly affected by discrimination in the field of housing, substandard living conditions, segregation and forced evictions. Travellers are unequally affected by discriminatory patterns in the allocation of planning permission in cases where Travellers or others purchase private land for the purposes of parking caravans; and discrimination in access to campsites, hotels and/or other temporary accommodation. The lack of camping sites for Travellers makes it particularly difficult for Travellers to have access to adequate housing in accordance with their itinerant or semi-itinerant lifestyle.

In Belgium, Travellers (whether nationals of Belgium or not) suffer a shortage of official transit sites. Some regions offer no sites; some offer only one. Travellers therefore often have no choice but to camp without access to drinking water, electricity or restrooms. It was

224. Digest of the Case Law of the European Committee of Social Rights’, pp. 171-2; CESCR, General Comment No. 7: The right to adequate housing (Article 11.1): forced evictions, 1997.

reported that local residents sometimes pressure local officials not to establish transit sites. An exception is the Walloon Region, which set up an inter-ministerial working group in 2007 to co-ordinate the regional government's action on Traveller needs; legislation there provides subsidies for municipalities willing to build transit sites and the region explicitly encouraged this in 2008.²²⁵

In France, the Law of 5 July 2000 on the Reception and Accommodation of Travellers, known as the Besson Law, requires municipalities with a population of more than 5 000 to provide a site with facilities and access to water and electricity. However, local authorities show continued reluctance to implement this requirement, resulting in a shortage of available places for Travellers. According to French authorities, at the beginning of 2009, 40% of the required number of places on sites had been made available. In 2010, ECRI noted with regret that “the number of stopping places available is therefore still insufficient”. Given the lack of transit sites, many Travellers are forced to live in caravans that are parked illegally and are exposed to penalties and forced evictions. Evictions are not always carried out in compliance with international standards. Often, Travellers' sites are created by municipalities “near to facilities which are major sources of nuisance (such as electrical transformers or very busy roads), making them difficult – if not dangerous – to use, particularly for families with young children”. In 2009, the Council of Europe's European Committee of Social Rights found France in breach of numerous articles of the Revised European Social Charter in respect of the housing situation of Travellers, due in part to social exclusion, forced eviction as well as residential segregation, substandard housing conditions and lack of security.²²⁶

In the United Kingdom, ECRI reports that many caravans remain parked without permission and that the “authorities acknowledge the lack of sites and have promoted legal reform and required local

225. ECRI Fourth report on Belgium, pp. 8 and 34.

226. European Committee of Social Rights, Decision on the Merits, 19 October 2009, *European Roma Rights Centre (ERRC) v. France*, Complaint No. 51/2008.

authorities to produce needs assessments.” Local councils are reluctant to provide more sites due to extreme resistance from locals, and the renovation of some sites has led to a reduction in the number of places on offer, since the area for each place has been expanded without increasing the area of the site overall. Travellers then have no choice but to use unauthorised land. Local authorities tend to resort to evictions involving legal proceedings instead of mediation or negotiation.²²⁷ One example of this is Dale Farm, the largest Traveller site in the UK created in the 1970s. In recent years, local authorities refused planning permission for residence on five acres which had previously been licensed as a scrap yard; some families occupied the site without permission. In response, in 2005 local authorities recommended that part of Dale Farm be confiscated through eminent domain. Several attempts by Travellers to appeal against the decision in court were turned down. The eviction of 86 families, including 110 children, was planned to take place in September 2011, while no alternative housing solution had been offered, which has triggered strong resistance as well as expression of international concern. The Commissioner stressed that going ahead with the eviction would be immature and unwise and that the only way forward was for the government or the local authority to appoint people trusted by both sides to find an agreed solution.²²⁸

In some cases, camping sites for Traveller accommodation have inferior forms of protection of security of tenure than standard housing, an issue which has led to at least one negative finding by the European Court of Human Rights, in the case of *Connors v. the United Kingdom*.²²⁹ In this case, the Court found that the eviction of the applicant and his family had not been accompanied by the requisite procedural safeguards.

227. ECRI Fourth report on the United Kingdom.

228. See www.guardian.co.uk/uk/2011/sep/04/dale-farm-travellers-jewish-backing?INTCMP=SRCH

229. See European Court of Human Rights, judgment in *Connors v. the United Kingdom*, Application No. 66746/01, Judgment of 27 May 2004.

Particular attention should be paid to the enjoyment of the right to adequate housing by Travellers. Local authorities play a crucial role in this domain. The Commissioner has emphasised that:

... in countries where there is a migrant Traveller population, there should be a statutory obligation on local authorities to provide short- and long-term caravan sites, that meet basic standards of decency. Local authorities should receive financial assistance for constructing or laying out those sites. Furthermore, the housing of Travellers should not be approached through the unique lens of 'halting sites', but possibilities for Travellers to live on private land in caravans must be included in urban planning and made possible in practice.²³⁰

Homelessness

Roma migrants from Bulgaria, Romania and elsewhere in the Balkans have frequently become homeless in western Europe. Homelessness is also reported among Roma and Travellers in their own countries, with Roma particularly evident among post-1989 populations of homeless adults and children in countries such as Bulgaria, the Czech Republic, Hungary and Romania.

In 2008, the Commissioner cited a report by Médecins du Monde that claimed that in France about 53% of Roma live in caravans (many of which are not mobile), 21% of Roma squat, and 20% live in huts. The Internal Security Act of March 2003 permitted police to intervene within 48 hours (without permission from courts or landowners) against anyone interfering with “law and order, hygiene or public peace and safety.”

Homelessness is not confined to western Europe, however. Thus, for example, in Georgia, Roma families in Tbilisi who cannot afford rental housing live on the streets, sheltering temporarily in train stations. Roma internally displaced persons (IDPs) from Abkhazia can be found living in settlements across Georgia, especially in the Samgori

230. Commissioner for Human Rights, Position Paper of the Commissioner for Human Rights, Position on the human rights of Roma and Travellers.

quarter of Tbilisi.²³¹ According to ECRI, IDPs in Georgia have also been accommodated in collective centres where they suffer from a lack of decent housing.

Concerted and sustained efforts are required at a local, national and pan-European level to end the housing crisis of Roma and Travellers. The rights of Roma and Travellers to live in adequate housing in accordance with international legal standards need to be guaranteed. In its Recommendation on improving the housing conditions of Roma and Travellers in Europe the Committee of Ministers urged that those member states which had not already done so should “develop a comprehensive policy and legal framework related to housing, which is necessary for sedentary and itinerant people (in accordance with the geographical specificity) to exercise their right to adequate housing.” The EU Framework for National Roma Integration Strategies up to 2020 also includes housing as one of the key areas on which EU member states should focus.

6.3. Access to employment

The challenges affecting Roma and Travellers’ inclusion in the labour market are numerous and have resulted in the near-complete exclusion of Roma and Travellers from the job markets of Europe, causing worryingly high unemployment rates. Endemic discrimination combined with under-education often offsets the potential positive effects of emerging employment policies targeting Roma and Travellers.

High unemployment rates among Roma and Travellers

Despite efforts to increase labour market access in some countries, levels of unemployment among Roma and Travellers in Europe are in many places at levels significantly higher than among non-Roma. In Bulgaria, for example, the Roma unemployment rate is reportedly

231. Szakonyi D., “No way out: an assessment of the Romani community in Georgia”, European Centre For Minority Issues (ECMI) Working Paper No. 39, p. 7, Flensburg, February 2008.

70-80%, with the highest rates among women and youth.²³² In many Roma communities in the Czech Republic, 90% or more of the working-age population are unemployed.²³³ In Ireland, Traveller organisations stated that recent improvements in Travellers' access to education have not yet resulted in better integration into employment. In the 2002 census, 73% of Traveller men and 60% of Traveller women were unemployed.²³⁴ In Serbia, the "majority of Roma are outside the employment system, they are not legally economically active and are mostly registered as unemployed ... Roma who live in informal settlements find it difficult to register with the National Employment Office".²³⁵ ECRI's 2010 report on "the former Yugoslav Republic of Macedonia" noted that the employment situation of the Roma had not improved since the publication of ECRI's previous report in 2006. Employment of Roma within the public service sector had "scarcely increased". In 2008 ECRI characterised the situation of Roma employment in Ukraine as "worrying". Roma organisations have reported only 38% of Roma are employed and only 21% have full-time jobs.

The almost total unemployment of working-age Roma in several European countries represents an inexcusable waste of human potential. Governments ultimately bear responsibility for allowing those living in the most desperate circumstances to fall through the cracks of the employment and social security systems and for permitting their countries' labour markets to generate inequality and poverty. Member states bound by the European Social Charter have undertaken, in accordance with Article 1 of the Charter, "to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view

232. Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Bulgaria from 3 to 5 November 2009, Strasbourg, 9 February 2010, p. 14.

233. ECRI Fourth report on the Czech Republic, pp. 32-3.

234. ECRI, Third report on Ireland, adopted on 15 December 2006, published on 24 May 2007, p. 26.

235. ECRI Second report on Serbia, adopted on 23 March 2011, published 31 May 2011, p. 18.

to the attainment of full employment”. According to the European Committee of Social Rights, this is a somewhat flexible standard: that is, failure to achieve full employment does not in itself lead to a conclusion of nonconformity by the state party. However, “the efforts made by states must be adequate in the light of the economic situation and the level of unemployment”.²³⁶

Direct discrimination in access to employment and in the workplace

In a number of countries, Roma and Travellers are denied employment on discriminatory grounds, due to their ethnicity. Those Roma that are employed are more inclined to face discrimination in the working place. Discrimination also affects educated Roma, who are constrained by a “glass box” that prevents them from progressing upwards.²³⁷ Throughout Europe, while perceptions of discrimination are very widespread, data are lacking, among other things because discrimination on the labour market is frequently covert.

Roma have been reported to face discrimination in employment in many countries, including the Czech Republic, Estonia, Finland, Georgia, Hungary, Latvia, Poland, Portugal, Romania, Serbia, Spain and Slovakia.

In Romania, even Roma who are university graduates are reported to be discriminated against in employment. Very few businesses participate in the existing government grant schemes to promote Roma employment. Other programmes facilitating access to employment or loans are so complicated that it is all but impossible for most Roma to access them. Integration of Roma into the labour market in the long term is by no means ensured.²³⁸ In Spain, an April 2007 survey by the Labour and Social Affairs Ministry found that the vast majority of

236. “Digest of the Case Law of the European Committee of Social Rights”, p. 19.

237. ERRC, *The glass box: exclusion of Roma from employment*, Budapest, February 2007, p. 9.

238. ECRI Third report on Romania, adopted on 27 June 2007, and published on 12 February 2008, pp. 29 and 33.

Roma in Spain are discriminated against in the labour market; 47% of those surveyed said racism was their greatest problem.²³⁹

In Serbia, almost no Roma are employed in a public or state-owned enterprise, “indicating a pattern of discrimination”. Roma representatives reported cases where “Roma who present themselves for job interviews are informed that the position has been filled” and a few cases of discriminatory job advertising. According to ECRI, “employed Roma reportedly earn 48% less than the majority.”

An ERRC study carried out in Bulgaria, the Czech Republic, Hungary, Romania and Slovakia shows that one in four working Roma reported that their pay and other conditions were less favourable than for non-Roma doing the same job. In the workplace, inequalities have been noticed in jobs that involve direct contact with clients, in rates of pay and in the type of positions offered, with lower-status positions often given to Roma. According to the ERRC, in Slovakia, “where a higher incidence of university-educated Roma was reported than in other countries, nearly all university-educated Roma interviewed were in work related to their ethnicity, such as community work, the Social Development Fund or in public service specialising in Roma issues”.²⁴⁰

Discrimination is the primary engine of social exclusion as far as Roma and Travellers’ access to employment is concerned. Racial and ethnic discrimination in accessing the labour market and in the workplace violates Articles 1, 2, 3 and 4 of the European Social Charter (among other provisions). In EU member states, such discrimination violates the EU Racial Equality Directive (Directive 2000/43/EC). Measures to address Roma and Traveller unemployment must include assistance to victims of discrimination in claiming their rights through the courts so that employers who discriminate can be punished and impunity for discrimination in employment can be brought to an end.

239. *International Herald Tribune*, “Recent survey reveals poor living conditions of Spanish Roma”, 20 November 2007.

240. ERRC, *The glass box: exclusion of Roma from employment*, op. cit., p. 44.

Indirect discrimination in access to employment

In addition to direct discrimination, indirect discrimination is also a crucial factor in determining the exclusion of Roma and Travellers from the labour market. Thus, for example, in France, many migrant Roma are from either Bulgaria or Romania. Since 2007 all Bulgarians and Romanians have had access to employment in France in a restricted set of just 150 occupations and cannot be employed unless the employer pays a fixed tax of approximately 900 euros. Obtaining such a contract is a prerequisite for regularising residence status.²⁴¹ In 2008, the Commissioner noted that France's 2007 Integration, Immigration and Asylum Act was supposed to allow prefectures to issue a "worker's card" to any irregular residents who had secured job offers and wished to regularise their status; however, the lengthy administrative procedure involved means this law has been difficult to implement in practice.²⁴² As of 1 July 2008, restrictions in place for citizens of those countries which joined the EU in 2004 were removed, but the restrictions mentioned above with respect to occupations still apply to Bulgarians and Romanians. This is one reason why some Roma migrants resort to undeclared work in France. In its Decision 2009-372 of 26 October 2009, the French Haute Autorité de Lutte contre les Discriminations et pour l'Égalité (HALDE) recommended the jettisoning of these restrictions which disproportionately impact on Roma.²⁴³ The Commissioner has called on the French authorities to ensure better access to employment for Roma, noting that "a successful integration policy has to involve a role in the economy for adults."²⁴⁴

The lack of camping sites also constitutes an obstacle to access to employment and self-employment by Travellers, for example in Belgium.²⁴⁵

241. ECRI Fourth report on France, pp. 7 and 36.

242. Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to France from 21 to 23 May 2008, 20 November 2008.

243. HALDE, Délibération No. 2009-372 of 26 October 2009.

244. Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to France from 21 to 23 May 2008.

245. ECRI Fourth report on Belgium, pp. 8 and 35.

Member states should adopt effective anti-discrimination legislation and ensure the identification and removal of discriminatory barriers (such as regulations that disproportionately affect Roma businesses) in order to combat indirect forms of discrimination. Equality bodies have a great role to play in advocating for the promotion of equality, including combating indirect discrimination against Roma and Travellers.

