

Annex II

Excerpts from International Human Rights Monitoring Bodies

The first source of data for the Shadow Report is recent country reports produced by specialized international monitoring bodies. More precisely, we collected and analysed excerpts from country reports by the Council of Europe's Commissioner for Human Rights, the European Commission against Racism and Intolerance, the United Nations Committee on the Elimination of Racial Discrimination, and the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

This Annex presents the excerpts divided by the relevant areas under the Race Equality Directive: employment, education, healthcare, housing, access to other goods and services, equality data, positive action, equality bodies.

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BULGARIA

Sources

1. [Country report by the COE Commissioner on HR](#) (February 2010, CommDH(2010)1)
2. [CERD Concluding Observations](#) (March 2009, CERD/C/BGR/CO/19)
3. [ECRI report](#) (February 2009, CRI(2009)2)
4. OSF experts: Alina Covaci and Mariana Barbec Rostas (February 2013)

1. General trends and challenges

[CERD Concluding observations](#)

§15. The Committee is concerned about the specific obstacles encountered by Roma in respect of access to work, housing, health care and education. It recommends that the State party continue taking positive measures to improve the living conditions of Roma in respect of access to work, health care, housing and education within the framework of the Plan of Action for Roma Inclusion and the Decade for Roma Inclusion, in accordance with article 5 of the Convention and general recommendation XXVII (2000) on discrimination against Roma (art. 5).

2. Employment

[Country report by the COE Commissioner on HR](#)

§58. During his visit, the Commissioner learned that discrimination is still an important factor preventing certain minorities, in particular Roma, from accessing employment. The Commissioner is aware that domestic, anti-discrimination legislation prohibits discriminatory recruitment and obliges employers to combat discrimination in the workplace. In this context, the work of the Commission for Protection against Discrimination is highlighted and the need to support and reinforce such activities underlined.

§59. The employment situation of Turks is unsatisfactory, too, with an estimated unemployment rate of 36%. Economically, Pomaks are worse off than the majority of the population which is also due to their generally lower level of education. Consequently, they work in poorly paid sectors (building industry, harvesting) and poverty is widespread. In view of this situation, a systematic evaluation of all employment-related measures taken or planned with a view to increasing their effectiveness towards all minority groups concerned is highly advisable.

[CERD Concluding observations](#)

§11. The Committee has taken note of the data provided by the State party on the ethnic composition of the population and the main minorities residing in Bulgaria. It is concerned, however, about the low representation of persons from certain minority groups, particularly Roma, in the various public administrations, the army and the police, which may be due to discriminatory practices during selection and recruitment.

The Committee recommends that the State party take effective measures with a view to improving the representation of minority groups in the public services and preventing and combating all forms of discrimination in the selection and recruitment process in the administration, the army and the police. The Committee invites the State party to provide in its next periodic report information on the measures taken to this end (art. 5).

[ECRI report](#)

§55. In its third report, ECRI recommended that the authorities continue, and step up, their efforts to provide vocational training in order to increase the opportunities for members of the Roma community to find jobs.

§59. Although no statistics broken down according to ethnic origin are collected in the employment field, according to studies carried out by NGOs, the unemployment rate in the Roma community is 70 to 80%, with the situation of women and young people giving particular cause for concern. The illiteracy rate among adult Roma is also very high.

§60. The above measures show that the authorities have to a certain extent become aware of the issues. However, civil society representatives have observed that the programmes described above need to be implemented more actively, in a co-ordinated manner and over a long period, with the necessary human and financial resources. Indeed, Roma remain largely excluded from the job market both because of their lack of qualifications and because of discrimination, particularly when it comes to recruitment. Both the authorities and the Roma community are aware of the inextricable link between improved access to quality education for Roma and their employment. The Protection against Discrimination Act contains several provisions prohibiting discrimination on grounds, among others, of race, national or ethnic origin, religion and nationality in respect of recruitment (Section 12, paragraphs 1 to 4) and training and promotion (Section 15). The Act also obliges the employer to take disciplinary measures in cases of harassment on the above-mentioned grounds (Section 16). The employer is required, in co-operation with the trade unions, to take effective steps to prevent all forms of discrimination in the workplace (Section 18). Moreover, under Section 19, an employer is liable for any discrimination perpetrated in the workplace by an employee (Section 19). It would seem, however, that the authorities have done little to raise awareness of this Act among employers and that more could be done in this regard as concerns ethnic and religious minorities in general and Roma in particular.

§61. ECRI strongly recommends that the Bulgarian authorities continue, and strengthen, the measures taken to integrate Roma into the labour market, paying particular attention to the situation of women, as advocated in its General Policy Recommendation No. 3 on combating racism and intolerance against Roma/Gypsies. It also recommends that they take measures geared towards young Roma, and collect data broken down by ethnic origin in order to better examine the situation of Roma in this field, to assess the progress made and devise other projects if necessary. ECRI recommends that the Bulgarian authorities implement the various programmes for the employment of Roma adopted since the third report more actively, and allocate the necessary human and financial resources to them.

§62. The ECRI encourages the Bulgarian authorities to continue to work with the Roma community on their integration into the employment market. It recommends ensuring co-operation and close co-ordination with other governmental and civil society actors.

§64. ECRI strongly recommends that the Bulgarian authorities wage campaigns to make employers aware of the Protection against Discrimination Act in order to provide them with information about the rights of members of ethnic and religious minorities in the employment sector and employers' responsibilities in this regard.

§82. Civil society actors have indicated that Roma are represented little, if at all, in such bodies as the police and the judiciary. With regard to the justice sector, it has been stated that very few Roma hold judicial positions.

3. Education

[Country report by the COE Commissioner on HR](#)

§54. The Commissioner commends the active involvement of civil society in the field of education. Yet he is worried at reports indicating that, despite all these programmes, concrete progress remains slow and numerous problems persist, particularly with regard to Roma, Turks and Pomaks who generally have a lower level of education compared with the majority of the population.

a. Mainstream education

§77. The Commissioner notes, however, that parents complained about the charges imposed on them by kindergartens which amounted to between 20 levs and 40 levs (approximately €10 to €20) per month. These charges made it impossible for families with low or no income, including Roma, to enrol their children into school. Similarly, the UN Committee on the Rights of the Child regretted that the places available in preschool facilities were not being fully utilised for preparing children with disabilities and Roma children for school. It therefore recommended extending the early childhood development programmes and preschool education to more children, particularly Roma children.

§78. The Commissioner notes with concern the structural reform introduced into all schools in Bulgaria in January 2008. As a result of this reform (...) the school budget is (...) solely determined on the basis of the number of students enrolled in the school. (...)

§79. The Commissioner is concerned that, as a result of this reform and the way in which the budget is now determined, the future of schools with a low intake of pupils will be put in jeopardy since funding is likely to be insufficient to allow them to finance their activities and/or staff costs. (...) Of further concern to the Commissioner is the significant impact of the school budgetary reform on the process of Roma educational integration. As many Roma children were enrolled in rural or small schools and many of these schools have closed due to budgetary constraints, a significant increase in the drop-out rate has ensued. (...)