Employment of Roma women

Employment issues facing Roma on the labour market have an important gender dimension. European employers discriminate against Roma women on the grounds of both ethnicity and gender. However, as noted by the Spanish NGO *Fundación Secretariado Gitano*, Roma women often shoulder the brunt of family financial obligations. In Spain, women aged 16-29, in particular, experience higher unemployment and work more part-time and temporary jobs. The policies aimed at integrating Roma women into the labour market have reportedly not yet contributed to eliminating these inequalities.²⁴⁶

The study commissioned by the European Commission published in 2006 entitled “Economic Aspects of the Condition of Roma Women” found that at the time of the study there was little to no information available in the EU on the vocational training of Roma women. Roma women are frequently involved in family-organised economic strategies, such as participation in markets, rural trade and seasonal agricultural work. The study noted that Roma women’s low levels of formal educational achievement mean they are generally denied occupations in production or services. The EU member states which acceded in 2004 reported, interestingly, that Roma women were better integrated into the labour market prior to the economic transformation of the 1990s. Roma women are also more extensively unemployed than Roma men.

Member states should make sure that they involve Roma women in employment-related programmes that concern them and that

246. *Fundación Secretariado Gitano*, “Grounds for concern regarding compliance with the Articles of the Convention”, Shadow Report to UN CEDAW.

national strategies for Roma inclusion are gender-sensitive. Pay gaps and workplace discrimination against Roma women should be abolished. As noted by the PACE Committee on Equal Opportunities for Women and Men, “Roma women need social and legal support to improve their socio-economic status and to ensure their access to education and health as preconditions for employment.”²⁴⁷ Specific measures should be taken to improve Roma women’s economic independence. These might include the extension of micro-credit loans based on group or mutual solidarity (provided interest rates on money loaned are not exorbitant), incentives for employers for hiring Roma women and the strengthening of vocational training and lifelong professional development support.

Over-representation of Roma in un- and under-qualified employment and in the informal economy

As a result of a combination of under-education and ill-addressed discrimination on the job market, generations of Roma have pursued work on the margins of the economy. In Greece for example, as throughout the Balkans, many Roma work in garbage and scrap collection; few work in mainstream employment. In Moldova, half of the Roma live in extreme poverty (compared to 19% of the majority population), and one-third of the Roma are in the bottom 20% of the population with respect to income. The poorest Roma live in small towns and have the largest number of dependants. Roma thus become much more reliant than non-Roma on collecting and selling discarded items; fortune-telling; gambling; remittances from relatives abroad; selling off personal property; “unofficial” income from begging; and welfare. In Portugal, many Roma make their living selling goods at fairs and markets. In “the former Yugoslav Republic of Macedonia”, Roma reportedly do not hold more than 1% of public service jobs and are “primarily employed in

247. Parliamentary Assembly of the Council of Europe, Committee on Equal Opportunities for Women and Men, “The situation of Roma in Europe and relevant activities of the Council of Europe Opinion Committee on Equal Opportunities for Women and Men”, 28 April 2010.

menial functions”.²⁴⁸ In Kosovo, the OSCE reported that “some Roma engage in seasonal work, for example in construction and agriculture. However, the most common types of employment are informal labour such as collecting scrap metal, or low-paid cleaning activities. Only a very limited number of Roma are employed as civil servants in Kosovo or Serbian-run institutions, and are represented in the public employment sector or in former socially owned enterprises.”²⁴⁹ In Azerbaijan, Finland, Georgia and Switzerland, especially in urban areas, Roma are reportedly regularly engaged in begging for economic survival.

There is a pressing need to increase the chances of Roma and Travellers entering the labour market, including by improving the quality of education and public vocational training programmes for Roma and Travellers. The Committee of Ministers also recommends that income-generating activities be developed in partnership between Roma and non-Roma, in fields such as tourism, recreation, culture, transport, environmental restoration, new aspects of recycling and disposal, agriculture and animal husbandry.²⁵⁰ Some positive examples are presented below.

Efforts to improve Roma access to the labour market

Some countries have begun working to improve access to the labour market by Roma, in some cases with the assistance of European Union funding. In his February 2010 report following a 2009 visit to Bulgaria, for instance, the Commissioner noted with appreciation that the Ministry of Labour and Social Policy had adopted a number of measures to improve the access of Roma to the labour market. In 2007, about 22 000 Roma participated in programmes to increase their professional qualifications and competitiveness within the labour market as well as to motivate them to establish a career path and actively seek employment. Programmes to develop entrepreneurship among

248. ECRI, Fourth report on “the former Yugoslav Republic of Macedonia”, p. 29.

249. OSCE Mission in Kosovo, Community Profiles 2010, p. 190.

250. Committee of Ministers, Recommendation Rec(2001)17 on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe, adopted on 27 November 2001.

the Roma community were developed. The Employment Agency regularly organises job fairs for Roma in areas with predominantly Roma populations. It also employs Roma experts to improve its services for Roma and to train its staff to work with unemployed Roma.

In Poland, measures to improve Roma employment have been taken as part of the Programme for the Benefit of the Roma Community in Poland 2004-2013, administered by the Ministry of Internal Affairs and Administration. The Advisory Committee on FCNM reported in 2009 that, since 2006, projects to reduce social exclusion of Roma have benefited from financing available from the European Social Fund, and this financing has contributed to the establishment of enterprises owned and run by Roma in four towns.

In 2009, the Advisory Committee on the FCNM reported that specific measures had been taken by the National Employment Office in Serbia to attract Roma to self-employment projects.

Spain's ACCEDER Programme on access to employment for Roma has been noted as an example of good practice in Europe. It was established in 2000 as part of the European Social Fund's (ESF) Multiregional Operational Programme "Fight against Discrimination" and the European Regional Development Fund for 2000-2007 and has continued in ESF 2008-2013. The programme is managed by the NGO Fundación Secretariado Gitano (FSG) and co-funded by the Spanish Government, the governments of several autonomous communities, some city councils and some private donors. As of July 2010, 3 000 private companies were said to be involved in ACCEDER, as are the Roma communities, various social networks and the media. The programme is implemented nationwide through 46 locally integrated employment centres and features counselling to Roma individuals on how to access employment as well as the promotion among businesses and governments of proactive policies for Roma hiring. The centres offer guidance and training to Roma individuals and facilitate their labour market entry; they also study the labour markets and perform mediation with prospective employers. During his visit to Spain in April 2011, the Commissioner was pleased to learn that over the past ten years more than 58 000 Roma benefited

from the programme, leading to almost 40 000 new employment contracts for Roma.²⁵¹ According to the FSG, reasons for success in the past ten years have included: having a balance between economic and social perspectives; a commitment to the programme from both the authorities and Roma organisations; careful scope; the use of intercultural and multidisciplinary working groups; a long-term perspective; and the presence of a national dimension of the programme, implemented in co-operation with the private sector at local level.²⁵²

However, measures aimed at improving Roma economic self-sufficiency in Europe are in their infancy; it is only recently that pilot projects offering micro-credit to Roma women in particular have been implemented in EU member states such as Bulgaria and Spain.²⁵³

The EU Framework for National Roma Integration Strategies up to 2020 has established the objective of “cutting the employment gap between Roma and the rest of the population.” The Commissioner has stressed the need for specific measures in the field of Roma employment: “We cannot eradicate [anti-Gypsyism] through measures aiming at formal equality alone. Roma must reach effective equality of opportunity with everyone else and this clearly requires positive measures to compensate for long-term discrimination and prejudice. Otherwise the situation of many Roma will get worse rather than better.”²⁵⁴

When governments themselves practise or ignore discrimination in hiring and fail to lead on affirmative action measures, there is no reason

251. Letter of Thomas Hammarberg, Commissioner for Human Rights, to Ms Leire Pajin, Minister of Health, Social Policy and Equality, Strasbourg, 9 May 2011.

252. Examples of good practice in the field of protection and promotion of human rights listed in response to the invitation by the Commissioner for Human Rights, Example from Spain, Fundacion secretario Gitano, October 2010.

253. Corsi M. et al., “Ethnic minority and Roma women in Europe: a case for gender equality?”, Synthesis report of the Expert Group on Gender Equality, Social Inclusion, Health and Long-term Care (EGGSI) of the European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities, November 2008, p. 12.

254. Commissioner for Human Rights, “Roma job seekers are discriminated against”, Viewpoint, 2007.

to expect the private sector to do so. Specific measures should include the allocation of funds to develop programmes and various types of assistance that encourage the creation of enterprises, recruitment of Roma in enterprises or administrative departments or the devising of specific training programmes. Measures to facilitate access to loans by Roma are needed, for example by making provision for direct financial assistance and/or providing partial government guarantees for loans contracted between Roma enterprises and banking institutions. Consideration might also be given to financial incentives for entrepreneurs who employ Roma. The Spanish programme ACCEDER, which promotes employment of Roma, including self-employment, thanks to its model of co-operation between the public and private sectors, could provide a blueprint for other countries. Where such targeted programmes exist, the Commissioner calls on member states to maintain political and financial support for them, as well as to ensure that Roma are not disproportionately affected by the current economic situation.

6.4. The right to the highest attainable standard of physical and mental health

Throughout Europe, the average life expectancy of Roma and Travellers is shorter than that of non-Roma and non-Travellers. Roma and Traveller infant mortality rates are also higher.²⁵⁵ Factors precluding Roma and Travellers' access to health care include a lack of funds to pay for insurance or treatment, a lack of identification documents and a lack of means of transportation from remote areas to health care facilities. Health care providers also reportedly discriminate against Roma, including in the provision of emergency services, and some hospitals regularly segregate Roma patients away from non-Roma patients, especially in maternity wards. Very few Roma or Traveller persons work in health care provision in Europe. As noted above, segments of the Roma community live in slum housing manifestly threatening to their health.

255. Ringold D., Orenstein M.A. and Wilkens E., *Roma in an expanding Europe: breaking the poverty cycle*, World Bank, Washington DC, 2003.

The life-threatening living conditions of approximately 600 Roma, including families and children, for more than ten years, since the late 1990s, in a lead-contaminated area in northern Kosovo (Česmin Lug and Osterode, and Žitkovac, Mitrovica) has been probably the most extreme case in Europe of state failure to safeguard Romas' right to health.²⁵⁶ As mentioned above,²⁵⁷ since 1999 camp residents have been subjected to extremely high levels of lead contamination with serious health consequences for children and pregnant women in particular. Poor hygienic conditions and nutrition compound the effects of the contamination. Scores of residents of these camps have reportedly died. In 2004 the World Health Organisation (WHO) tested the Roma children's blood for lead, and the readings for 90% of the children were higher than the medical equipment was capable of measuring. The WHO and the International Red Cross recommended that the camps be immediately evacuated. In 2006 the Žitkovac camp was closed but the residents were relocated into the lead-contaminated Osterode camp. Only in 2010 was the Česmin Lug camp closed and the residents were relocated to their former settlement in the Roma Mahalla. Children resettled to Roma Mahalla have shown reduced lead levels. However, the consequences for their health need to be addressed on a long-term basis. It is reported that the health care services required to this end might not be easily accessible from their present location, and that socioeconomic insecurity there is unacceptably high. As of October 2011, 19 families still remain in the Osterode camp. While these families are waiting for housing solutions to be found for them in northern Kosovo, they continue to be exposed to high levels of lead contamination.

Denial of and discrimination by emergency medical services

Cases where emergency services have failed to respond in an efficient manner to calls for assistance coming from Roma have been reported throughout Europe. For instance, in October 2006, a four-month-old

256. See Commissioner's Report on Kosovo, 2 July 2009, and press release on his visit to Kosovo, 15 February 2010. The situation of the Roma families in Mitrovica is described in more detail in "Access to adequate housing".

257. "Access to adequate housing – Substandard housing conditions" on p. 144 above.

Roma infant died after emergency medical services failed to arrive despite repeated telephone calls by the parents from a Roma neighbourhood in Sofia, Bulgaria. As of early 2007, the Sofia Regional Prosecutor had started an investigation.²⁵⁸ Also in 2007 in Bulgaria, a Roma woman living in a quarter of Sofia known for its large Roma population was found to have suffered a stroke in her yard; despite numerous calls to emergency services, it took more than two hours for the ambulance to arrive. While she did not die until after arriving at the hospital, doctors reportedly told her relatives that she would have survived if the ambulance had not taken so long. Her relatives have accused the ambulance dispatcher of discrimination and asked officials to review the incident.²⁵⁹ Emergency medical assistance is also reportedly slow to arrive in Roma neighbourhoods in Hungary or is sometimes even denied to Roma.²⁶⁰ In Moldova, international and regional monitoring bodies, as well as civil society, have indicated a number of concerns, including reports of denial or delay of emergency health care services in excluded Roma settlements. In September 2010, Slovak emergency medical responders reportedly placed the body of a Roma man who had died in their ambulance on the street in front of his home, greatly offending his family. Spokespeople for the ambulance company defended the crew as having correctly followed instructions from the regional operations centre and said police had supervised the body until it was retrieved by undertakers.²⁶¹ Roma in Kırklareli, Turkey, have alleged that both ambulance and fire services refuse to attend incidents in their neighbourhood. Their only means of transport to hospital is by horse. Wrongful deaths due to refusal of treatment have also been reported. In 2006, a Roma man died at the state hospital in Çerkezköy, Turkey, of a gunshot wound to the leg when a surgeon refused to treat him; witnesses said the doctor made

258. Romani Baht Foundation, “Romani baby dies in Bulgaria when ambulance does not show up”, posted by ERRC, 19 June 2007.

259. Sofia Echo, “Romani woman dies in Bulgarian capital after waiting two hours for ambulance”, posted by ERRC, 20 November 2007.

260. ECRI Fourth report on Hungary, p. 38.

261. Romea, “Roma man dies in ambulance in Slovakia, crew dumps his body in front of his home”, 13 September 2010.

racist remarks about the patient, who was transferred to another hospital and died of blood loss during the journey. When the patient's wife filed suit, the witnesses withdrew their statements regarding the doctor's remarks.²⁶²

Discrimination by health care providers, including segregated wards

Racial discrimination against Roma and Travellers in access to health care is widely reported throughout Europe and ranges from segregation in health care facilities to the provision of low-quality services. Roma women are particularly affected by this phenomenon.