§80. (...) The Commissioner considers that this reform risks exacerbating the existing de facto segregation of Roma in schools in majority-Roma neighbourhoods or villages with fewer human and financial resources available.

b. Education of Roma children in special institutions

§82. From 2001 to 2005, the Bulgarian Helsinki Committee reported that Roma made up half of all the students in schools for children with intellectual disabilities and about two-thirds of the students in boarding schools. In its 2009 report, ECRI expressed its concerns that Roma children with no specific disabilities continued to be placed in special schools, either because they had an insufficient grasp of the Bulgarian language or simply because these schools provided free meals which was a persuasive argument for many disadvantaged Roma parents.

§83. During his visit, the Commissioner was informed that the number of auxiliary and boarding schools for Roma children was progressively decreasing. The authorities indicated that twelve reform schools which were largely attended by pupils of Roma origin were closed down in 2006- 2007. An up-to-date evaluation of the pupils from these schools was conducted by integrated pedagogical evaluation teams within the regional education inspectorates and, on the basis of these assessments, it was concluded that the majority of Roma should be sent to mainstream schools. Of the reform schools which were closed down, two are in Roma neighbourhoods which lack a mainstream school.

§84. Like ECRI, the Commissioner is particularly concerned that reform establishments have a disproportionately high number of Roma children who are sometimes sent there by their parents because of their own socio-economic problems. The Commissioner calls for urgent measures to be taken to tackle this problem. Appropriate and targeted awareness-raising campaigns need to be immediately initiated to inform parents of alternative solutions as well as the possible short term and long-term consequences of institutionalisation. The Commissioner urges the authorities to adopt a concrete and comprehensive action plan to deinstitutionalise these children.

[CERD Concluding observations](#)

§13. The Committee is concerned about the former practice of placing Roma children in special schools reserved for children with disabilities. It recommends that the State party continue measures to integrate Roma children into mixed schools, in cooperation with civil society organizations.

[ECRI report](#)

§49. ECRI encourages the Bulgarian authorities to continue training teachers to work in a multicultural environment. It recommends that, in accordance with its General Policy Recommendation No. 10, they provide educational staff with initial and ongoing training designed to foster awareness of issues pertaining to racism and racial discrimination and of the harmful consequences these have on the ability of children who are victims of these phenomena to succeed at school. ECRI also recommends that the Bulgarian authorities provide them with training in the Protection against Discrimination Act.

4. Health care

[Country report by the COE Commissioner on HR](#)

§61. The Commissioner is concerned about reports that in Bulgaria, people have no health insurance if they do not receive or are no longer receiving unemployment benefits and that a relevant fund set up does not appear adequate to meet the needs of people. According to official statistics, 46% of Roma do not have any health insurance. The Commissioner notes that other minority groups could be affected as well and would like to be informed of how and to what extent people not covered by the Health Insurance Act may access health care.

[ECRI report](#)

§70. Roma continue to encounter numerous health problems stemming from various socio-economic factors, such as poverty, the poor housing conditions in which many of them live and their generally low standard of education. According to information provided by the Bulgarian authorities, 68% of Roma households have a chronically sick member and 55% said they had difficulty in obtaining access to a doctor because of their remoteness.

§71. In addition, ECRI is concerned to note that the health situation of Roma is exacerbated by the fact that many of them have no health insurance (46% according to figures provided by the authorities). This is mainly because a large number of them have been unemployed for years and are not, or are no longer, registered as jobless. Consequently, they no longer receive unemployment benefits and are not covered by the Health Insurance Act, which provides for State medical cover only for those receiving unemployment benefits. The authorities stated that there is a fund of 5 million leva (about €2,500,000) for providing health care for the most disadvantaged. However, those concerned must expressly apply to benefit from it, and it seems that no steps have been taken to inform the Roma community of the existence of the fund, which moreover appears largely insufficient to meet needs. The above-mentioned amendment to the Social Assistance Act is liable to exacerbate the situation of Roma. Indeed, it seems that if people who were receiving assistance do not find work during the year for which they no longer receive assistance, they will not have access to State health insurance either.

§72. ECRI is concerned about reports from several sources to the effect that Roma are discriminated against in the health field. Instances of pregnant Roma women being placed in separate wards in certain maternity hospitals have been noted and it would seem that sanitary conditions in these wards are of a lower standard than in the others and that the medical personnel pay less attention to these patients. There are reports of ambulances refusing to go to Roma areas, or delaying going there. ECRI does not have any information about the steps taken to review this problem. Such studies would make it possible to establish the scale of the problem and to take appropriate measures to address it, particularly by raising awareness of racism and racial discrimination issues and enforcing the legislation on the subject.

§75. ECRI urges the Bulgarian authorities to carry out investigations into allegations of discrimination against Roma and segregation in the area of health care and to take the necessary measures, including legal measures, to combat this phenomenon. It also recommends that they conduct campaigns to make medical personnel aware of the fight against racial discrimination.

5. Housing

[Country report by the COE Commissioner on HR](#)

The government adopted an Action Plan for 2007-2008, as part of the National Programme for Improving the Living Conditions of Roma and a number of municipalities adopted development plans for improving the living conditions of Roma. Several municipalities also developed cadastral plans for compact Romani settlements. However, the Commissioner was informed that funds allocated for social housing remain insufficient and, in some places, their construction is blocked due to lack of co-operation with the local authorities. Furthermore, Roma are reportedly discriminated against in the housing sector,

particularly when trying to rent or buy real estate. The Commissioner notes with concern that many Roma still live in sub-standard housing and often encounter difficulties in obtaining documents they should already have received showing proof of ownership. This causes particular problems in cases of eviction as the title deeds are required to obtain compensation. The Commissioner observes that Roma are disproportionately affected by evictions. Often their dwellings are destroyed without alternative accommodation being provided. The Commission for Protection against Discrimination has also received complaints from Roma regarding their applications for proposed housing developments that were turned down by the municipalities.

§70. During the Commissioner's visit in November 2009, the Bulgarian authorities indicated that they were working on cadastral and zoning maps, work which is still in progress. Roma face extreme difficulties as their neighbourhoods do not have building or zoning maps in urbanised areas. When zoning exists, they often do not have all the documentation proving their property rights due to illiteracy or lack of knowledge of the laws. In smaller municipalities, their dwellings are often built outside the residential districts in agricultural areas or zones under a specific regime.

§72. The concerns of the Roma people regarding the risk of forced evictions cannot be ignored as there are still reports of such cases from different parts of the country. During his last visit, the Commissioner was informed of the demolition of Roma houses in Bourgas in September, leaving 200 people, including children and elderly, homeless just before the winter. The Commissioner stresses the need for immediate, concrete steps by the Bulgarian government in co-ordination with the local authorities to ensure sustainable and healthy living conditions for the Roma population in close consultation with the people directly concerned.

§73. The Commissioner reiterates that forced evictions should be avoided when there is a real risk of violating the European Convention on Human Rights, notably the right to respect for private and family life (Article 8) and the prohibition of degrading treatment (Article 3).³² He invites the authorities to provide suitable alternative accommodation in cases of eviction. Recalling his recent Recommendation *on the implementation of the right to housing* of 30 June 2009, the Commissioner insists that effective legal remedies should be available to all persons affected by eviction orders. Moreover, the conditions for legalising constructions which had hitherto been illegal should be relaxed to allow the authorities to tackle the housing shortage facing Roma families.