Discrimination against Roma in health care provision is a serious problem in Bulgaria, where pregnant Roma women are segregated from others in hospital wards which are less sanitary and less frequently visited by staff.²⁶³ In Hungary, Roma women are reportedly segregated from others in maternity wards. In one instance, janitorial services were denied to the Roma-only ward, and staff required the patients to clean the ward themselves. Roma patients there have also reported that “doctors refuse to touch them or make only [a] cursory examination, leading in some cases to misdiagnosis or prescription of inadequate medicines”.²⁶⁴ In 2008, 17% of Travellers in Ireland reported they had experienced discrimination when trying to register with a doctor.²⁶⁵ In “the former Yugoslav Republic of Macedonia”, Roma experience widespread discrimination in access to health care, as noted by the United Nations Committee on Economic, Social and Cultural Rights in 2006. ECRI's 2010 report on this country noted that the issue of Roma access to health care is “far from settled” and poses particular problems; NGOs report that Roma continue to be victims of prejudice and neglect by health care professionals and social workers. The separation of Roma women in maternity wards has also been reported in Turkey. Roma interviewed in İzmir and Manisa reported

262. Edirne Roma Association, ERRC, Helsinki Citizens Association, *We are here!*, p. 104.

263. ECRI Fourth report on Bulgaria, f p. 26.

264. ECRI Fourth report on Hungary, p. 38.

265. Minority Rights Group International, Ireland Overview, updated June 2008.

that the medical staff in public hospitals have subjected Roma patients to differential treatment based on their perceived physical differences.²⁶⁶ Roma interviewed in Bartın report that hospital staff do not give Roma patients the same service as non-Roma patients and that non-Roma patients refuse to sit next to them in the waiting rooms. In Şavşat, Roma reported that if hospital staff were able to identify patients as Roma they would be made to wait longer than necessary, even in emergencies. Doctors are sometimes reluctant to register Roma and Travellers in the United Kingdom or are unsure how to best approach them; some government initiatives to address this are, however, reportedly in place.

Exclusion from health insurance and denial of medical services as a result of a lack of personal documents or related status issues

In many countries, Roma have been excluded from health care schemes as they cannot afford to pay health insurance contributions or are not formally employed or registered in employment agencies. Lack of identification documents is also a problem hindering Roma access to health care.

For example, in Bosnia and Herzegovina, the lack of personal identification prevents Roma from registering in an employment office, which is, in turn, a prerequisite for unemployed persons to have health insurance.²⁶⁷ Around 46% of Roma in Bulgaria, and in some areas up to 90%, have no health insurance.²⁶⁸ While medical facilities do exist near almost every Roma settlement in Georgia, Roma often purportedly cannot afford to pay for care.²⁶⁹ A lack of identity documents also hampers Roma access to health care in Georgia.²⁷⁰ In Moldova,

266. Edirne Roma Association, ERRC, Helsinki Citizens Association, *We are here!*, p. 104.

267. ECRI Second report on Bosnia and Herzegovina, adopted on 7 December 2010, published on 8 February 2011, p. 34.

268. ECRI Fourth report on Bulgaria, p. 25.

269. Szakonyi D., “No way out: an assessment of the Romani community in Georgia”, ECMI Working Paper No. 39, Flensburg, February 2008, p. 5.

270. ECRI Third report on Georgia, adopted 28 April 2010, published 15 June 2010, p. 23.

the compulsory health insurance system covered about 78.6% of the population in 2009, but only 23% of Roma households had a medical insurance policy.²⁷¹ In the Netherlands, NGOs undertaking mediation work between health care institutes and Roma patients report that lack of personal identification results in difficulties in practice for some Roma in accessing care.²⁷² In Ukraine, Roma access to medical services is a major concern as many lack the financial means to pay for medical treatment.²⁷³

The lingering effects of the citizenship law of 1993 mean many Roma in the Czech Republic who were formerly citizens of Czechoslovakia are unable to access public health care because they were never granted Czech citizenship. Roma living in the Czech Republic who had no choice but to claim Slovak citizenship after 1993, expectant mothers in particular, may have to travel to Slovakia for health care should they want to access a national health plan and not be treated as foreigners in the health care system.²⁷⁴

In France, migrant Roma from other EU countries experience difficulties in securing the same access to health insurance as other EU citizens in practice. The French NGO Collectif RomEurope reported that until Romania and Bulgaria joined the European Union, the universal health coverage scheme (*Couverture Médicale Universelle*) was available to all after three months of residence in the EU. Since 2007, an extra condition of proof of sufficient resources has been required of individuals by social services, thereby negatively affecting migrant Roma from Romania and Bulgaria.²⁷⁵ Migrant Roma can then only benefit from the basic insurance scheme (*Aide Médicale d'Etat* or AME). However, since March 2011, the AME costs 30 euros, which

271. UNDP, “Roma in the Republic of Moldova”, p. 14.

272. Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on the Netherlands, adopted on 25 June 2009, p. 15.

273. ECRI, Third report on Ukraine, p. 22.

274. ECRI Fourth report on the Czech Republic, p. 13.

275. Collectif RomEurope, “Rapport d'étude, Mettre en œuvre des actions de médiation sanitaire auprès du public rom d'Europe de l'Est présent en France – Etat des lieux des expériences ressources et préfiguration de projets pilotes”, Mars 2009, p. 19.

represent an additional obstacle to enrolment in the health insurance scheme. As a result, 77% of Roma interviewed by Médecins du Monde were not covered by the AME in 2011.²⁷⁶

Exclusion from health care as a result of physical distance from health care facilities

In a number of cases, the fact that Roma live in remote or isolated areas and lack means of transportation is an additional obstacle to their access to health care provision. In Albania, many Roma live in areas with very limited health care services.²⁷⁷ Approximately 55% of Roma in Bulgaria have difficulty accessing health care due to lack of transportation and residential isolation.²⁷⁸ Access to hospital treatment is difficult for Roma in Hungary and those living in isolated rural areas have great difficulties accessing even general practitioners. ECRI reported that in Hungary the “isolation of Roma in rural areas in particular means that access to general practitioners is often more difficult”. In Poland, factors contributing to the disadvantaged position of Roma in health care include lack of access to facilities due to residence in remote areas. These difficulties are being addressed by free medical consultations and “health visitors” offering targeted assistance and advice to Roma women and families in particular.

Health outcomes

As a result of a range of factors (including those noted above) as well as poor housing conditions, Roma and Travellers suffer serious impacts on their health. This is especially an issue for Roma and Traveller women and children. Roma life expectancy is reported to be about 10 years shorter than that of non-Roma and non-Travellers on average in Georgia, Hungary, Moldova, Spain and the United Kingdom, to take just a few examples. In Bulgaria, authorities acknowledge

276. Médecins du Monde, “Parias, les Roms en France”, press release, July 2011.

277. ECRI Fourth report on Albania, adopted 15 December 2009, published 2 March 2010, p. 8.

278. ECRI Fourth report on Bulgaria, p. 25.

that Roma suffer disproportionately from lung disease “as a result of their customary employment”; 68% of Roma households include a chronically ill member.²⁷⁹ There is also a high death rate among Roma infants and children in Georgia.²⁸⁰ In Moldova, health indicators such as infant morbidity and mortality are much worse for Roma than for non-Roma, with infant mortality and miscarriages among Roma almost twice that of non-Roma. Roma also suffer more from chronic disease than non-Roma.²⁸¹

In 2009 the Advisory Committee on the FCNM reported that Roma organisations, including Roma women organisations, describe the health situation of Roma in Serbia, in particular children, the elderly, and women, as “alarming”. In Spain, according to a study published in 2004 by the Ministry of Health, Social Policy and Equality, infant mortality among Roma is 1.4 times higher than the national average due to deficient child vaccinations and inadequate child medical follow-up.²⁸² Respiratory illnesses are endemic amongst Roma in Turkey, particularly amongst Roma women, where the incidence is apparently some three or four times the national average.²⁸³ In Ukraine, an increase in various cardiovascular and infectious diseases among the Roma population has been noted. Malnutrition is also a problem there.

Roma and health care systems: overcoming mistrust

In many places in Europe, a gulf of suspicion and mistrust separates Roma and health care providers. The health care systems of many countries in Europe are full of fearful rumours about large groups of Roma causing disruptions during the illness or death of a family member. Among Roma, in many places there is a strong suspicion that callous and uncaring health care providers do their best to treat Roma only minimally.

279. Ibid.

280. Szakonyi D., “No way out: an assessment of the Romani community in Georgia”, op. cit., p. 5.

281. Căce S. et al., “Roma in the Republic of Moldova”, UNDP, Chişinău, 2007, p. 13.

282. Ministerio de Sanidad y Consumo, *Health and the Roma Community*, 2004.

283. Edirne Roma Association, ERRC, Helsinki Citizens Association, *We are here!*, p. 60.

Beginning with Romania, a number of countries have in recent years developed initiatives such as the introduction of Roma health mediators, aiming at overcoming barriers of access rooted in suspicion, fear, mistrust or discrimination. Although such programmes are not a panacea for all issues complicating the relationship between Roma and health care systems, in a number of localities they have succeeded in strengthening links between otherwise excluded Roma and health care systems, as well as promoting awareness of the importance of health prevention measures. In October 2010, the Council of Europe created a new European training programme for more than a thousand Roma mediators, operating in sectors including health care, as a follow-up to the Strasbourg Declaration on Roma.

The right to the enjoyment of the highest attainable standard of physical and mental health is recognised as a human right by the International Covenant on Economic, Social and Cultural Rights. The right to protection of health is guaranteed by Article 11 of the European Social Charter. The European Committee of Social Rights has emphasised that rights relating to health and contained both in Article 11 of the European Social Charter and Articles 2 and 3 ECHR are inextricably linked, since “human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention on Human Rights – and health care is a prerequisite for the preservation of human dignity”.²⁸⁴

In a 2008 decision, the European Committee of Social Rights found Bulgaria in violation of the European Social Charter for failing to meet its obligations to ensure adequate access to the health care system for members of the Roma minority. At issue were legal restrictions on access to health insurance and medical assistance disproportionately affecting vulnerable segments of the Roma community in Bulgaria – in particular the very high numbers of Roma who were not covered by state-provided health insurance as a result of being neither formally

284. ECSR, “Digest of the Case Law of the European Committee of Social Rights”, 2008, p. 81.

employed nor included in official registries of the unemployed; physical distance from hospitals and other medical facilities; and discrimination against Roma by health care providers. The Committee concluded by 13 votes to 1 that the situation in Bulgaria constituted a violation of Article 11.1, 11.2 and 11.3 (the right to protection of health) in conjunction with Article E (the ban on discrimination) and Article 13.1 (right to social and medical assistance) of the Revised Social Charter.²⁸⁵ The European Court of Human Rights has also held that measures involving health care implicate a number of European Convention rights, including Article 2 (the right to life) and Article 8 (the right to private and family life).

In a 2006 Recommendation on better access to health care for Roma and Travellers in Europe, the Council of Europe Committee of Ministers provided a complete set of standards in the field. In particular, the Committee of Ministers called on member states to “adopt comprehensive anti-discrimination legislation that includes the express prohibition of direct and indirect discrimination in access to health care and related public services” and provide effective remedies for victims of discrimination. Effective access to health care should be provided, which means a “geographically accessible and affordable health care”. In principle, “Roma and Travellers should receive in every country the same medical care as the general population, or, if they are not nationals of the member state concerned, as any other persons with the same residence status”. Efforts should be made by member states in the field of preventive care and awareness-raising campaigns targeting Roma and Travellers, particularly related to sexual and reproductive health of Roma women.

The active involvement of Roma and Travellers in the elaboration of health care policies and the training of health care workers in diversity are essential. Issues of access to health care by Roma and Travellers must be considered in the context of enjoyment of other human rights. In its above-mentioned Recommendation, the Committee of Ministers

285. European Committee of Social Rights, Decision on the Merits, *European Roma Rights Centre v. Bulgaria*, Complaint No. 46/2007, 3 December 2008.

recalled that “decent housing and a satisfactory sanitation infrastructure is a sine qua non for improvement of the health status of Roma.”

6.5. The right to social security

There has been only limited study of equality and discrimination issues concerning Roma and Travellers’ access to social security measures. A 2007 report by the European Roma Rights Centre and Numena on access by Roma to social assistance measures in Czech Republic, France and Portugal concluded that Roma and Travellers experience problems in achieving equal access to effective social services in those countries. Factors negatively impacting the ability of Roma and Travellers to access social services included: discrimination against Roma and Travellers by social services workers, including arbitrary decisions to deny access completely or to reduce the amount of assistance granted and the discriminatory application of social assistance programmes (such as means-tested social assistance); the implementation of laws and/or policies that have the effect of rendering Roma and Travellers ineligible for regular social services; territorial segregation of Roma and Travellers, making social services difficult to access; communication barriers between social service workers and Roma or Traveller individuals; and a lack of information about such services in Roma and Traveller communities.

The European Committee of Social Rights has found states party to the European Social Charter in violation of various Charter provisions for acts or policies resulting in the exclusion of Roma from social security entitlements. For example, in *European Roma Rights Centre v. Bulgaria*, it found that Bulgaria had violated Article 13, paragraph 1 (on adequate assistance for every person in need) of the Revised Charter after undertaking amendments to the Social Assistance Act, which lowered the maximum time periods for which most unemployed persons of working age could obtain monthly social assistance benefits to initially 18, then 12, and now 6 months. Those who lose their entitlement to monthly social assistance can have this entitlement restored, but this is only possible when 12 months have passed since the expiration of

the initial 18-, 12- or 6-month period. Prior to these amendments, entitlement to social assistance benefits was unlimited in time and only made conditional on the needs of beneficiaries.²⁸⁶

Similar concerns have arisen elsewhere in Europe. For example, in the “former Yugoslav Republic of Macedonia”, NGOs reported that the government would not permit Roma who have not completed primary education to register with the Employment Agency. NGOs said a significant number of Roma therefore would not have access to social security because it is administered by the Employment Agency. Lack of birth certificates and personal identification also prevents Roma from participating in this system. In addition, racial prejudice from some social workers has resulted in the blocking of access to social insurance to some members of the Roma community in that country.²⁸⁷

Non-citizen Roma have also been subjected to different treatment than others with respect to social services. In 2009, the city of Helsinki, Finland, announced it would not be providing social services to “itinerant Roma”, most of them migrants from Romania, working as beggars, peddlers or street musicians.²⁸⁸

The right to social security, including social insurance, is established under Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 10 of ICESCR further establishes that ratifying states recognise that the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children; that special protection should be accorded to mothers during a reasonable period before and after childbirth; and that special measures of protection and assistance should be undertaken on behalf of all children and young people without any

286. European Committee of Social Rights, Decision on the Merits, *European Roma Rights Centre (ERRC) v. Bulgaria*, Complaint No. 48/2008, 18 February 2009.

287. ECRI Fourth report on “the former Yugoslav Republic of Macedonia”, pp. 22-24.

288. Helsingin Sanomat International Edition, “City of Helsinki not offering housing or health services to itinerant Roma”, 9 January 2009.

discrimination. These measures should include protection from economic and social exploitation and protection under law from work harmful to their morals or health, dangerous to life or likely to hamper their development. These protections are developed further in the Convention on the Rights of the Child.

The Council of Europe system elaborates on these commitments for the purposes of European law particularly – but not only – under the European Social Charter (ESC) and the revised European Social Charter (RESC). Constraints of brevity preclude detailed treatment of all aspects of this law. Its key elements include ESC/RESC Article 12 (the commitment by states to establish and develop a system of social security); ESC/RESC Article 13 (the right to social and medical assistance); ESC/RESC Article 14 (the right to benefit from social welfare services); ESC/RESC Articles 15, 16, 17 and 19 (the right of families, disabled persons, children, young people, migrant workers and their families to social, legal and economic protection); RESC Article 23 (the right of elderly persons to social protection); and RESC Article 30 (the right to protection against poverty and social exclusion). Although the right to social security is not included in the European Convention on Human Rights, the Court has consistently held that a “claim” — even concerning a particular social benefit — can constitute a “possession”, worthy of protection, within the meaning of Article 1 of Protocol No. 1, if it is sufficiently established to be enforceable.²⁸⁹

European Union law similarly establishes social security rights. Article 34(1) of the Charter of Fundamental Rights of the European Union sets out that the Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.

289. European Court of Human Rights, *Case of Malinovsky v. Russia*, Application No. 41302/02, Judgment, of 7 July 2005.

The European Court of Justice has previously ruled that EU member states have infringed EU law in various social security cases.²⁹⁰

Measures should be taken to address discriminatory attitudes among social services employees, including specific training on Roma and Travellers needs in terms of social security. Information on existing social services should be made available to Roma and Travellers, including migrant Roma. The communication between social services and Roma and Travellers must be improved, including in segregated and remote settlements. Member states must avoid indirect discrimination when planning legislation and policies in the field of social security.

6.6. Access to goods, services and public places

Roma and Travellers throughout Europe face discrimination in access to goods and services available to the public. Discrimination is reported in access to hotels, discotheques, restaurants, bars, public swimming pools and other recreational facilities, as well as in access to services crucial for small business activity, such as bank loans and insurance. Although government programmes to address such discrimination are currently limited, examples from several Council of Europe member states indicate that action in this area can be important in challenging patterns and practices of racial discrimination against Roma. Discrimination against Roma and Travellers in access to goods and services has been reported in many countries in Europe, including in Bulgaria, Finland, Hungary, Poland, Moldova, Portugal, Romania, Slovakia, Sweden and Turkey.

290. For example, regulations that entitled receipt of a winter fuel payment for women over 60 (but 65 for men) were held to violate the European Union Directive on the progressive implementation of the principle of equal treatment for men and women in matters of social security (see European Court of Justice, *Taylor v. the United Kingdom*, Case-382/98, 16 Dec. 1999). A similar conclusion was reached in the Barber case, where women were accorded a lower pensionable age than men (Case C-262/88, *Barber v. Guardian Royal Exchange Assurance Group* [1990] ECR I-1889).

Thus, for example, in Bulgaria, in 2006 an appeals court in Plovdiv found a discotheque owner guilty of discriminating against Roma by refusing them entry. Similar lawsuits have been brought over Roma being denied access to cafes, hotels and restaurants.²⁹¹ In Hungary, the Equal Treatment Authority emphasised in its 2005 and 2006 reports that denial of service in bars, restaurants and shops seems to be exclusively experienced by Roma. In Romania the National Council for Combating Discrimination (NCCD) received more complaints from Roma in 2009 than from any minority, including concerning access to restaurants and swimming pools and harassment by managers of public markets where Roma were employed. In Turkey, Roma allegedly face high levels of discrimination, including in access to public services. In Erzincan, eastern Anatolia, for example, Roma report that when they attempt to visit public coffeehouses, the owners tell them to leave because they allegedly “scare” other customers.²⁹²

The International Convention on the Elimination of All Forms of Racial Discrimination prohibits, under Article 5(f), racial discrimination in “access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks.” The United Nations Committee on the Elimination of Racial Discrimination has found violations of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination concerning the discriminatory refusal to allow Roma into such public facilities.²⁹³

It is evident that redoubled efforts are needed in this area, among other things because of the widespread perception among Roma and Travellers that discrimination is, if anything, getting worse. Thus, for example, in Germany, a survey conducted by the Central Council of German Sinti and Roma, involving more than 500 Sinti and Roma, showed that in 2006 76% of respondents said they were experiencing

291. ECRI Fourth report on Bulgaria, p. 16.

292. Edirne Roma Association, ERRC, Helsinki Citizens Association, *We are here!*, p. 135.

293. CERD Decision, Communication No. 29/2003, *Dragan Durmic v. Serbia and Montenegro*, 8 March 2006.

increased discrimination, including in restaurants and other public places. Over 90% said they were anxious about discrimination and social exclusion.²⁹⁴

The Commissioner urges governments of Council of Europe member states to step up their efforts aimed at countering discrimination in accessing goods and services, including as part of their national strategies for Roma inclusion. A key feature of these efforts must be improving the ability of victims to challenge this type of discrimination, for instance by providing them with easily accessible and good-quality legal assistance. National structures for promoting equality could also conduct research and surveys on discrimination in access to goods and services and provide guidance and support to service providers on best practice in this field. Other promising practices in the field of goods and services include “situation testing”, which was first carried out in France and Belgium by NGOs in order to gather evidence of ethnic discrimination relating to entry into night clubs. The method has now become admissible as proof in discrimination suits.²⁹⁵ ECRI has also reported the Dutch authorities’ practice of establishing “door policy panels” to monitor complaints related to entrance policies and take the necessary actions.

294. Zentralrat Deutscher Sinti und Roma (Central Council of German Sinti and Roma), “Informations for Council of Europe’s Commissioner for Human Rights, Mr Thomas Hammarberg”, received 22 May 2010.

295. Center for Equal Rights and Migration Policy Group, *Proving discrimination cases – the role of situation testing*, 27 March 2009, pp. 57-64.



7. Statelessness and gaps in personal documentation of Roma

The social exclusion of Roma and Travellers can worsen as a result of their having no formal administrative existence. As the Commissioner has noted in a Human Rights Comment devoted specifically to this issue, “tens of thousands of Roma live in Europe without a nationality. Lacking birth certificates, identity cards, passports and other

Tens of thousands of Roma live in Europe without a nationality. Lacking birth certificates, identity cards, passports and other documents, they are often denied basic rights such as education, healthcare, social assistance and the right to vote. Many inhabitants in the Cesmin Lug camp in northern Mitrovica, Kosovo, find themselves in this situation. March 2009.

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documents, they are often denied basic rights such as education, health care, social assistance and the right to vote.”²⁹⁶

Many factors contribute to hindering Roma access to documents and effective citizenship, including armed conflicts and forced migration, extreme poverty and marginalisation and, above all, a lack of genuine interest on the part of authorities in tackling and resolving the issues. These difficulties are amplified when Roma are in a situation of forced displacement. Moreover, situations arising from state succession, such as restrictive citizenship laws, are additional obstacles that disproportionately affect Roma. Consequently, many Roma in Europe are stateless persons: they are not considered to be nationals by any state and are frequently denied basic social rights and freedom of movement. The exclusion and marginalisation that Roma persons already experience is even worse for those who are stateless. The problem exists in many countries in Europe, but it is particularly acute in the western Balkans.

7.1. Lack of personal identification documents

Extreme poverty, combined with exclusionary practices, may conspire to preclude Roma from having access to documents such as birth certificates. In one scenario, persons unable to pay for maternity care may flee hospital with their newborn children before receiving a birth certificate for the infant. Alternatively, some children may be born at home and it may become impossible to subsequently procure a birth certificate for them because of administrative costs or fines. A person without a birth certificate will then be unable to access personal identity cards, health insurance documents, internal passports and other documents, and later will be effectively excluded from items such as a driving licence. These people may be unable to enrol in school, gain access to health care or secure social assistance benefits to which they might be otherwise entitled, including social housing. Such persons effectively have no administrative existence. This problem affects many thousands of people, particularly in Albania, Bulgaria, Romania, and

296. Commissioner for Human Rights, “Stateless Roma: No documents – no rights”, Human Rights Comment, August 2010.

the countries of the western Balkans and the former Soviet Union. Lack of administrative existence can also affect one's children or grandchildren. The result is intergenerational exclusion.

The OSCE reports that, in Albania, Roma are often not registered as local residents because they “frequently fail or refuse to undergo necessary civil and voter registration.”²⁹⁷ The Committee of Ministers of the Council of Europe has recommended that the Albanian Government “take urgent action to remedy the absence of civil registration of many Roma, including by introducing a simplified administrative procedure and by developing awareness-raising measures on the importance of such registration.”²⁹⁸

In his report following his visit to Bosnia and Herzegovina in November 2010, the Commissioner noted that

the lack of registration and of identity documents of Roma continues to represent one of the main obstacles to the enjoyment by Roma of their social, economic and civil rights. Research carried out in 2006 by the Institution of Ombudsman of the Federation of Bosnia and Herzegovina showed that in three major cities in the Federation of Bosnia and Herzegovina approximately 6 000 children were not properly registered, most of whom were believed to be Roma. Registration problems persist for those children who were born at home as well as for those children whose parents lack identity documents.

The Commissioner further “noted with satisfaction the authorities’ survey from 2009 on Roma household needs and their willingness to share the relevant data on undocumented persons with all interested stakeholders, including UNHCR.”

In Serbia, thousands of Roma have recently received free legal assistance from UNHCR to obtain legal documents. UNHCR estimates that, as of March 2011, 95% of Roma are registered at birth and that the remaining 5% who are not registered still represents a significant group.²⁹⁹

297. Kaczorowski N., “Minority participation in electoral processes: summary of findings”, p. 6.

298. Committee of Ministers, Resolution (2009)5 on the implementation of the Framework Convention for the Protection of National Minorities by Albania, pp. 2-3.

299. ECRI Second report on Serbia, p. 26.

In Georgia, urban Roma are more likely to have personal identification documents, but many Roma have been unable to obtain birth certificates, register for pensions or even obtain death certificates for their relatives in independent Georgia. Those born after independence may have no identification at all. Internally displaced Roma from Abkhazia living in Georgia are almost completely without documents today.³⁰⁰ Lack of proof of citizenship and identity renders the Roma vulnerable to trafficking and prevents them from voting and from acquiring Georgian passports.³⁰¹ The ECRI's 2010 report on Georgia noted that this lack of identification hampers Roma access to health care and other social services. The Civil Registry Agency is apparently now involved in an ongoing process of registering national minorities, Roma included, in order to address this problem, although more efforts are needed to guarantee Roma their full citizenship rights.

7.2. Statelessness in the context of state succession and transformation of the citizenship regime

In some cases, the persons concerned may be unable to demonstrate the citizenship of any country, notwithstanding formal ties to one or more states, because of rigid legal practice, restrictive laws in the context of state succession or other reasons.³⁰² Since 1989, the issue has been particularly pronounced in countries that adopted new citizenship laws in the context of state succession (particularly Croatia, the Czech Republic, the “former Yugoslav Republic of Macedonia” and Slovenia) or where other large-scale transformation of the legal

300. Szakonyi D., “No way out: an assessment of the Romani community in Georgia”, ECMI Working Paper No. 39, Flensburg, February 2008, p. 11.

301. Janiashvili G. et al., *People without rights: Roma rights in Georgia*, Report prepared by The Human Rights Information and Documentation Center, Tbilisi, 2003, p. 10.

302. An overview of status and citizenship issues concerning Roma in Europe is provided in Cahn C. and Skenderovska S., “Roma, citizenship, statelessness and related status issues in Europe”, paper presented at meeting on citizenship and minorities convened by the UN Independent Expert on Minority Issues Gay McDougall, December 2007.

regime governing citizenship and/or personal documents has taken place, including Russia and Moldova. Cases of statelessness among Sinti and Roma were reported in Germany and Greece until recently.

In Croatia, ECRI's 2005 report noted the main problem faced by many Roma was access to Croatian nationality, a problem acknowledged by the authorities. After independence, Croatia adopted a restrictive citizenship law that resulted in the exclusion of Roma and others from access to citizenship. A significant number of Roma people who came to Croatia from elsewhere in the former Yugoslavia during the wars of the 1990s or before are still stateless; civil society and the UNHCR estimate there are 1 000 stateless Roma in the country. As of 2007, Roma NGOs in Croatia estimated that 25% of the Roma population did not have citizenship and therefore could not access employment, apply for property restitution or social benefits, or vote.³⁰³ The Commissioner addressed the issue of stateless Roma in a report following his visit to Croatia in 2010, noting that the National Plan for the Roma identified the legal status of Roma as a priority. Pursuant to the National Plan for the Roma, mobile teams "consisting in particular of representatives of the competent Ministries, centres for social welfare and Roma NGOs are charged with providing assistance, legal advice and information to the Roma population." Notwithstanding these positive legislative measures, the Commissioner remained concerned by "serious obstacles for Roma in access to citizenship or residence permits: the current legislative framework, such as the provisions requiring knowledge of Latin script or Croatian culture; shortcomings in the administration, such as excessive procedural delays; and complicated procedures." The Commissioner urged the authorities to take additional measures to facilitate Roma access to citizenship, including tailored opportunities for Roma to learn the Croatian language and the substantial reinforcement of free legal aid for Roma.

In Slovenia, Roma have been affected by the "erasure" in 1992 by the government of 25 671 citizens of the former Yugoslavia from the register of permanent residents. As of January 2009, 13 425 of the

303. U.S. Department of State, 2010 Human Rights Report: Croatia, p. 16.

“erased” had not settled their status in Slovenia and their residence was unknown. Though there are no reliable statistics as to how many “erased” persons became stateless, the number is likely to be high, as many of the “erased” persons were not able to acquire citizenship in other successor countries of former Yugoslavia. The Constitutional Court of the Republic of Slovenia has twice established that the erasing of these people was unconstitutional and requested the government to adequately resolve the issue. On 8 March 2010 the National Assembly enacted legislative amendments, in order to comply with the decisions of the Constitutional Court. In his letter to the Prime Minister of Slovenia following his visit to the country in April 2011, the Commissioner was “concerned that the law does not fully remedy the negative impact the 1992 ‘erasure’ has had on the enjoyment of human rights by the ‘erased’ persons, in particular those who were forced to leave Slovenia”. In July 2010 the European Court of Human Rights delivered a judgment in the case of *Kuric and Others* relating to the issue of the “erased”, establishing a violation of Articles 8 (respect for private and family life) and 13 (the right to effective remedy) of the European Convention on Human Rights.³⁰⁴ The case has been referred to the Grand Chamber of the Court, which had a public hearing on the matter on 6 July 2011.

The “former Yugoslav Republic of Macedonia” implemented a restrictive citizenship law after independence, giving rise to a number of categories of excluded groups, most notably ethnic Albanians and Roma.³⁰⁵ Widely touted amendments in 2004 did not remedy the underlying problem, which is that authorities fail to recognise the legitimate ties of a number of categories of persons to the country. In 2006, the UN Committee on Economic, Social and Cultural Rights instructed the authorities to “urgently process” citizenship claims that had been submitted by Roma applicants and other minorities and to take immediate steps to issue all Roma applicants with personal

304. European Court of Human Rights, *Kuric and Others v. Slovenia*, Application No. 26828/06, Chamber Judgment of 13 July 2010, not final.