[ECRI report](#)

§66. ECRI is concerned that most Roma continue to live in de facto segregated housing, often in the big cities, for example Sofia and Plovdiv. Such amenities and services as water, electricity and heating are either non-existent or insufficient to meet the needs of those living there. As mentioned above, most of this housing was built without planning permission and/or without the involvement of the competent authorities, and therefore without any town planning. It is therefore not readily accessible to such public services as ambulances, the fire brigade and rubbish collectors. This exacerbates the isolation of the inhabitants and aggravates other problems, particularly health problems. Civil society actors observe that the housing is overcrowded, and that this leads to situations where projects to provide amenities are not implemented(...).

§67. In October 2006 the European Committee of Social Rights issued a decision concerning the right of Roma to housing. The Committee concluded that the situation in respect of the inadequate housing of Roma families and the lack of proper amenities constituted a violation of Article 16 of the Revised European Social Charter (right of the family to social, legal and economic protection), taken together with Article E (non-discrimination). The Committee stated that the lack of legal security of tenure and the failure to comply with the conditions concerning the eviction of Roma families from dwellings unlawfully occupied by them constituted a violation of these articles. ECRI hopes that this decision will be taken into consideration when the above-mentioned measures are applied, to ensure that all the problems referred to in it are solved.

§68. ECRI recommends that the Bulgarian authorities continue with, and step up, the measures taken to address the housing problems facing Roma and to provide the human and financial resources needed for this purpose. It encourages them to continue to work in co-operation with NGOs and Roma civil society. It recommends that they strengthen such co-operation, particularly in respect of the regularisation of Roma housing and the building of new housing.

6. Access to other goods and services

[Country report by the COE Commissioner on HR](#)

§63. The Commissioner notes that the Bulgarian Constitution provides for the right to social assistance. He is aware that legislative attempts to restrict this right by amending the Social Assistance Act in such a way that social assistance for unemployed persons of working age can be interrupted after 6, 12 or 18 months of unemployment was found in breach of Article 13 paragraph 1 of the revised Social Charter. In its 2009 decision concerning Bulgaria, the European Committee of Social Rights stressed that the above legislative proposals are likely to have a considerable impact on some of the most disadvantaged groups in Bulgaria, particularly on Roma as they face particular difficulties in accessing the labour market and thus depend to a large extent on social assistance. The Commissioner trusts that the Bulgarian authorities will give full effect to the decision and safeguard the constitutional right to social assistance for Bulgarian citizens, including those who are particularly vulnerable, such as members of minority groups.

[ECRI report](#)

§59. ...Given that Roma are in a precarious situation with regard to employment, ECRI is concerned to note that an amendment to the Social Assistance Act has restricted the period for which an unemployed person may receive social assistance to 18 months. This measure affects Roma disproportionately because many of them are long-term unemployed. The authorities have informed ECRI that this amendment, which came into force in January 2007, does not apply to vulnerable groups, such as mothers and people with disabilities. Other people undergo an assessment, after which several solutions designed to integrate them into the labour market are proposed to them. ECRI is not aware of any widespread research on the effects of this amendment on members of the Roma community. However, it hopes that the consequences of this amendment for members of the Roma community will be closely monitored with a view to its being repealed if it proves to discriminate against them indirectly.

§63. ECRI urges the Bulgarian authorities to monitor the consequences of the above-mentioned amendment to the Social Assistance Act to ensure that it does not discriminate indirectly against Roma. It recommends that they consider repealing the amendment should it prove to discriminate indirectly against Roma.

7. Availability of equality data

[Country report by the COE Commissioner on HR](#)

§55. The Commissioner notes with concern that no systematic evaluation of the measures taken so far seems to be available which might also be due to a general lack of data on the situation of children belonging to minorities. He considers necessary such data collection and a thorough evaluation of the programmes with a view to assessing the social inclusion of minority groups' members.

§56. The Commissioner has noted that no official data seems to exist for evaluating the employment situation of minority groups. The Commissioner reiterates that education is the key to effectively addressing both unemployment and precarious, unskilled forms of employment. Thus, it would be highly advisable to carry out research into the areas of education and employment which mostly affect the situation of all socio-economically disadvantaged minority groups. Measures taken in the field of education should be carefully evaluated with a view to assessing and improving their impact on the employment of minority groups.

[CERD Concluding observations on Bulgaria](#)

§11. The Committee has taken note of the data provided by the State party on the ethnic composition of the population and the main minorities residing in Bulgaria. (...) The Committee invites the State party to compile disaggregated data on the ethnic composition of its population. In view of its general recommendation No. 8 (1990) on identification with a particular racial or ethnic group, the Committee wishes to recall that the ways in which individuals are identified as members of racial or ethnic groups should be established on a voluntary and anonymous basis, and on the basis of self-identification by the individuals concerned. The Committee also recommends that the State party refrain from conducting emergency censuses targeted at minority groups.

[ECRI report](#)

§43. The authorities have informed ECRI that they estimate that in the 2006-2007 school year, roughly 10% of pupils were Roma, but that they did not have accurate statistics. NGOs have done research that shows that many Roma children continue to encounter serious schooling problems, for example a high drop-out rate and an insufficient command of reading and writing. Moreover, most of these children continue to receive their schooling in schools that are, de facto, segregated because of various factors connected with their socio-economic situation. ECRI is concerned to note that these schools continue to have less in the way of human and financial resources than other schools, and that the education provided there is of poorer quality. The lack of statistics on the situation of children belonging to

minorities, in particular Roma pupils, in the field of education, hinders the implementation and assessment of the various programmes set up by the authorities, including the National Programme to Integrate More Children of School Age (February 2005) and the corresponding Action Plan (June 2005). Accordingly, although studies by a number of NGOs show that few Roma pupils finish primary or secondary school, that very few go to university and that they are over-represented in specialised establishments, the lack of a long-term policy for compiling statistics on their situation is preventing the authorities from gauging the full scale of the problem.

§48. ECRI recommends that the Bulgarian authorities, in accordance with Section 1, paragraph 1, of its General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education, undertake, in conjunction with civil society organisations, studies on the situation of Roma children in the school system, by compiling statistics on their attendance and completion rates, drop-out rates, results achieved and progress made.

§59. (...) no statistics broken down according to ethnic origin are collected in the employment field (...)

§61. ECRI strongly recommends that the Bulgarian authorities continue, and strengthen, the measures taken to integrate Roma into the labour market, paying particular attention to the situation of women, as advocated in its General Policy Recommendation No. 3 on combating racism and intolerance against Roma/Gypsies. It also recommends that they take measures geared towards young Roma, and collect data broken down by ethnic origin in order to better examine the situation of Roma in this field, to assess the progress made and devise other projects if necessary.

8. Positive action

[Country report by the COE Commissioner on HR](#)

The government adopted an Action Plan for 2007-2008, as part of the National Programme for Improving the Living Conditions of Roma and a number of municipalities adopted development plans for improving the living conditions of Roma. Several municipalities also developed cadastral plans for compact Romani settlements.

§53. The Commissioner is aware of the numerous activities carried out by the Bulgarian authorities in the field of education with a view to better integrating children of minorities, in particular Roma children, into schools. (...)

§57. The Commissioner notes with appreciation that the Ministry of Labour and Social Policy 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 on the labour market as well as to motivate them to establish a career path and actively seek employment. Programmes to develop entrepreneurship among the Roma community were developed. The Employment Agency regularly organises job fairs for Roma in areas with a predominantly Roma population. It also employs Roma experts to improve its services for Roma and to train its staff to work with unemployed Roma. Nevertheless, according to NGO information, unemployment remains particularly high among Roma with a rate of 70% to 80%.

§60. The Commissioner notes with appreciation that the Bulgarian authorities are currently implementing their "Health Strategy concerning people in disadvantaged positions, belonging to ethnic minorities" as an integrated part of the National Health Strategy. In this context, he welcomes the various measures taken to improve the situation of Roma who still suffer from numerous health problems often due to poor housing conditions and unhealthy working conditions. A total of 111 health mediators were recruited to facilitate the access of Roma people to health care and 23 mobile health units now operate in the country. Recent regulations provide free-of-charge hospitalisation to persons without income as well as obstetrical care for women without insurance. These measures could have a wider impact if the procedures are simplified. The Commissioner hopes that the measures taken or planned will also include ethnic Turks and Pomaks, groups that are socio-economically disadvantaged and face similar health problems.

§69. The Commissioner trusts that the 2005 - 2015 National Programme to Improve the Housing Conditions of Roma will be speedily implemented, legalising housing and improving material standards in due consideration of the relevant decision of the European Committee of Social Rights. The implementation of the above programme should be continuously evaluated to avoid possible shortfalls while Roma NGOs as well as the families concerned should be involved from the very outset before concrete measures are taken in this domain.

§74. The Bulgarian Constitution and the Public Education Act provide for every child's right to an education. Education is mandatory from 7 until 16 years of age, with primary and secondary education in state and municipal schools free of charge.

a. Mainstream education

§75. The Commissioner is aware of the measures taken by the Bulgarian authorities in the field of education with a view to better integrating children from minorities into schools, in particular, Roma children. He is pleased to note that the authorities, in 2004, adopted the Strategy for the School Integration of Children and Teenagers from Ethnic Minorities. Furthermore, Roma teaching assistants have been hired by the Ministry of Education, municipalities and NGOs. (...)

§76. The Commissioner notes with satisfaction that, since 2004, free-of-charge preschool education has been made mandatory for children in the year prior to them enrolling in first grade. The Commissioner welcomes the programmes developed by the authorities to integrate Roma children into kindergartens and schools outside Roma neighbourhoods: As a consequence, 3 500 pupils living in predominantly Roma neighbourhoods have been integrated into comprehensive schools in the community at large. The Commissioner also welcomes the implementation by the Ministry of Labour and Social Policy of the programme for "Child welfare reform" aimed at preparing children of preschool age from disadvantaged families (mainly of Roma origin) for enrolment in first grade. This has led to some 12 500 children and pupils from socially disadvantaged Roma families in 32 municipalities in the country benefiting from financial aid.

§81. The national study on causes of children dropping out of school has led to the development of a "National programme for the prevention of drop-outs" and a "National programme for school coverage of children in grades 1-4", funded by the European Structural Fund. However, civil society considers that measures to tackle the problem of children dropping out of school are not going far enough. (...)

[ECRI report](#)

§44. As mentioned above, Chapter II of the Protection against Discrimination Act contains several provisions concerning the right to education. For instance, Section 29 (1) provides that the Ministry of Education and Science and the local self-governments must take measures to prevent racial segregation in educational institutions. In January 2005, the Centre for the School Integration of Children and Teenagers from Ethnic Minorities was set up in the Ministry of Education and Science in order to help municipalities and NGOs combat the various forms of de facto segregation that Roma pupils face. The authorities stated that the Centre devises, finances and supports projects to promote access for children from minority groups to quality education and improve their academic results. According to the authorities, the Centre works by raising funds in order to implement and support projects and by financing them itself. ECRI notes with interest that certain Roma NGOs appear satisfied with the progress the Centre has made.

§45. The authorities have, often in conjunction with NGOs, implemented a number of measures to improve the integration of Roma children in schools. They have, for example proposed to send them to schools outside their neighbourhoods in order to remove them from an environment which only comprises Roma pupils. In addition, compulsory preparatory classes continue to improve the integration of Roma children, and the introduction of free textbooks and free school transport helps to improve schooling for pupils from this group. A long-term strategy for the school integration of Roma children has yet to be devised, however, and the authorities should take the initiative more often when it comes to school integration measures for these children, given that such measures often seem to be taken by NGOs. It appears that the impact of the numerous programmes and action plans (Action Plan for the implementation of the Decade of Roma Inclusion, Strategy for the Educational Integration of Children and Pupils Belonging to Ethnic Minorities (2004), Action Plan for the Framework Programme for Equal Integration of Roma in Bulgarian Society (2006), National Programme for the Development of Primary, Secondary and Preparatory Education (2006-2015), drawn up, among other things, to improve the schooling of Roma children has yet to be seen. These plans and programmes would also be more effective if they were better co-ordinated. Greater consideration should also be given to the link between the educational problems facing Roma on the one hand and the very high unemployment rate in the Roma community on the other hand.

§46. The authorities informed ECRI that the National Council for Co-operation on Ethnic and Demographic Issues has carried out three projects in the framework of the PHARE programme to improve the education of Roma children. For instance, a scheme has been introduced to improve the training of teachers working in a multicultural environment. (...)

§57. The authorities have informed ECRI of a number of measures taken since the third report to integrate Roma into the job market. Several programmes and plans have been adopted, including, in 2006, the National Programme for Roma Literacy and Training. The authorities stated that in 2007 some 2,000 Roma took part in this programme. In addition, the national action plan setting out measures for the implementation of the programme of the Decade of Roma Inclusion 2005-2015 contains a section devoted to employment. Provision was made in 2008 for employment mediators, whose role is to ensure communication between Roma and the authorities. The authorities have specified that 45 mediators are to be appointed in the framework of pilot projects. They also reported that in 2007, fourteen meetings

on employment in the Roma community were held in various parts of the country, and that 1,734 people were recruited in the building, tourism and service sectors. The authorities recognise the lack of qualifications as the biggest problem facing Roma in the employment field. They have assured ECRI that they would concentrate on vocational training for members of this community in 2008.

§58. The Ministry of Labour and Social Policy launched an awareness campaign and a survey, in which 1,500 Roma took part, with a view to holding discussions on their needs and problems and the solutions they envisaged. A Roma Integration Council has been set up within the Ministry, and the authorities have informed ECRI that it meets at least every three months to examine the situation and the measures to be taken for Roma. Roma NGOs are represented at meetings of the Council. ECRI is interested to note that the Ministry of Labour and Social Policy is very satisfied with its contacts with Roma in general and, in particular, with Roma women, who display a keen interest and great commitment when they take part in the schemes introduced.

§60. (...) The Protection against Discrimination Act contains several provisions prohibiting discrimination on grounds, among others, of race, national or ethnic origin, religion and nationality in respect of recruitment (Section 12, paragraphs 1 to 4) and training and promotion (Section 15). The Act also obliges the employer to take disciplinary measures in cases of harassment on the above-mentioned grounds (Section 16). The employer is required, in co-operation with the trade unions, to take effective steps to prevent all forms of discrimination in the workplace (Section 18). Moreover, under Section 19, an employer is liable for any discrimination perpetrated in the workplace by an employee (Section 19). It would seem, however, that the authorities have done little to raise awareness of this Act among employers and that more could be done in this regard as concerns ethnic and religious minorities in general and Roma in particular.