305. Cahn C. and Skenderovska S., “Roma, citizenship, statelessness and related status issues in Europe”, op. cit.

identification. The 2010 ECRI report noted that “the issue is not fully settled” and there are still “many persons with no effective nationality, including a significant proportion of Roma”, despite a 2008 programme launched to identify “cases of de facto statelessness, lack of official proof of nationality and lack of documentation with the Roma population, which has already allowed over 2000 people to obtain the documents they were lacking.”

In addition, Roma who left former Yugoslavia in the 1980s and 1990s and went to Italy, Germany and elsewhere have experienced particular challenges when their passports expired. In the cases of persons from Serbia during the 1990s, men might not be able to approach the Serbian embassy for passport renewal if they did not serve in the military. The lack of a valid passport has rendered it difficult or nigh-on-impossible for Roma to secure valid residence permits in destination countries, such as Italy, particularly in cases where they reside in informal settlements without a valid address. Thus, even in cases where there may be a formal entitlement to citizenship, such as the result of birth on the territory, administrative obstacles in many cases preclude access to citizenship. Many of the persons concerned now have children and grandchildren who may also be stateless.³⁰⁶ Their exclusion is being handed down through the generations. In his report following his visit to Italy in 2009, the Commissioner welcomed the Italian Government’s commitment to address the situation of stateless minors and to ratify the 1997 European Convention on Nationality without any reservation, as recommended by the Commissioner. However, since then no significant steps are known to have been taken in order to grant easier access to Italian citizenship both for children born or raised in Italy and for long-term residents.

Statelessness is also documented in other western European states among Roma with long-term, inter-generational ties to the countries

306. ECRI Third report on Italy, adopted on 16 December 2005, published on 16 May 2006, p. 28. See also Commissioner for Human Rights, “No-one should have to be stateless in today’s Europe”, Viewpoint, 9 June 2008.

concerned.³⁰⁷ In the Netherlands, for example, the Advisory Committee on the FCNM noted in 2010 “with concern” that some Roma reportedly still lack personal documentation and are *de facto* stateless. The Advisory Committee has called on the authorities “to support research carried out by NGOs in consultation with Roma organisations in order to determine the number of Roma who are lacking personal documents and establish the scope of *de facto* statelessness.”

Lack of a formal administrative existence, whether in the form of statelessness or the lack of personal identification documents, has a devastating impact on anyone’s ability to enjoy human rights and fundamental freedoms. For example, in Croatia, the new Law on Free Legal Aid (2009) excludes persons of unregulated legal status, thus hindering the access of many Roma to free legal aid.³⁰⁸ In Lithuania, lack of citizenship, identification or legal residency prevents Roma from accessing public housing or unemployment benefits.³⁰⁹ In Moldova, lack of birth certificates and identity cards poses a serious barrier to Roma persons accessing health insurance and related services.³¹⁰ In an international migration context, persons without documents may be unable to secure a passport or a valid visa. Such persons may also be particularly vulnerable to trafficking.

International standards have been drawn up to protect the right of each person to have a nationality and to avoid statelessness. The international law framework is based primarily on the 1954 UN Convention Relating to the Status of Stateless Persons and the 1961 UN Convention on the Reduction of Statelessness. In Europe two important Council of Europe treaties, which were drawn up following the collapse of Czechoslovakia, the Soviet Union and Yugoslavia and the emergence of new states as well as groups of persons potentially

307. Cahn C. and Guild E., *Recent migration of Roma in Europe*, OSCE, HCNM, 2010.

308. Report by Thomas Hammarberg, Commissioner for Human Rights, following his visit to Croatia, from 6 to 9 April 2010, p. 23.

309. ECRI, Third report on Lithuania, p. 26 at 94.

310. Cace S. et al., “Roma in the Republic of Moldova”, United Nations Development Programme, Chişinău, 2007.

excluded from the new polities, are the 1997 European Convention on Nationality and the 2006 Convention on Avoiding Statelessness in the Context of State Succession. The former instrument includes a separate chapter on statelessness in the context of state succession; the latter instrument creates an obligation on states to avoid statelessness, including in the context of state succession, to restrict conditions on loss of nationality by law, and to provide in writing (with reasons) their nationality-related decisions. In the core human rights treaties, the right to recognition before the law is guaranteed under Article 16 of the International Covenant on Civil and Political Rights. The right of children to acquire a nationality, and in particular the need to avoid the statelessness of children, is set out under Article 7 of the Convention on the Rights of the Child.

The European Court of Human Rights has ruled on cases concerning the denial of personal identification documents. In the Court's assessment, denial of key personal identification documents, such as, in one case, the Russian "internal passport", could give rise to a violation of one's private and family life in the sense of Article 8 of the Convention.³¹¹ The Commissioner has noted in a 2009 Viewpoint that "measures to resolve statelessness and related disfranchisement are an international obligation".³¹²

In 2008, UNHCR launched a free legal aid project to help Roma from Bosnia and Herzegovina, Montenegro, Serbia, "the former Yugoslav Republic of Macedonia" and Kosovo to gain free registration in birth registers, leading to the issuance of personal documents. In recent years, in addition to the UNHCR and national authorities' efforts noted above, EU-supported civil society projects have begun in some countries to make inroads into this problem.³¹³ However, without

311. European Court of Human Rights, *Smirnova v. Russia*, 24 October 2003, Applications Nos. 46133/99 and 48183/99, Judgment of 24 July 2003, paragraphs 95-97.

312. Commissioner for Human Rights, "Many Roma in Europe are stateless and live outside social protection", Viewpoint, 6 July 2009.

313. Open Society Institute, EU Monitoring and Advocacy Program, Education Support Program, Roma Participation Program, "Equal Access to Quality Education for Roma", Vol. 1, Monitoring Reports 2007, Bulgaria, Hungary, Romania, Serbia, p. 66.

major state-level commitments to ameliorate conditions for currently excluded persons to have access to documents, for example via “amnesties” for persons with no birth certificates or similar measures, there is little indication that either these pilot projects or other ad hoc projects are having any major impact.

In his work on the subject, the Commissioner has urged measures by member states, including the following, in order to aim for resolution of statelessness and related issues among Roma in Europe:

- Providing free legal aid for proceedings aimed at securing documentation;
- Waiving fees for civil registration for those in destitution;
- Making it possible to establish personal status through simplified procedures such as witnesses’ testimonials when no other evidence can be obtained;
- Strengthening the role of Ombudsperson institutions to solve these issues;
- Acceding to the 1997 European Convention on Nationality, the 2006 Council of Europe Convention on the avoidance of statelessness in relation to state succession as well as to the two UN conventions on statelessness.

Governments should commit to these and other measures by adopting clear and workable action plans, with Roma participation.



8. Enjoyment by Roma and Travellers of freedom of movement and international protection inside and outside the state territory

Roma and Travellers experience discrimination in the exercise of their freedom of movement and related rights. This chapter looks at several aspects of the rights of Roma to free movement, both within the territory of a state and in an international context, including in the particular context of the European Union. The chapter also analyses the enjoyment by Roma of international protection when fleeing persecution.

Thousands of Roma, Ashkali and Egyptians have been expelled in the last few years, mainly from Austria, Germany, Sweden and Switzerland. Many of them return to very difficult conditions. August, 2010. © Photo by Eva Parey/Abaca

8.1. Free movement within a territory

The European Court of Human Rights has repeatedly held that there is “a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the Gypsy way of life.”³¹⁴ Given that it involves moving from place to place (sometimes within national borders, sometimes crossing them) the Traveller or itinerant Roma “way of life” frequently requires the exercise of freedom of movement. Very few European states are committed to ensuring Travellers can exercise that freedom and practise their way of life; on the contrary, existing policies in all but a very few countries serve rather to dissuade Roma and Travellers from developing regular migration routes. In practice, zoning measures or other rules and regulations are frequently used to dissuade Travellers or itinerant Roma from coming and going. In some countries, such policies “result ... in it being totally impossible for a Gypsy family to make suitable arrangements for its accommodation, social life and the integration of its children at school”.³¹⁵

In addition, in certain scenarios, regulatory frameworks add additional burdens or create particular limitations on freedom of movement where Travellers are concerned. In France, for example, Travellers of French nationality are subject to special legislation that does not apply to other French citizens. People over the age of 16 living itinerantly must hold a travel permit. There are two types: the *carnet de circulation* for those with no regular income, and the *livret de circulation* for those engaged in paid work. For those with no regular income, the travel permit must be stamped by an administrative authority every three months; the permit for those involved in paid work must be stamped every year. If the formalities are not completed on time, the permit holder is subject to heavy fines (€750 for each overdue day). Failure to hold the relevant document

314. European Court of Human Rights, *Chapman v. the United Kingdom*, Application No. 27238/95, Judgment of 18 January 2001.

315. Dissenting Opinion of Judge Petitti, European Court of Human Rights judgment in the case of *Buckley v. the United Kingdom*, 26 August 1996.

carries a penalty of up to one year in prison.³¹⁶ In a 2010 decision, this separate documentation and registration regime for Travellers was found by the European Committee of Social Rights to violate the Revised European Social Charter.³¹⁷

Elsewhere, patterns and practices of denying planning permission to Traveller accommodation limits the possibilities for Travellers to use their own land to pursue Traveller traditions. This has been a particular issue in the United Kingdom, and was at the heart of the first series of cases concerning Travellers to come before the European Court of Human Rights. Lack of provision of camping sites for Travellers and other itinerant groups has been identified as a further hindrance of freedom of movement in Belgium, France, Ireland, Luxembourg, the Netherlands, the United Kingdom (including Scotland), Switzerland, and elsewhere, as mentioned in another chapter of this report.³¹⁸

Roma third-country nationals have, additionally, been subjected to limitations on freedom of movement such as arbitrary detention and related arbitrary security measures. Restrictions on free movement rights have been particularly severe in the Russian Federation. Russia is a destination country for Roma migration from Azerbaijan, Estonia, Georgia, Latvia, Lithuania, Moldova and Ukraine.³¹⁹ In 2011, Russian authorities acknowledged violations of Articles 3, 5.1, 5.5 and 13 of the European Convention on Human Rights (ECHR) in connection with the arrest, detention and conviction for immigration violations of Roma from Ukraine. The persons concerned were detained in degrading conditions for over one year.³²⁰

316. Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to France from 21 to 23 May 2008, 20 November 2008, p. 25.

317. European Committee of Social Rights, Decision on the Merits, Collective Complaint No. 58/2009, *European Roma Rights Centre (ERRC) v. France*, 25 June 2010.

318. See “Access to adequate housing – Enjoyment of the right to adequate housing by Travellers”, p. 153 above.

319. Cahn C. and Guild E., *Recent migration of Roma in Europe*, op. cit., p. 35.

320. Memorial, “*Lakatos and Others v. Russia: State admits violations of European Convention*”, 3 July 2011.

Article 2 of Protocol 4 to the ECHR broadly mirrors the rights set out under Article 12 of the International Covenant on Civil and Political Rights by providing that everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his or her residence. In 2005, the Council of Europe Committee of Ministers emphasised that governments have an obligation to create conditions so that Roma and Travellers are able to “pursue sedentary or nomadic lifestyles, according to their own free choice.”³²¹ The Committee of Ministers specifically recommended making “all conditions necessary to pursue these lifestyles” (i.e. either itinerant or sedentary) available through national, regional and local authorities, “in accordance with the resources available and to the rights of others and within the legal framework relating to building, planning, and access to private land.” Countries with a non-sedentary Traveller or Roma population should comply with this standard and the jurisprudence of the European Court of Human Rights.

8.2. International protection and internal displacement

Even when at risk of serious human rights violations, Roma face discrimination in accessing protection mechanisms on an equal footing with the rest of the population, including in accessing the asylum procedure.

In his February 2010 Viewpoint entitled “European migration policies discriminate against Roma people”, the Commissioner noted that some European governments treat Roma asylum seekers differently from non-Roma asylum seekers. In Austria, Germany and the “former Yugoslav Republic of Macedonia”, Roma asylum seekers have been generally provided with forms of temporary protection which do not confer residence status or any progressive accrual of rights. One example is the status called *duldung* (“tolerance”) or *geduldet* (“tolerated”) provided in Germany to persons who originally enjoyed

321. Appendix to Council of Europe, Recommendation (2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe, adopted on 23 February 2005.

temporary protection. In the case of Roma, this concerns persons from primarily Bosnia and Herzegovina or Kosovo who came during or following the conflicts in that region. *Duldung* status does not bring with it a residence permit – it merely prevents expulsion and it must be renewed at very frequent intervals, in some instances every few weeks. As noted in a study on “Recent Migration of Roma in Europe”, commissioned by the Commissioner and the OSCE High Commissioner on National Minorities, members of the same family are often awarded *duldung* status at different times, meaning that the head of a household may be almost constantly queuing to renew the status of various members of family. *Duldung* status frequently includes restrictions on freedom of movement, access to employment and various forms of social and health protection, although provisions vary from state to state within the Federal Republic of Germany. Numerous Roma individuals have had no administrative status in Germany other than *duldung* for periods sometimes exceeding ten years.³²²

The repeated provision of extremely short-term *duldung* status and similar non-status provisions elsewhere has effectively prevented tens of thousands of third-country national Roma in Germany and elsewhere from integrating into host societies, although such persons may have given birth to children on the territory (and those children may be enrolled in and regularly attending schools) and may have formed extensive real and factual ties to the host country. In addition, persons provided with *duldung* status and their children may labour under conditions of great stress due both to the ever-present threat of expulsion and very frequent interaction with public officials responsible for the allocation of *duldung* status who are very often hostile.

In addition, in the EU the general policy is that all member states should be considered “safe countries of origin” with respect to asylum matters, which means an EU citizen may not be granted asylum in another EU member state. Thus Roma from the Czech Republic or Hungary have been refused asylum in countries such as France

322. Cahn C. and Guild E., *Recent migration of Roma in Europe*, op. cit., p. 62.

but granted it in non-EU states such as Canada.³²³ Some national authorities have also examined ways to tighten general asylum rules in an attempt to counter Roma seeking asylum. Thus, for example, the Finnish Parliament announced in 2010 that it wanted to tighten its procedures regarding failed asylum seekers from EU countries; the proposed rules would deprive rejected applicants of financial support while they await deportation and shorten their waiting times before deportation from a month to one week. Legislators said the change would reduce the number of “unfounded” asylum applications being filed by Roma from Bulgaria and Romania. In 2009, 739 of the 800 EU-citizen applications for asylum in Finland were filed by Bulgarian passport-holders.³²⁴

The conditions in which many displaced Roma people live give rise to the concern that protection measures do not meet international standards.³²⁵ Thus, for example, Roma internally displaced persons (IDPs) in Georgia have reportedly been accommodated in collective centres where they suffer from a lack of decent housing.³²⁶ In Montenegro, many children of displaced Roma from Kosovo live in refugee camps in extreme poverty. These Roma refugees are said to encounter hostility from local Roma, who have begun migrating themselves to neighbouring countries.³²⁷ In Serbia, authorities report that around 11% of IDPs in the country are Roma, Ashkali and Egyptians (roughly 20,900 people in 2011) who are subject to discrimination in housing, education and employment.³²⁸ Kosovo still has about 20 000 IDPs, many of whom do not feel they can

323. Commissioner for Human Rights, “European migration policies discriminate against Roma people”, Viewpoint, 22 February 2010.