§65. In the area of housing, the authorities have adopted a National Programme (2005 -2015) to Improve the Housing Conditions of Roma. They have informed ECRI that it is planned to improve the situation of Roma in two main stages, first by legalising housing built largely without planning permission in recent decades and then by bringing it up to standard. The authorities have stated that they began taking measures in the framework of this programme in 2007. Work has begun in 38 municipalities and the authorities have informed ECRI that in 2008 they hope to work on those municipalities in which no action has yet been taken. It is thus planned to build over 200 dwellings in four municipalities. The authorities have stated that they are largely relying on local authorities to implement these projects. They have informed ECRI that they are working with Roma NGOs on the subject. According to information provided by Roma representatives, however, it seems that there is a need for closer cooperation.

§69. A health strategy has been adopted for members of ethnic minorities who are in a vulnerable situation. The authorities have informed ECRI that the first part of this strategy is complete, and the second, which will cover a period of three years, is being implemented. Three schemes are being carried out as part of the strategy: 1) the appointment of health mediators of Roma origin at local level; 2) the training of medical personnel specifically to treat Roma, and 3) medical examination campaigns in Roma communities. The authorities have stated that the role of Roma health mediators, who have been in place since 2007, is to liaise between the Roma community, municipalities and doctors as well as to provide health education to members of the community. (...) It is planned, in the context of the PHARE programme, to send out mobile units to carry out medical examinations, including in the Roma

community. The authorities have also stated that the Ministry of Health organises and finances the conduct of other general and specialist check-ups of the Roma population and that within the framework of the Health Strategy for Disadvantaged Persons from Ethnic Minorities, 20,549 check-ups were conducted over the last year.

9. Equality bodies

[ECRI report](#)

- Commission for Protection against Discrimination

§34. The Commission for Protection against Discrimination was set up in 2005 and became operational in November of that year. It comprises 77 people from different ethnic groups. NGOs have a favourable view of the Commission and consider that, by and large, it is a success. Under the Protection against Discrimination Act, the Commission is empowered, inter alia, to receive complaints, issue fines and make recommendations to legal entities and government departments. It also has the power to examine cases *proprio motu* and it may examine regulations and monitor the way in which its recommendations are implemented. The Commission can propose amendments to existing laws. The Commission has set up groups specialising in various issues, one of which is responsible for examining complaints of racial and ethnic discrimination and another for considering complaints of discrimination based, among other things, on national origin, citizenship and religion. Proceedings before the Commission are free and public, and it is possible to appeal against its decisions before the Supreme Administrative Court.

§35. The Commission informed ECRI that, although victims may apply either to the Commission or to the courts, they prefer the former option as it is quicker. However, as the staff of the Commission comprises only 77 people, technical personnel included, ECRI is concerned that the Commission may be too small to meet the potential demand. The authorities have informed ECRI on this matter that the Commission's specialised administration has been increased by 27 tenured positions. Since it was set up, the Commission has handed down a number of decisions in areas of interest to ECRI, and it has indicated that ethnic discrimination was found to exist in 55% of the cases considered in 2005, while in 2007 the figure was 29%. The Commission informed ECRI that in 2006 it succeeded in having the Protection against Discrimination Act amended in order to enable it to open local offices, and that it considers it a priority to set up and run such offices. The authorities have informed ECRI that office premises have been purchased in Shumen.

§36. A number of points worth considering in order to strengthen the Commission's work have been drawn to ECRI's attention. It would seem, for instance, that more training in discrimination issues for the members of the Commission is needed. Moreover, according to NGOs, the Commission comprises former members of parliament, which in their opinion, limits their independence with regard to the executive. Steps should also be taken to make it easier for victims to obtain access to this institution, which is outside the Sofia city centre. The Commission informed ECRI in this connection that the travel expenses of disadvantaged people are covered.

§37. ECRI recommends that the Bulgarian authorities ensure that the Commission for Protection against Discrimination has the human and financial resources needed to set up and run local offices.

§38. ECRI recommends that the Bulgarian authorities ensure that the Commission for Protection against Discrimination has sufficient financial resources to enable it, among other things, to further train its staff in racial discrimination issues. *National Council for Co-operation on Ethnic and Demographic Issues*

§40. The National Council for Co-operation on Ethnic and Demographic Issues has replaced the old National Council on Ethnic and Demographic Issues. The authorities stated that a Special Commission for the integration of Roma had been set up within this body to provide advice on the formulation and implementation of government policy on the equal integration of Roma into Bulgarian society. The authorities also announced that a Directorate of Ethnic and Demographic Affairs had been set up within the Council to devise, implement and monitor the Framework Programme for Equal Integration of Roma. The Council informed ECRI that it had, for example, taken steps to monitor the implementation of the national programme for improving the housing conditions of Roma. The Council stated that it had fulfilled this task by informing local authorities of the content of the programme. The Council said it had prepared reports on ethnic minorities and on combating discrimination, and that it had organised seminars in 2007 on combating racism and xenophobia. ECRI notes that Roma and other ethnic minorities are represented on the Council. It seems necessary, however, to strengthen the Council. Indeed, concerning the Council's work, civil society actors have observed that it has a purely advisory role and cannot take independent action.

§41. ECRI recommends that the Bulgarian authorities clarify the responsibilities of the National Council for Co-operation on Ethnic and Demographic Issues by ensuring that it has the powers and responsibilities needed to make a greater impact, especially in areas affecting Roma.

CZECH REPUBLIC

Sources

1. [CERD Concluding Observations](#) (September 2011, CERD/C/CZE/CO/8-9)
2. [Report by the Commissioner for HR of the COE](#) (November 2010, CommDH(2011)3)
3. [ECRI report](#) (April 2009, CRI(2009)30)
4. OSF expert: Filip Rameš (February 2013)

1. General trends and challenges

CERD Concluding Observations

§7. While welcoming the enactment of the Anti-Discrimination Act of 2009, the Committee is concerned that legal provisions against discrimination are scattered across the principal acts of public law (the Constitution), private law (the Civil Code, the Labour Code) and administrative law (the Code of Administrative Offences, the Anti-Discrimination Act) and the procedural codes thereto (the Code of Civil Procedure, the Code of Administrative Procedure, etc.). The Committee is concerned that, since the grounds for discrimination and the remedies differ depending on the area of discrimination, victims may find the access to justice cumbersome, slow and ineffective (arts. 2, 4 and 6).

The Committee thus recommends that the State party consider the possibility of unifying and consolidating the prohibited grounds of discrimination and standardizing remedies for racial discrimination in order to facilitate access to justice for victims of racial discrimination.

§8. While acknowledging the important progress that has been made through adoption of the Anti-Discrimination Act, the Committee is conscious that it defines permissible and impermissible grounds and forms of differential treatment without providing sufficiently for new means of protection to victims. The Committee also notes that establishing discrimination reportedly remains difficult and the only additional means of protection stipulated by the Anti-Discrimination Act is recourse to the Ombudsman, who has limited direct powers, however (arts. 2, 4 and 6). In line with its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party take steps to unify its legislation and simplify judicial procedures in cases of racial discrimination, and strengthen the mandate of the Ombudsman. The Committee also recommends that the State party provide the requisite legal information to persons belonging to the most vulnerable social groups and promote institutions such as free legal aid and advice centres, legal information and centres for conciliation and mediation.

§23. The Committee notes with regret the State party's decision not to develop a national action plan against racism in line with the Durban Declaration and Programme of Action. Furthermore, while having appreciated the State party's engagement with the Durban processes, the Committee regrets its disengagement from the commemoration of the tenth anniversary of the adoption of the Durban Declaration and Programme of Action (art. 2). The Committee is of the view that a national action plan against racism in line with the Durban Declaration and Programme of Action remains a useful instrument for combating racial discrimination. It encourages the State party to develop such a tool. The Committee further encourages the State party to reconsider participation in and re-engagement with the Durban tenth-anniversary commemoration. The Committee once again requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level, and to include also specific information on progress made as a result of these and other measures, to combat racial discrimination.

[Country report by the Human Rights Commissioner of the Council of Europe](#)

§28. The Commissioner welcomes the fact that for many years now, the Czech authorities have implemented strategies for Roma inclusion. The most recent Roma Integration Concept for 2010-2013, which he was happy to receive from the Czech authorities together with the progress reports 2008 and 2009 of a previous strategy, set out important priorities in key areas (such as support for Roma culture and language, education, over indebtedness, housing, social protection and personal safety) and identifies specific tasks for each government administration to perform. The Commissioner considers this strategy as an important tool.

§31. All interlocutors have stressed the urgent need to ensure that local authorities share and implement the central government's Roma inclusion policies. This need is also reflected as priority in the current Roma Integration Concept, which also envisages legal changes to facilitate this process. Furthermore, since its establishment in 2008, the Agency for Social Inclusion of Roma Localities has been working to promote partnerships between stakeholders at local level for the implementation of social inclusion projects. The Agency is currently working in 23 localities and plans to start working in ten more localities in 2011. The Commissioner is encouraged by reports indicating that very good work for Roma inclusion is carried out by certain local authorities. At the same time, it is also clear that many local authorities are at the origin of the worst practices (in the field of housing, for instance) that keep Roma in a vicious circle of poverty, discrimination and exclusion in the Czech Republic.

§32. The Commissioner also believes that in order for Roma inclusion policies to be effective, they must enjoy genuine and regular public backing by the highest decision makers. Thus, the Commissioner considers it a positive development that the Government Council for Roma Minority Affairs is now chaired by the Prime Minister and that the governmental members of it are Ministers and Deputy Ministers. He also hopes that the participation in the Council of the Association of Regional Administrations and the Union of Municipalities and Villages will facilitate greater participation by local and regional governments in the development and implementation of national-level Roma integration policy.

§35. Involving the local government in the development and effective implementation of the central government's Roma inclusion policy remains a crucial task to perform. To this end, the Commissioner encourages the Czech authorities to ensure that the role of the Agency for Social Inclusion of Roma Localities is strengthened and extended to cover inclusion work in all localities where there is a need.

[ECRI report](#)

§10. ECRI notes that an individual or legal entity may lodge a constitutional complaint if one of their constitutionally guaranteed fundamental rights or freedoms (including those laid down by the Charter) is infringed by an enforceable decision in proceedings to which that person was a party, or by a measure taken by or any other form of involvement of a public authority. Preliminary questions of constitutionality may also be referred to the Constitutional Court in the course of other judicial proceedings. However, it still appears to be the case that the abovementioned provisions of the Charter have not yet been applied in practice to cases of racial discrimination.

§11. ECRI observes, moreover, that the above-mentioned provisions of the Charter do not have direct effect between citizens; nor do they provide a legal basis for awarding compensation to victims of racial discrimination. In this context, ECRI stresses the importance of enacting comprehensive anti-discrimination legislation, in order to ensure that practical remedies are available to all victims of racial discrimination, no matter who commits it.

§12. ECRI again urges the Czech authorities, and in particular judicial authorities, to make use of the non-discrimination provisions of the Czech Charter of Fundamental Rights and Freedoms in order to address instances of racial discrimination by public authorities at local or national level. It also strongly encourages the Czech authorities to ensure that authorities at all levels are made fully aware of Articles 1 and 3 of the Charter, with a view to preventing such instances from occurring.

2. Employment

[ECRI report](#)

§107. (...) the level of unemployment of Roma remains very high. Reports indicate that in many Roma localities, 90% or more of the potentially active members of the population are unemployed. As the World Bank report found, the average level of education of Roma, which is well below that of the rest of the population, has a devastating impact on literacy and numeracy, with 14% of Roma in such localities having completed only special schooling for children with disabilities, and 40% suffering from functional illiteracy. Roma candidates are thus at a significant disadvantage on the labour market and often unable to compete on an equal footing with other job-seekers. Moreover, in the most marginalised localities, demand for low or unskilled labour is generally low, meaning Roma with low levels of education and who are unable to travel to larger cities face particular difficulties finding work. In marginalised communities in particular, those Roma who are able to find work often have only short-term, precarious jobs and low wages. Many Roma in situations of high indebtedness also find themselves turning to the informal market as a means of coping with their situation; for individuals in this position, it is difficult to contemplate a return to the labour market unless they also receive support to overcome the spiral of debt. A further barrier to employment may arise in regions of the Czech Republic where wages are relatively low and there is little demand for low or unskilled workers: here, discouragement from seeking work may be high and reliance on welfare benefits may appear to be the only realistic option in practice.

§108. Representatives of the Roma community also report persisting prejudice on the part of employers towards Roma candidates; cases continue to be reported where Roma job applicants are rejected for a job on the grounds that it has already been filled, only to find that a later, non-Roma applicant for the job is invited to an interview. Only a minority of employers presently see themselves as having a responsibility for change in this situation; and the authorities have indicated that small and medium-sized businesses, which offer a significant proportion of jobs in the Czech Republic, are especially likely to manifest prejudice towards Roma applicants. As regards overcoming long-term unemployment, the value of providing individual counselling and a tailored approach based on the specific problems faced by each person (for example acquiring new skills, overcoming debt) appears to be generally recognised. However, doubts have been expressed as to whether Labour Offices responsible for implementing such

programmes currently have the resources necessary to provide such an approach, especially in a context where the number of civil servants is being cut.

§109. ECRI welcomes the steps recently taken by the Czech authorities to analyse the employment challenges faced by Roma in marginalised localities. It emphasises that given the still widespread and endemic nature of disadvantage and discrimination faced by Roma on the labour market, long-term efforts will be required to produce lasting change in this field. In this context it underlines the value of building on past successful projects. ECRI stresses that improving education outcomes for younger Roma, and assisting adults in acquiring new skills to increase their employability, could be a key to ending the disadvantage faced by Roma on the Czech labour market. ECRI also emphasises, given the particular challenges faced by long-term unemployed persons, the importance of ensuring that sufficient resources are available to allow all long-term unemployed, including the Roma, to benefit from individual counselling and support to aid in their return to the labour market. Finally, ECRI emphasises that it is especially important in times of economic crisis to avoid situations where certain groups are designated as responsible for others' problems; in this respect, it draws the attention of the authorities to its recommendations made earlier in this report regarding racism in public discourse.

§110. ECRI urges the Czech authorities to pursue vigorously their efforts to tackle the disadvantage currently faced by the Roma in the field of employment, and recommends that the Czech authorities implement as a matter of priority the recommendations made as part of the study on the employment situation of Roma in marginalised localities carried out in co-operation with the World Bank. ECRI draws the authorities' attention to the need to ensure that sufficient resources are available to provide the individualised attention necessary to assist the long-term unemployed in returning to the labour market.