324. Helsingin Sanomat International Edition, “Parliament taking hard line on Roma asylum applications”, 7 June 2010.

325. As set out, *inter alia*, under the 1951 Convention relating to the Status of Refugees (“1951 Geneva Convention”).

326. ECRI Third report on Georgia, adopted 28 April 2010, published 15 June 2010, p. 30.

327. Open Society Institute, “Equal Access to Quality Education for Roma”, Vol. 2, 2007, Croatia, Macedonia, Montenegro, Slovakia Monitoring Reports, p. 66.

328. ECRI Second report on Serbia, p. 25.

safely return to their places of origin and have been unable to obtain reparations for lost property.³²⁹

The right to asylum is recognised by the UN Convention relating to the Status of Refugees (1951) for all refugees without discrimination. In its 2010 Resolution on the Situation of Roma in Europe and relevant activities of Council of Europe, the Parliamentary Assembly of the Council of Europe recommended that states “take special measures to protect Roma asylum seekers who have fled racist violence, to ensure that citizens of the European Union have the possibility to rebut the presumption of safety that applies in respect of EU member states.”³³⁰ Roma asylum-seekers and internally displaced persons should be treated the same way as non-Roma. Efforts must be made so that Roma stop suffering from double discrimination on the grounds of their ethnicity and their status as asylum-seeker or IDPs.

8.3. Collective and individual expulsion

European states have increasingly resorted to individual and collective expulsion of Roma to address the arrival of Roma from different states. A number of cases brought before the European Court of Human Rights concerning the expulsion of citizens of one Council of Europe member state to another Council of Europe member state involve Roma. The only occasion on which the Strasbourg Court has ever found a violation of the European Convention ban on the collective expulsion of aliens concerned Slovak Roma collectively expelled from Belgium.³³¹ In 2002, Italy settled similar cases concerning Bosnian Roma amicably.³³² In

329. Commissioner for Human Rights, “Kosovo: Commissioner Hammarberg calls for stop of forced returns and immediate evacuation of Roma from lead-contaminated camps”, Strasbourg, 15 February 2010.

330. PACE, Resolution 1740 (2010) on the Situation of Roma in Europe and relevant activities of Council of Europe, adopted on 22 June 2010.

331. European Court of Human Rights, *Čonka v Belgium*, Application No. 51564/99, Judgment of 5 May 2002.

332. European Court of Human Rights, *Sulejmanovic and Others and Sejdovic and Sulejmanovic v. Italy*, Applications Nos. 57574/00 and 57575/00, Judgment 8 November 2002.

another case against Italy, a Roma citizen of Bosnia and Herzegovina, the mother of three children, was expelled from Italy in 2005 while her individual application was pending before the Strasbourg Court³³³ and despite the request made by the Court to Italy, under Rule 39, to suspend the applicant's expulsion while her application was pending. Even if Italy eventually granted the woman a permit to stay, the Commissioner still expressed his concerns in relation to the Italian non-compliance with the interim measures adopted by the Court.³³⁴ Similar cases against the Czech Republic had earlier been dismissed on procedural grounds³³⁵ and were ultimately also settled in non-adversarial proceedings.

The vast majority of cases of expulsion of Roma from Council of Europe member states, however, have not come before the Court, no matter how high-profile or public the expulsions. Germany has been repeatedly criticised for repatriating Kosovar Roma to face inhuman conditions in Kosovo and for forcibly expelling Roma to Serbia. In July 2010 UNICEF issued a report on the 12 000 Roma, many of them minors, still living in Germany under threat of deportation to Kosovo. Some of the families facing deportation now have been in Germany since the early 1990s. Police have often arrived in Roma homes unannounced in early morning hours to rush them through deportations in which they are asked to sign statements claiming that their deportation is voluntary in exchange for promises of better housing in Kosovo. Those so deported often leave vital personal identification such as birth certificates behind and end up stateless and without resources in Kosovo. Most of the children have never been to Kosovo and speak neither Albanian nor Serbian; of 66 interviewed for the report, only 17 were still attending school after being deported. While the average monthly Roma family income in Kosovo is about 120 EUR, for families deported from Germany it is approximately 88 EUR. Authorities in

333. European Court of Human Rights, *Hamidovic v. Italy*, Application No. 31956/05.

334. Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to Italy, 19-20 June 2008, 29 July 2009.

335. European Commission on Human Rights, Admissibility Decision, *Gejza Cervenak, Margita Cervenakova, Aranka Horvatova, Ondrej Cervenak, Iveta Cervenakova, Peter Mirga and Vojtech Filko v. the Czech Republic*, 28 February 1996.

Kosovo are unequipped to handle the returnees.³³⁶ After the publication of the UNICEF report, authorities in several German *Länder* have taken into consideration the interests of the child in decisions of repatriation of Roma, Ashkali and Egyptians to Kosovo. However, in a follow-up report from June 2011, UNICEF reported that Germany repatriated 133 Roma, Ashkali and Egyptian children to Kosovo in 2010 alone, including 94 school children, noting that most of them had been born, raised and schooled in Germany. In addition, an estimated 5-6 000 Roma, Ashkali and Egyptian children in Germany continue to live under imminent threat of deportation. Moreover, the life of children repatriated to Kosovo in 2010 has not improved. “With the exception of two girls, none of the other 49 school-aged children have been able to re-enter or continue school in Kosovo.”³³⁷ Forced expulsions of Roma back to Serbia have also been ongoing from Sweden for a number of years. A March 2008 UNDP report noted that most (75%) of the Serbian nationals returned from Sweden and other EU countries between March 2003 and October 2007 were Roma.³³⁸ Switzerland has also regularly and repeatedly expelled Roma, particularly from Romania and Kosovo.³³⁹

Article 4 of Protocol No. 4 to the ECHR prohibits the collective expulsion of aliens. While the European Convention does not guarantee aliens the right to enter or reside in a given country, the removal of a person from a country where close members of his or her family live may infringe his or her right to respect for family life as guaranteed

336. Knaus V. and Widmann P., *Integration subject to conditions – a report on the situation of Kosovan Roma, Ashkali and Egyptian children in Germany and after their repatriation to Kosovo*, UNICEF Kosovo and the German Committee for UNICEF, 2010.

337. Knaus V., *No place to call home – repatriation from Germany to Kosovo as seen and experienced by Roma, Ashkali and Egyptian children*, UNICEF Kosovo and the German Committee for UNICEF, 2011.

338. UNDP and the Agency for Human and Minority Rights Government of the Republic of Serbia, “Reintegration of returnees in Serbia: an overview of awareness raising activities of the Agency for Human and Minority Rights, Belgrade”, March 2008, pp. 2-3.

339. Cahn C. and Guild E. *Recent migration of Roma in Europe*, op. cit., p. 49.

by the Convention. The report on “Recent Migration of Roma in Europe” has noted that:

*... the right to respect for private and family life provided by Article 8 has been interpreted by the European Court of Human Rights as including a right to enter a country in very specific circumstances. For the moment this right has been recognized to only apply to minor children of persons settled in a state where the family is seeking to effect family reunification. [...] Under current case law, the fact that the child may never have been on the territory of the state where the rest of the family lives is not an insurmountable obstacle to the recognition of the right.*³⁴⁰

Article 3 of the ECHR’s ban on cruel and degrading treatment has been repeatedly interpreted to bar states from returning a person to another country where s/he might face cruel or degrading treatment. The Committee of Ministers’ 20 Guidelines on Forced Return of 2005 provides standards on procedural safeguards member states that should respect when proceeding to forced return. The guidelines recall that the collective expulsion of aliens is prohibited.

The Commissioner has repeatedly opposed the forced or involuntary return of Roma, Ashkali and Egyptian to Kosovo in particular, because Kosovo at present is unable to provide conditions for the sustainable reintegration of these returnees, as the UNHCR assessed in November 2009 in its Eligibility Guidelines For Assessing the International Protection Needs of Individuals from Kosovo. In February 2010, the Commissioner noted the unemployment rate in Kosovo was 50% and the returnees would not be able to access humane living conditions upon return because national-level reintegration strategies are not being locally implemented. Some of the Roma who have been forcibly returned have even ended up in the lead-contaminated camps of northern Mitrovicë/Mitrovica. During 2009, more than 2 600 forcible returns to Kosovo took place, 429 of them Roma or Ashkali. The countries involved are Austria, Germany, Sweden and Switzerland. The Commissioner highlights that 70-75% of persons forcibly returned to

340. Ibid., p. 62. Other articles potentially implicated are Article 5 (right to liberty and security), Article 13 (right to effective remedy) and Article 14 (ban on discrimination).

Kosovo could not reintegrate and have had to emigrate elsewhere.³⁴¹ Member states should also consider the best interests of the child when proceeding to forced expulsion, as children are the most affected by these practices.

8.4. Exercise of freedom of movement by Roma and Travellers in the European Union

The freedoms of movement of goods, services, capital and people are founding purposes of the European Union. The rules on the free movement of EU citizens inside the European Union – extensively developed under EU law – are currently set out in Council Directive 2004/38/EC of 29 April 2004, “the Free Movement Directive”. EU member states, despite these provisions, have also discriminated against Roma EU citizens exercising their freedom of movement.

The movement of Roma who are EU citizens within the EU was addressed by a November 2009 report of the EU Fundamental Rights Agency. The report summarises the situation as follows:

*The research identified a disturbingly negative Roma-specific dynamic. First, responses to the arrival of Roma EU citizens are often negative. Second, specific anti-Roma policy responses have also been identified. Third, existing policy and practice can impact negatively on Roma exercising freedom of movement, even when this is unintended.*³⁴²

As the Commissioner has noted,

The agreed Directives within the EU do not support Roma rights in reality. In practice, the ‘Free Movement Directive’ impacts differently on Roma than on other EU citizens. It provides that every EU citizen has the right to reside in any EU member State for a period of three months without any other requirement than a valid passport. For longer periods of stay, however, the person concerned must prove that s/he is not a burden to the

341. Commissioner for Human Rights, “European migration policies discriminate against Roma people”, op. cit.

342. European Union Fundamental Rights Agency, “Summary Report: The situation of Roma EU citizens moving to and settling in other EU Member States”, November 2009, p. 16.

*host State, through either employment or adequate financial resources. A majority of Roma cannot fulfill this requirement.*³⁴³

The Commissioner also noted that “the protective provisions of the “Free Movement Directive” are breached much more readily in respect of Roma than any other identifiable group. Expulsions of Roma have been carried out in contravention of EU law. In other cases destruction of Roma dwellings has been used as a method to persuade Roma to leave “voluntarily”.³⁴⁴

As mentioned above,³⁴⁵ in the summer of 2010 practices of eviction and expulsion of Romanian and Bulgarian Roma from France met with considerable international attention and concern. Expulsions of Roma EU citizens to Romania and Bulgaria were at the centre a serious controversy with the European Union, raising notably the issue of its compatibility with the Free Movement Directive and the EU Charter of Fundamental Rights. Expulsions of Romanian and Bulgarian Roma to their countries of origin had taken place in France for several years. However, as part of an aggressive public campaign of the French Government on security and immigration, in summer 2010 high-ranking politicians gave prominence to these expulsions and called for their intensification. These calls were accompanied by strikingly sweeping public declarations overtly targeting the Roma as a group and stigmatising them as criminals. The French authorities announced in November 2010 that in the first 10 months of that year 13 241 Romanian and Bulgarian citizens had been expelled. Following the announcement of the intention by the European Commission to initiate infringement proceedings against France, in October 2010, the French Government provided assurances that it would adequately transpose the Free Movement Directive in new draft immigration legislation. On 17 July 2011 the new immigration law (Law No. 2011-672 also known as Besson Law) entered into force. However, according to Human Rights Watch, French law and

343. Commissioner for Human Rights, “European migration policies discriminate against Roma people”, op. cit.

344. Ibid.

345. “Access to adequate housing – Security of tenure and forced evictions”, p. 148.

practice continue to violate France's obligation under both EU law and international human rights law. In a document that it submitted to the European Commission in July 2011, the organisation states that the law contains provisions that directly infringe the Directive and "appear to be conceived to facilitate the expulsion of Roma who are in France". The organisation finds that the procedural guarantees contained in the law are at variance with the standards imposed by the Directive. Finally, when it comes to practices on the ground, the French authorities reportedly continue to target Roma EU citizens in order to expel them in a manner that constitutes discrimination and is therefore illegal under both EU and human rights law.³⁴⁶

In Italy, Roma from Romania have been met with hatred from private citizens and have been targeted by official policies which are at variance with human rights standards. Italian policy lumps all Roma and Sinti together – Italian citizens, EU citizens or third-country nationals – in a way that "might infringe fundamental rights" according to the EU Fundamental Rights Agency.³⁴⁷ In November 2007, the Italian Government passed a temporary emergency decree amending the law on the expulsion of EU citizens, facilitating in a *de facto* way the expulsion of migrant Roma who were Romanian citizens. In December 2007 the decree was replaced with "[u]rgent measures in matters of expulsions and removal for terrorism and for imperative reasons of public safety". In June 2010, the European Committee of Social Rights held that the situation of expulsion of Roma and Sinti constitutes a violation by Italy of Article E along with Article 19(8) of the Revised European Social Charter, the right of migrant workers and their families not to be arbitrarily expelled.³⁴⁸

346. *Le respect par la France de la Directive européenne relative à la liberté de circulation et l'éloignement de ressortissants européens appartenant à la communauté Rom*, information document submitted by Human Rights Watch to the European Commission in July 2011, published on 28 September 2011.

347. European Union Fundamental Rights Agency, "Summary Report: The situation of Roma EU citizens moving to and settling in other EU Member States", 2009, p. 14.

348. European Committee of Social Rights, Decision on the Merits, Collective Complaint No. 58/2009, *Centre on Housing Rights and Evictions (COHRE) v. Italy*, 25 June 2010.