111. ECRI strongly recommends that awareness-raising measures be carried out, aimed at employers, and particularly those running small and medium-sized businesses, in order to overcome long-standing prejudices against the Roma.

3. Education

[CERD Concluding Observations](#)

§12. The Committee expresses its concern regarding the persistent segregation of Romani children in education as confirmed by the decision of the European Court of Human Rights of 2007 and the 2010 report of the Czech School Inspection Authority. The Committee is concerned with reports that the practice of linking social disadvantage and ethnicity with disability for the purposes of school-class allocation has continued, not removed by recent regulations. Furthermore, some amendments to regulatory decrees which take effect in September 2011 may reinforce discrimination against Romani children in education and that practical changes which will benefit Romani children under the Government National Action Plan for Inclusive Education are only envisaged from 2014 onwards (arts. 3 and 5).

In line with its previous concluding observations and general recommendation No. 27 (2000) on discrimination against Roma, the Committee urges the State party to eliminate any discrimination or

racial harassment of Romani students and prevent and avoid the segregation of Romani students, while keeping open the possibility for bilingual or mother-tongue tuition.

The Committee recommends that the State party take concrete steps to ensure effective de-segregation of Romani children and students and to ensure that they are not deprived of their rights to education of any type or at any level. The Committee also recommends that the State party undertake full consultation with Roma stakeholders with regard to education and in order to promote awareness of Roma rights and enhance their capacities to address the discrimination they experience including in education and by school authorities.

§22. The Committee notes that the education of the population is important to accompany the success of plans, structures and legislation towards integration for full and effective equality with rights to culture and identity recognized (art. 7).

The Committee recommends that the State party take further measures to develop awareness-raising activities promoting tolerance and diversity and pay particular attention to the role of the media in this regard.

[Country report by the Commissioner for HR of the COE](#)

§61. Roma children continue to be assigned to schools for children with mild mental disabilities without justification, as a result of either mis-diagnosis or direct enrolment in these schools not preceded by tests. A report by the Czech School Inspection Authority dated March 2010, which reviewed the situation in over 40% of schools for children with mild mental disabilities around the country, concluded that Roma children made up over one quarter of the children that had been assigned to these schools without having been found to have a mental disability, and around one third of the children found to have a mental disability. The Commissioner notes that in an Opinion rendered in April 2010 at the request of the School Inspection Authority, the Czech Ombudsman found that both situations constituted discrimination.

§64. Prior and during the Commissioner's visit, concern had been expressed by many, including Czech and international civil society organisations, about developments that appeared to cast doubts on the Czech government's commitment towards the inclusive education agenda, notably as set out in the NAPIE. The Commissioner was informed in particular about the downsizing of the Department of Special Education and Equal Opportunities (which has crucial responsibilities in the implementation of the *D.H. and Others* judgment), the resignation tendered by key Ministry of Education officials, and plans to postpone the adoption of important legal changes that had been envisaged by the government. These included in particular: a decree regulating the provision of psychological evaluations at counseling facilities and schools (i.e. the testing procedures that were criticised by the Strasbourg Court in the *D.H. and Others* judgment), so that it could not be abused; and a decree regulating special needs education, in order to strictly limit the provision of this education to children who were in genuine need of it.

§68. The Czech authorities should now set clear and measurable targets for transfers of children from special to ordinary education and for overall desegregation of the school system. They should ensure the adoption of special measures to facilitate and support Roma children and their parents during the

transition process. This would be in line with the decision of the Council of Europe Ministers' Deputies adopted on 2 December 2010 by which the Czech authorities were encouraged "to follow the implementation of the NAPI[E] without delay particularly concerning measures to address the situation of pupils improperly placed in practical schools [...] to ensure that they are able to transfer to the mainstream education system".

§69. Legislative changes that are necessary to underpin the inclusive education agenda must not be further delayed. This may include legislation explicitly mandating desegregation; setting out a clear prohibition on educating children without mental disabilities under programmes and at schools specifically intended for children with mental disabilities; highlighting individual integration in mainstream school as the preferred way of education; and introducing measures to enable socially disadvantaged children (including Roma children) to fully integrate into the mainstream national education.

§70. The Commissioner strongly encourages the plans referred to by the Deputy Minister of Education during the visit to monitor school placements through the School Inspection Authority and stresses the need for updated, disaggregated data by ethnic origin to be available in order to monitor progress.

§71. Lastly, the Commissioner recalls that on 20 October 2010, the member states of the Council of Europe, undertook in the *Strasbourg Declaration on Roma* 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". In line with these commitments, the Commissioner strongly urges the Czech authorities to strengthen measures to secure participation of Roma children in mainstream pre-school education and the presence of teaching assistants in all schools where they are genuinely needed.

[ECRI report](#)

§74. On 13 November 2007, the Grand Chamber of the European Court of Human Rights handed down its judgment in the case of *D.H. and others v. the Czech Republic*. The Roma applicants in the case, who had attended special schools for children with mental disabilities as described in ECRI's third report (under a system since superseded by new legislation, as described below), complained that they had been discriminated against in the enjoyment of their right to education on account of their race or ethnic origin. In finding a violation of Article 14 of the Convention, read in conjunction with Article 2 of Protocol No. 1, the Court highlighted the more basic curriculum followed in schools for children with mental disabilities than in ordinary schools, and the isolation of pupils in these schools from pupils from the wider population. It noted that the education the applicants had received had compounded their difficulties and compromised their subsequent personal development rather than tackling their real problems or helping them to integrate into the ordinary schools and develop the skills that would facilitate life among the majority population

§75. As noted by the European Court of Human Rights in the above judgment, a new Schools Act 2004 (Law no. 561/2004) was enacted in 2004. This Act no longer provides for special schools in the form that had existed prior to its entry into force. Primary education is now provided by primary schools and specialized primary schools, the latter being intended primarily for pupils with severe mental disability or

multiple disabilities and for autistic children. The Act also contains provisions governing the education of children and pupils with special educational needs. These include children suffering from a social disadvantage. The existence of special educational needs is assessed by an educational guidance centre. The Act also makes provision for educational assistants, individualised education projects, preparatory classes for socially disadvantaged children prior to the period of compulsory school education and additional lessons for pupils who have not received a basic education. A new decree, Decree no. 73/2005 on the education of children, pupils and students with special educational needs and gifted children, pupils and students, has also been issued. This decree provides that pupils and students with special educational needs are to be educated with the help of support measures that go beyond or are different from the individualised educational and organisational measures available in ordinary schools. Children whose special educational needs have been established with the aid of an educational or psychological examination performed by an educational guidance centre will receive special schooling if they have clear and compelling needs that warrant their placement in a special education system.

§79. Despite these measures, civil society actors consistently point out that as yet, in day-to-day school life, little has changed. They emphasise that in practice, special schools have essentially been renamed and reorganised as basic (or “practical”) schools, with little change to the curriculum followed there – which still has a higher number of practical subjects and fewer academic subjects, and a focus on developing manual rather than intellectual skills. There is still a disproportionate number of Roma pupils attending these schools. In some localities, the only school in fact available is a former special school, and the teachers are still the same. These factors increase the difficulties involved in breaking the cycle of lower education outcomes of Roma children, in part because the expectations placed on children in these schools may still be lower. (...)