In Denmark, 23 EU citizens of Roma origin were arrested *en masse* in Copenhagen in July 2010 and expelled to Romania the next day. They were also banned from re-entering Denmark for the next two years.³⁴⁹

EU migration policies also impact on the freedom of movement of Roma from EU candidate and potential candidate countries. For example, since Serbia and “the former Yugoslav Republic of Macedonia” have gained the visa-free travel regime in the Schengen area – and after the EU Commission called on these countries to closely monitor the system so it does not lead to abuse – controls over the movement of Roma have reportedly increased. The Serbian Government even called on Roma not to seek asylum in EU countries as it could damage Serbia’s image.³⁵⁰

The rules on the free movement of EU citizens inside the European Union must be respected when it comes to freedom of movement of Roma. In addition, member states should respect Article 4 of Protocol 4 of the ECHR banning collective expulsions. Expulsions between EU countries are bound to fail in a great number of cases as the Roma make use of their right as EU citizens to move within the European Union area. Efforts to expel EU citizens in contravention of EU law, as well as other measures aimed at hindering access to territory, should be ended if undertaken by some member states. As the Commissioner has suggested, the resources being used by EU member states to repatriate Roma who are EU citizens would be better spent facilitating their social inclusion.

349. The Danish Institute for Human Rights, “Parallel report July 2010 to the UN Committee on the Elimination of Racial Discrimination on the 18th and 19th periodic reports by the government of Denmark on the implementation of the international convention on all forms of racial discrimination”, pp. 21-2. The decision was reportedly reversed by the Ministry of Interior in April 2011. See ERRC, Danish Authorities Reverse Decisions in Roma Expulsions, 18 April 2011.

350. Chachipe a.s.b.l., Luxembourg and others, Letter to the Serbian Government on the planned restrictions of freedom of movement of Serbian citizens, 6 June 2011.



9. Participation of Roma and Travellers in public life and decision-making processes

The Framework Convention for the Protection of National Minorities (FCNM) in Article 15 has established that “[t]he Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.” Article 2.2 of the 1992 United Nations General Assembly Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities sets out that “[p]ersons belonging to minorities have the

A Roma woman casts her vote during the first Kosovo-wide election to the Assembly. Obiliq/Obilić, Kosovo, Nov 2001. © Council of Europe.

right to participate effectively in cultural, religious, social, economic and public life.” This principle has been further elaborated in the OSCE Lund Recommendations for the Effective Participation of National Minorities in Public Life, which emanate from the premise that effective participation of national minorities in public life is an essential component of a peaceful and democratic society.

In 2008, the Advisory Committee on the FCNM published a Commentary on national minorities’ participation in cultural, social and economic life and in public affairs. The Commentary notes that Roma and Travellers are “more at risk of suffering forms of exclusion from socio-economic life” than other national minorities or the majority population. Roma and Travellers may therefore require specific measures to address their needs.

Exclusion of Roma and Travellers from participation in public life is both a cause and a consequence of the lack of enjoyment of economic and social rights. It takes several forms, including the inability to exercise the right to vote, and the lack of representation in elected bodies and in civil service. Special consultation mechanisms are therefore crucial to overcoming this exclusion.

9.1. Registration and exercise of the right to vote

Many Roma and Travellers are unable to vote in practice, either because they cannot be formally registered due to the lack of personal identification documents or for other reasons. For example, according to reports, Roma in Albania were disproportionately deprived of the right to vote in 2009 due to financial barriers to obtaining personal identification and restrictive voter-registration provisions. In Croatia, Roma NGOs have estimated that 25% of the Roma population does not have citizenship documents and therefore cannot vote.³⁵¹ In a 2010 decision, the European Committee of Social Rights deemed that Italy had violated Article 30 of the Revised European Social Charter, taken together with the Charter’s Article E non-discrimination provisions,

351. Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Croatia from 6 to 9 April 2010, 17 June 2010.

because of – amongst other things – the lack of personal status among Roma or denial of citizenship or a residence permit resulted in denial of “the possibility for the persons concerned to participate in the decision-making processes. This leads to discriminatory treatment with regard to the right to vote or other forms of citizen participation for Roma and Sinti and, thus, is a cause of marginalisation and social exclusion.”³⁵² Roma in Turkey frequently lack personal identity documents and therefore are in practice barred from voting.³⁵³

In some cases, as noted by the Commissioner, “Roma communities are socially isolated and fragmented. As a result they may be less aware about political and electoral processes, and may lack vital information. They are therefore also vulnerable to electoral malpractices.”³⁵⁴ For example, it was reported that in the Czech Republic, during the 2010 municipal elections, various political parties trafficked the votes of socially vulnerable voters, Roma in particular. The parties organised transportation for the voters to the polls, gave them already-completed ballots to place in the urns and then paid them; the polls in six districts had to be repeated as a result.³⁵⁵

In France, the separate documentation and registration regime for Travellers was found to be discriminatory by the European Committee of Social Rights in 2010, as it frequently prevents Travellers from becoming residents of municipalities, and thereby prevents them from voting. Travellers of French nationality are subject to special legislation that does not apply to other French citizens. People over the age of 16 living itinerantly must hold a travel permit. The holders of these permits may only exercise their right to vote after a three-year period of “attachment”

352. European Committee of Social Rights, Decision on the Merits, *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, 25 June 2010.

353. Edirne Roma Association, ERRC, Helsinki Citizens Association, *We are here!*, pp. 60-61.

354. Commissioner for Human Rights, “Roma representatives must be welcomed into political decision-making”, Viewpoint, 1 September 2008.

355. Romea, “Ústi region of Czech Republic reports vote rigging attempts in every district”, 18 October 2010; Romea, “Municipal elections to be repeated in six Czech voting districts”, 12 November 2010.

to a municipality. Any other French citizens are able to vote after only half a year of residence in a municipality. Except in particular situations, the number of Travellers holding such permits may not exceed 3% of the population of any municipality. Travellers therefore have difficulty becoming meaningful electoral constituencies when they are *a priori* barred from exceeding 3% of any local population. The Haute Autorité de Lutte contre les Discriminations et pour l'Égalité (HALDE) (the state anti-discrimination authority) and the Commission Nationale Consultative des Droits de l'Homme (the national human rights institution) have drawn attention to the need to reform these practices and regulations, which specifically target itinerant Travellers.³⁵⁶ Reports issued by the Commissioner have highlighted the same need.³⁵⁷

The fact that Roma and Travellers are often unable to exercise their right to vote raises serious issues of conformity with Article 3 (the right to free elections) of Protocol No. 1 to the ECHR, and of Article 25 of the International Covenant on Civil and Political Rights, which sets out that every citizen shall have the right and the opportunity, without any form of discrimination and without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and (c) to have access, on general terms of equality, to public service in his country.

In a 2008 Viewpoint, the Commissioner recommended a series of measures regarding the exercise of the right to vote:

- *Governments should repeal any laws and regulations which discriminate against minorities, including the Roma and non-settled communities, in terms of political representation.*

356. ECRI Fourth report on France, p. 32.

357. Report by Mr Alvaro Gil-Robles, Commissioner For Human Rights, on The effective respect for human rights in France, following his visit from 5 to 21 September 2005; Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to France, 21-23 May 2008, p. 26.

- *Non-governmental organizations should be encouraged to support programmes in civic education for Roma communities. Such programmes should include human rights components and practical information about the electoral system. It is important that such support programmes reach women and young Roma. Written information should be available in the Romani language.*
- *More outreach efforts are needed to ensure voter registration. Again, it is also important to reach women. The widespread problem of lack of personal identification documents must be resolved with high priority. This must include effective measures to ensure the rights of those who are stateless.*³⁵⁸

9.2. Representation in elected bodies

With noteworthy exceptions, Roma are broadly missing from elected bodies at local, regional, national and supra-national level. Participation of Roma and Travellers in the parliaments of Europe is extremely limited. Only in certain parliaments of central and south-east Europe are Roma present, including in Bulgaria, Hungary, Serbia, “the former Yugoslav Republic of Macedonia” and Kosovo, where the Ashkali and the Egyptian communities are also represented. In the 2010 elections in Hungary, four candidates elected to Parliament were of Roma origin. In Serbia, the Advisory Committee on the FCNM has received complaints from members of the Roma minority that in 2008 the Constitutional Court did not approve reducing the number of signatures required in support of an electoral list from 10 000 to 3 000, a decision which negatively impacted all smaller minorities. There are currently no Roma in any parliaments in western Europe. There is one Roma Member of the European Parliament – Ms Livia Járóka – from Hungary.

The participation of Roma and Travellers is also limited at the local level, including in Ireland, Moldova, Poland, Portugal and Kosovo. For example, in 2010 the Advisory Committee on the FCNM noted that Roma participation in elected bodies in Portugal is very limited, with

358. Commissioner for Human Rights, “Roma representatives must be welcomed into political decision-making”, Viewpoint, 1 September 2008.

only one Roma mayor in the whole country, and that “Roma representatives complain that, when willing to be involved in the political life, they are usually not placed high on the electoral lists of mainstream political parties and have little access to elected positions.” According to the OSCE, in Kosovo, as of 2010, there was one Roma representative, four Egyptian representatives and three Ashkali representatives in municipal assemblies out of 1 034 municipal assembly members.³⁵⁹

Elsewhere in the region, such as in Hungary, Romania and Slovakia, numbers of Roma local representatives – including mayors and local counsellors – appear to have been rising over the past decade. In Slovakia, for example, Roma political participation has increased recently, with more Roma mayors being elected in municipalities during the 2006 municipal elections than previously. There are currently 29 Roma mayors in Slovakia, whereas there were 11 in 2002 and 19 in 2006.³⁶⁰

Reportedly, some Roma in Turkey have achieved office at higher levels but have never been willing to publicly acknowledge their origins.³⁶¹ In Turkey Roma may avoid political activism in response to nationalist pressures which deem the pursuit of minority rights essentially treasonous. Roma activists in Turkey thus avoid framing the discussion in terms of identity and/or minority rights.³⁶²

In Bosnia and Herzegovina, Roma and other minorities are excluded by law from running for certain public offices, as Bosnian law does not recognise them as a constituent people. A 2009 European Court of Human Rights judgment on this issue, *Sejdić and Finci v. Bosnia and Herzegovina*,³⁶³ found a violation of Article 14 taken together

359. Organization for Security and Co-operation in Europe Mission in Kosovo, “Communities Rights Assessment Report, Second Edition”, 2010, p. 15.

360. ECRI Fourth report on Slovakia, p. 35; AFP, Bednarikova T., “Slovaquie: un nombre record de maires roms suscite les espoirs”, 17 March 2011.

361. Edirne Roma Association, ERRC, Helsinki Citizens Association, *We are here!*, pp. 60-61.

362. *Ibid.*, p. 140.

363. European Court of Human Rights, *Sejdić and Finci v Bosnia and Herzegovina*, Applications Nos. 27996/06 and 34836/06, Grand Chamber Judgment of 22 December 2009.

with Article 3 of Protocol No. 1 (the right to free elections) and Article 1 of Protocol 12 (the general prohibition on discrimination). The application was lodged by one Jewish and one Roma citizen of Bosnia and Herzegovina, who contested the fact that they were prohibited from standing for election to the House of Peoples of the Parliamentary Assembly and for the State Presidency. Delays in implementing the judgment resulted in the October 2010 elections being held with these discriminatory provisions still in place. In 2009, the Committee of Ministers of the Council of Europe recommended that the Bosnian authorities “adopt, where necessary, legislative and practical measures to allow improved representation of national minorities, and in particular of the Roma, in elected bodies, especially at the local level.”³⁶⁴ In the report following his visit to Bosnia and Herzegovina in November 2010, the Commissioner called on the authorities “to end the longstanding discrimination towards members of national minorities by bringing the Constitution and the Election Law fully in line with the European Convention on Human Rights, in light of the Strasbourg Court judgment in the case of *Sejdic and Finci*.”

Some countries, such as Bosnia and Herzegovina, Croatia, Romania and Slovenia, have introduced positive measures in the field of representation of minorities, including the Roma, in elected bodies. For example in Slovenia, a Roma representative is elected by Roma in the municipal council of the 20 municipalities where autochthonous Roma live. In his letter to Slovenian authorities following the visit to Slovenia in April 2011, the Commissioner “encourages the authorities to continue supporting the work of the Roma councillors, not least by providing additional training” to enable councillors to carry out their tasks more effectively.” In Bosnia and Herzegovina, persons belonging to national minorities benefit from a reserved seat within local assemblies. However, amendments made to the Election Law in 2008 raised the threshold allowing minorities to have a special seat if

364. Committee of Ministers, Resolution CM/ResCMN(2009)6 on the implementation of the Framework Convention for the Protection of National Minorities by Bosnia and Herzegovina, p. 3.

they make up more than 3% of the population of a given municipality. Previously, they had a reserved seat even where they constituted less than 3% of the population. The Commissioner has noted this amendment, which particularly affects the Roma, with concern.

The Lund Recommendations on the Effective Participation of National Minorities in Public Life clearly state that “the electoral system should facilitate minority representation and influence”.³⁶⁵ More particularly, the Commissioner noted that reserved seats have shown positive results, as have the focus on participation of Roma at the local level. However, as the Advisory Committee on the FCNM has underlined, reserved seats are not a guarantee *per se* of the effective participation of minorities in public affairs. Some guarantees such as the involvement of elected minority representatives in decision-making processes, including in fields that are not strictly related to national minorities, are needed. “It is therefore important that [national minorities] have speaking and voting rights in the elected body and that their role is not limited to a mere observer status.”³⁶⁶

9.3. Representation in consultation mechanisms

The Commissioner has noted that “public life is not only about elections. Participation in public life also includes the possibility to influence authorities on a daily basis. More organised consultation is needed, for instance, in the municipalities, between the local authorities and the Roma population on housing and other concrete problems. Such consultation must be genuine and meaningful; any tendency of tokenism will backfire. Mechanisms for equal, direct and open communication are needed. Advisory bodies could be set up to give such consultations more continuity and promote the legitimacy of the Roma representatives.”³⁶⁷

365. OSCE High Commissioner on National Minorities, Lund Recommendations on the Effective participation of National Minorities in Public Life, Rule 9, 1 September 1999.

366. Advisory Committee of the Framework Convention on National Minorities, Commentary on the Effective Participation of National Minorities in Cultural, Social and economical Life and in Public Affairs, adopted on 27 February 2008, p. 26.

367. Commissioner for Human Rights, “Roma representatives must be welcomed into political decision-making”, *op. cit.*

Some measures taken by member states in this regard are promising. For example, in Finland, permanent regional advisory boards for Roma affairs have been established. In Norway, on 8 April 2010, the first meeting of the Forum for Dialogue between the Roma and Norwegian Authorities (*Samrådet mellom rom og norske myndigheter*) took place.

Hungary introduced in 1993 local, regional and national minority self-governments, which have the right to make decisions in the areas of local education, language use in public institutions, printed and electronic media, and the protection of their traditions and culture. However, their capacity and competencies are limited and do not replace participation in general elected bodies.³⁶⁸

In Kosovo, consultation mechanisms exist at the central and the local levels. There are two Roma, two Egyptian and two Ashkali representatives in the Communities Consultative Council, an advisory body operating under the auspices of the President of Kosovo. At the municipal level, mandatory and non-mandatory mechanisms, such as communities committees, municipal communities and returns offices, deputy mayors and deputy chairpersons of the municipal assembly for communities have generally been appointed or established and functional throughout Kosovo. However, Roma, Ashkali and Egyptians remain unrepresented in several municipalities. Consequently, none of the appointed deputy mayors for communities were Roma, Egyptian or Ashkali as of December 2010. The Roma community is “the most affected” by exclusion issues according to the OSCE.³⁶⁹

Broadly, improvements remain to be made in most European countries. In Austria, for example, the Committee of Ministers of the Council of Europe noted that “although valuable initiatives have been implemented to improve the situation of the Roma, there are no comprehensive policies, programmes and resources to promote

368. National Democratic Institute, “The Hungarian minority self-government system as a means of increasing Romani political participation”, September/October 2006.

369. Organization for Security and Co-operation in Europe Mission in Kosovo, “Communities Rights Assessment Report Second Edition”, op. cit., p. 15.

equal opportunities for them or for their effective participation in society.”³⁷⁰ In Cyprus, the Advisory Committee on the FCNM noted in 2010 that “the Cypriot Roma do not at present have associations able to formulate and represent their interests in an organised way.”

In Germany, the Committee of Ministers called on the government in 2007 to “improve the mechanisms for consulting the Roma/Sinti, with due regard for their diversity in order to increase participation of persons belonging to the Roma/Sinti minority in public life.” The OSCE High Commissioner on National Minorities has noted with respect to Italy that “there is little involvement and representation of Roma and Sinti in direct dialogue and consultation with the authorities. Roma and Sinti communities are seldom able to present their own interests and concerns; instead, they are presented through intermediary organizations contracted by local or regional authorities. Such indirect consultation arrangements may not always be in the best interest of those concerned”³⁷¹.

In Ireland, where the Council of Europe Committee of Ministers recommended that the authorities ensure Traveller representatives’ effective participation in various bodies dealing with Traveller issues,³⁷² the High Level Group on Traveller Issues to promote public policy on Traveller matters had no Travellers on staff in 2007. In the Netherlands, the Advisory Committee on the FCNM noted that Roma and Sinti have been excluded from the National Ethnic Minority Consultative Committee even though representatives of these minorities “have asked for direct dialogue with the national authorities and ... would welcome being represented ... in order to express their concerns and interests.” The Advisory Committee has called on the authorities to consider including

370. Committee of Ministers, Resolution CM/ResCMN(2008)3 on the implementation of the Framework Convention for the Protection of National Minorities by Austria, p. 1.

371. OSCE High Commissioner on National Minorities, Assessment of the Human Rights Situation of Roma and Sinti in Italy, March 2009, p. 30.

372. Committee of Ministers, Resolution CM/ResCMN(2007)10 on the implementation of the Framework Convention for the Protection of National Minorities by Ireland, p. 2.

Roma and Sinti on this body. In Portugal, the Advisory Committee on the FCNM recommended measures to “enhance the consultation and co-operation between the authorities and Roma representatives and improve participation of the latter in decision-making, in particular on issues of concern to them.”³⁷³ The Advisory Committee also reported that there have been recent setbacks in Roma representation through the closure of the Office for the Support of Roma. In Romania, in 2007, the Committee of Ministers called on the government to “promote further the participation of persons belonging to national minorities in public affairs at central and local levels, in particular as regards the Roma and the numerically smaller minorities.”

Efforts have been made to establish consultation mechanisms at the international level. One such mechanism among these is the European Roma and Travellers Forum. Originally the initiative of then-Finnish President Tarja Halonen in 2001, the Forum materialised in November 2004 with a Council of Europe Committee of Ministers decision on the matter. The idea of the Forum is to give the Roma a common voice in European decision-making. The Forum is an autonomous international association, set up by the Roma. Its relations with the Council of Europe are governed by a partnership agreement, which specifies how the Forum is funded and deals with its representatives’ participation in the work of various bodies within the Council of Europe.

The European Platform for Roma Inclusion, created in 2009, is also a useful forum for debate and concerted actions of all relevant stakeholders: EU institutions, national governments, international organisations, academics and Roma civil society representatives. The role of the Platform is expected to be extended following the adoption of the EU Framework for National Roma Integration Strategies up to 2020.

Authorities at all levels should encourage organised consultation with Roma and Travellers. In accordance with the Advisory Committee on the Framework Convention on National Minorities’ Commentary on

373. Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Portugal, adopted on 5 November 2009, p. 1.

participation, “it is essential that the legal status, role, duties, membership and institutional position of consultative bodies be clearly defined. This includes the scope of consultation, structures, rules governing appointment of their members and working methods.” In order to enhance their efficiency, consultative bodies should have a legal personality, should be transparent and should be representative of the minorities. Consultative bodies should be consulted in legislation drafting and given adequate resources to carry out their mission. However, as the Advisory Committee has underlined, “consultation alone does not constitute a sufficient mechanism for ensuring effective participation of persons belonging to national minorities.”³⁷⁴

9.4. Representation in civil service

The representation of Roma and Travellers in public life would be considerably improved were Roma and Travellers visibly represented among the ranks of civil service, including as teachers and in the police, at local, regional and national level. At present, however, inclusion in public employment remains scant, and for the most part of low visibility.

For example, the Advisory Committee of the FCNM in 2008 reported with concern that “apart from a few exceptions, the Roma are not represented within the civil service” in Bosnia and Herzegovina. In the Czech Republic, at regional level, every region has a post for Roma Adviser, established differently as per the needs of the region. Not all of the Roma Advisers, however, are members of the Roma community. The Advisory Committee has, however, noted with interest that “specifically targeted training is offered to young Roma graduates to help them find employment as public officials in ministries”.³⁷⁵ In 2010, the Committee of Ministers of the Council of Europe noted with respect

374. Advisory Committee of the Framework Convention on National Minorities, Commentary on the Effective Participation of National Minorities in Cultural, Social and Economic Life and in Public Affairs, op. cit., p. 28.

375. Advisory Committee of the Framework Convention on National Minorities, Second Opinion on the Czech Republic, adopted on 24 February 2005, p. 26.

to Moldova that “the employment of Roma and of persons belonging to numerically smaller minorities in state administration and civil service is particularly low” and recommended the government “take steps to promote a better representation of the Roma at all levels.” In Kosovo, the OSCE reported that “only a very limited number of Roma are employed as civil servants in Kosovo or Serbia-run institutions, and are represented in the public employment sector or in former socially owned enterprises”.³⁷⁶

The Advisory Committee on the FCNM noted in its Commentary on the Effective Participation of National Minorities in Cultural, Social and Economic Life and in Public Affairs that “Roma and Travellers, indigenous peoples and numerically small national minorities are often particularly under-employed in public administration and this issue requires specific attention from the authorities. Their employment in public administration can contribute to a better image and increased awareness of such minorities in the society at large, which in turn is likely to improve their participation at all levels.” More efforts need to be launched in this direction. For example, in its Recommendation 1924 (2010) on the Situation of Roma in Europe and relevant activities of Council of Europe, the Parliamentary Assembly of the Council of Europe (PACE) recommended “the development of special internship programmes for Roma in the civil service in order to increase Roma representation within the state and local administration”, using the Irish model of the Travellers internship programme in 2006-2007, which provided employment opportunities for Travellers and raised the awareness of civil servants about this community.³⁷⁷

It is incumbent upon governments throughout Europe to set an example and involve Roma and Travellers as fully as possible in decision-making processes concerning them. The Commissioner has observed that one lesson is that “proactive measures are absolutely necessary. It is not sufficient to unblock some hindrances – there is a need to

376. OSCE Mission in Kosovo, *Communities Profiles 2010*, p. 190.

377. Irish Department of Justice, equality and law reform, *Review of a civil service Traveller internship pilot programme ‘Not Like Usual’*, 2007.

compensate for the long history of exclusion and marginalization through positive action.”³⁷⁸ The European Committee of Social Rights has also ruled that under Article 30 of the Revised European Social Charter,

*[s]tates have the positive obligation to encourage citizen participation in order to overcome obstacles deriving from the lack of representation of Roma and Sinti in the general culture, media or the different levels of government, so that these groups perceive that there are real incentives or opportunities for engagement to counter the lack of representation.*³⁷⁹

378. Commissioner for Human Rights, Viewpoint, “Roma representatives must be welcomed into political decision-making”, op. cit.

379. European Committee of Social Rights, Decision on the Merits, *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, 25 June 2010.

Conclusions

The years 2010 and 2011 saw major advances in the development of the European institutions' explicit commitments to tackle the exclusion of Roma. The Council of Europe Strasbourg Declaration on Roma provides the political impetus to take concrete measures in this direction. The EU Framework for National Roma Integration Strategies up to 2020 also constitutes a move long sought after by Roma rights activists throughout Europe.

On the other hand, there are troubling trends. European institutions responded with caution to policies evidently destructive of the fundamental rights of Roma in Italy and France. At a number of key moments, member states have rendered European-level calls to tackle Roma and Travellers' exclusion hollow, by openly flouting those expressions of concern. This fact has to a certain extent undermined efforts to emphasise the importance of inclusion for Roma and Travellers. Roma and Travellers throughout Europe follow these developments closely, and are keenly aware that, when push comes to shove, force currently prevails over international concern. Deep scepticism over whether there exists even a possibility of positive change for Roma and Travellers – a sentiment already widespread among Roma throughout the continent – is continually strengthened when international institutions fail to have a real impact on abuses by states and others.

At the same time, new voices from the extreme right are gaining volume, and resentment against any “positive discrimination” for Roma and Travellers appears to be growing. In many places, such views are a thin cover for sentiments that Roma and Travellers can never be accepted as full and equal citizens of Europe, and will only be tolerated if they remain a docile and ideally invisible population of outsiders, or if they cede any affiliation with the Roma and Travellers community and blend or “assimilate” into a – generally fictive – “majority”.

Today, more Roma young people are in university than ever before. In some countries, Roma professionals now staff ministries or police, or work in local or regional administrations. Roma and Travellers are

also vibrant contributors to private-sector development in some areas. These are important advances over only a decade ago. This progress is a testament to what is possible when communities, policy-makers, families and individuals come together to tackle even the deepest forms of exclusion. However, without continued and reinvigorated commitment, these gains are fragile – and reversible. Progress made thus far pales in comparison to the scope and depth of exclusion currently prevailing among some sectors of the Roma and Traveller communities.

Shortcomings in the four “priority areas” identified by the EU Framework for National Roma Integration Strategies up to 2020 – education, health care, housing and employment – need to be addressed without delay. The training of Roma mediators in the field of education, health and employment initiated by the Council of Europe Special Representative of the Secretary General on Roma issues seems to be an important step in that regard. Member states should make sure that their domestic legislation and practice are compliant with the jurisprudence of the European Court of Human Rights and the European Committee of Social Rights in these four areas. It is of particular importance that Roma children are moved without delay into mainstream educational environments and provided with the necessary classroom and other relevant support to succeed and excel in education.

Furthermore, the link between the rights to education, health care, housing and employment and other human rights and fundamental freedoms is clearly demonstrated in this report. The EU Framework’s key priority areas can and should be seen in the wider context of other reform areas, such as policing and the judiciary. In order to be effective, the National Roma Integration Strategies will need to be human rights-based, and cover all thematic areas of relevance to Roma inclusion. The human rights situation of Roma and Travellers should be addressed as a whole and different fields addressed simultaneously. Wherever possible, targets should be defined which go beyond the four EU Roma integration goals relating to access to education, employment, health care and housing.

The continued phenomenon of racial discrimination requires immediate attention. Adopting and implementing comprehensive anti-discrimination legislation is a necessary step. Member states that have not yet done so should also adopt Protocol No. 12 of the European Convention on Human Rights, providing for a general prohibition of discrimination. National structures promoting equality as well as low-threshold complaints bodies have an important role to play in offering effective and accessible remedies for Roma and Travellers victims of discrimination. In addition to removing obstacles in the way of fulfilment of rights, member states should take proactive measures so that Roma and Travellers are given a real chance to overcome a long history of exclusion.

Cycles of the forced expulsion from homes, localities or countries need to be broken if genuine social inclusion of Roma is to be achieved. For that imperative to be acted upon, European states must genuinely co-operate with Roma organisations and civil society to find adequate solutions. They must also accept the way of life of itinerant and semi-itinerant Roma and Travellers, according to their own choice.

The problem of statelessness and lack of personal documentation for thousands of Roma in Europe must be addressed with resolve, as these persons are often denied basic rights such as education, health care, social assistance and the right to vote.

Special attention should be given to those women who are victims of forced and coercive sterilisations and to the victims of trafficking in human beings.

Strategies aimed at the inclusion of Roma and Travellers should be implemented with the participation of the communities themselves in the development, implementation and evaluation of these policies. There will not be any improvement in these areas without the participation of Roma and Travellers in decision-making processes.

Above all, authorities in Europe must tackle, once and for all, the underlying prejudices and stereotypes – anti-Gypsyism – driving discrimination and violence against the Roma and Travellers in Europe.

It is time to end the negative portrayal of Roma in the media and the political sphere. The Commissioner believes that common action in investigating and sanctioning individual and collective forms of violence against the Roma must be undertaken in all relevant cases. Without the eradication of anti-Gypsyism, all efforts and programmes aimed at the inclusion of Roma will be in vain.

The Commissioner is convinced that this is indeed the only way forward: the governments and administrations of Europe must redouble their efforts to engage all segments of the public to secure genuine Roma inclusion. Otherwise, Europe is at risk of further ethnic polarisation with frustration sparking violence from all sides. Efforts to secure the fundamental human rights of Roma in practice can and must be Europe's present and future.

The Commissioner calls on the governments of Europe to intensify and deepen their efforts to ensure that Roma finally enjoy equal dignity in societies free of discrimination.

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FINLAND/FINLANDE

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In many European countries, the Roma and Traveller populations are still denied basic human rights and suffer blatant racism. They remain far behind others in terms of educational achievement, employment, housing and health standards, and they have virtually no political representation.

Anti-Gypsyism continues to be widespread and is compounded by a striking lack of knowledge among the general population about the history of repression of Roma in Europe. In times of economic crisis, the tendency to direct frustration against scapegoats increases – and Roma and Travellers appear to be easy targets.

This report presents the first overview of the human rights situation of Roma and Travellers, covering all 47 member states of the Council of Europe. Its purpose is to encourage a constructive discussion about policies towards Roma and Travellers in Europe today, focusing on what must be done in order to put an end to the discrimination and marginalisation they suffer.



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The Council of Europe has 47 member states, covering virtually the entire continent of Europe. It seeks to develop common democratic and legal principles based on the European Convention on Human Rights and other reference texts on the protection of individuals. Ever since it was founded in 1949, in the aftermath of the Second World War, the Council of Europe has symbolised reconciliation.

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