§80. Concerns also remain as to whether the tests used to assess children’s levels of educational attainment are socially and culturally neutral. Roma representatives point out that language proficiency tests may for example fail to recognise that a child is proficient in a language other than Czech and capable of adapting rapidly to classes in Czech as a second language, and may instead simply identify the child as lacking linguistic skills appropriate to their age. The tests may also fail to distinguish between cases of social disadvantage (for example, a lack of access to books in the home, leading to reading skills that are below average for the child’s age but may rapidly improve once the child is at school) and a genuine learning disability requiring more specific attention. Moreover, once a child is identified as having special educational needs, teaching staff are required to draw up an individual action plan for that child. In practice, this means that in a school where there are many socially disadvantaged children, these children (of whom the majority in the Czech Republic are Roma) may find themselves placed together in a separate class.²² The Czech authorities have indicated that an analysis of the diagnostic tools used by education advisory services is under way, and that the results of this analysis will be used to improve the methodology used. The aim is to improve the quality of diagnosis and advice so as to make it an instrument to aid the integration of Roma and other schoolchildren into the educational mainstream.

- Situation of Roma children in mainstream schools

§89. Reports indicate that even in the ordinary schooling system, segregation continues to exist. This situation is linked at least in part to segregated housing – a phenomenon which presently appears to be

increasing in the Czech Republic. Parental choice also appears to be having a negative impact, however, as de facto segregation between ordinary schools appears to be rising – with previously mixed schools becoming increasingly separated into predominantly non-Roma and predominantly Roma schools – even in some areas where housing is not segregated. (...)

§90. In this respect, civil society actors also emphasise that even in schools attended by pupils from a variety of backgrounds, segregated classes continue to exist. As mentioned above, once a child is identified (by their school) as having special educational needs, teaching staff are required to draw up an individual action plan for that child. In practice, this means that in a school where there are many socially disadvantaged children, these children may find themselves placed together in a separate class, as part of the measures intended to cater for their needs. Such circumstances may reinforce a tendency to place lower academic expectations on the children concerned – the majority of whom, in the Czech Republic, are Roma.

§93. ECRI is deeply concerned at the continuing de facto segregation of Roma children in ordinary schools, both through the segregation of schools themselves – a phenomenon linked, though not exclusively due, to segregation in housing –and through the creation of separate classes in integrated schools. It stresses the importance of continuing to act to counter these phenomena.

§94. ECRI also stresses the need to conduct research into the impact of the various measures taken to date in this field in order to ensure that resources invested in this area and programmes implemented are well matched to achieving the aims sought. ECRI notes with interest in this respect that the authorities have referred to two studies conducted between September 2008 and March 2009 in primary schools close to areas of social exclusion in the Czech Republic, where approximately one-third of the total estimated Roma population of the Czech Republic live; one study examined the educational paths and opportunities of Roma pupils from schools in such localities, and the other analysed the approach of individual teachers to pupils with special educational needs. The term “Roma pupils” as used in the studies included pupils who identify themselves as Roma or who are perceived to be Roma by a considerable part of the social circle around them. In terms of educational trajectories, it was found that only 72% of Roma pupils were in mainstream primary schools, and 28% in specialized primary schools, compared with a 92%-8% split for other pupils. Roma pupils in mainstream schools were absent almost three times more often than their peers, and Roma pupils in mainstream schools with a medium proportion (21-50%) of Roma pupils had a slightly lower chance than other children of completing their compulsory schooling in the grade in which they started. The presence of a teaching assistant had a clear positive impact on the educational achievement of children: 75% of Roma children in classes with an assistant completed their compulsory schooling in their original class group, compared with 65% of Roma children in classes without an assistant. Roma children who had attended kindergarten were also clearly more successful; on the other hand, the positive impact of preparatory classes was most marked at the beginning of schooling.

4. Health care

[CERD Concluding Observations](#)

§19. The Committee remains concerned about the issue of sterilization of Romani women without their free and informed consent. While welcoming the regret expressed by the authorities in Resolution 1424 of November 2009 and the decision of the Supreme Court of June 2011 that would waive the statute of limitations, the three-year statute of limitation still remains for these cases and obstructs full reparation and compensation of victims (arts. 2, 5 and 6).

The Committee recommends that the State party use the recent decision of the Supreme Court to facilitate full reparation and compensation for Romani women victim to unlawful sterilization, give consideration to ex gratia compensation procedures, generate awareness among patients, doctors and the public on the guidelines of the International Federation of Gynecology and Obstetrics and put in place safeguards to avoid similar incidents in the future. The Committee recommends that the State party consider legislating for a permanent waiver to limitation on all cases relating to compensation due to illegal sterilization.

[Country report by the Human Rights Commissioner of the Council of Europe](#)

§74. The Commissioner is particularly concerned at the fact that women who have been sterilized without full and informed consent appear currently to be left without a remedy to obtain compensation. A particularly important obstacle is the three-year time limitation that currently applies to compensation claims for breach of personality rights. Although the domestic case law in the matter has not been consistent – up to 2007 the Supreme Court had ruled in many cases that the time limitation did not apply to compensation claims for breach of personality rights -- following an overturn of the case law in 2008, these limitations do now apply to such cases. Furthermore, the three-year limit is applied so as to start from the time at which the sterilisation took place and not from the time at which the victim became aware of it.

§75. In the Commissioner's view this framework is inadequate to accommodate reality, which is characterised by the fact that in some cases the women concerned have learnt that sterilisation had been performed on them, or realised its full implications, only at a later stage. Further realities with which these women are confronted include the fact that they often need to overcome shame, their lack of awareness about possible avenues for redress, and the non-availability of medical records, which were either never given to them or went lost in floods or fires.

§76. As a result, to the Commissioner's knowledge, only one woman of Roma origin, unlawfully sterilised in 2003, has been able to obtain compensation to date, having managed to file a compensation claim before the three-year time limit after surgery had elapsed.

§77. The Commissioner also notes that in spite of recommendations issued by the Ombudsman, the Council of the Government for Human Rights, and international human rights monitoring bodies, the establishment of an out-of-court compensation mechanism for victims of coercive or non-consensual sterilisation, has so far been ruled out by the Czech authorities.

§80. He also notes, however, that there continue to be isolated reports of sterilisations having been performed without full and informed consent, well after the official discontinuation of this practice in 1991. Three of these cases, performed respectively in 1997, 2001 and 2003 are pending before the European Court of Human Rights on different accounts. In addition, the European Roma Rights Centre has reported having documented twenty new cases where sterilisations without full and informed consent took place in the Czech Republic between 1989 and 2007.

§81. Finally, the Commissioner understands that in none of the cases where criminal proceedings were initiated against those responsible for performing sterilisations did these proceedings lead to charges being brought, although in some of these cases the civil courts had established that sterilisation had been performed unlawfully. He notes that two of the cases pending before the Strasbourg Court mentioned above contain grievances concerning the effectiveness of the relative investigations by the police.

§84. (...) he considers it unfair that women who have been sterilised without full and informed consent are currently left without an effective domestic remedy to obtain compensation for the harm they have suffered. It is reminded that under the aforementioned 2005 UN 'Basic Principles and Guidelines' adequate, effective and prompt reparation, including compensation, should be made available to victims of gross human rights violations, and also be proportional to the gravity of the violations and the harm suffered. It is stressed that domestic statutes of limitations, including time limitations applicable to civil claims, should not be unduly restrictive.

§85. In view of the above international law principles, the Czech authorities should address this situation by reviewing the time limits applying to compensation claims for unlawful sterilisations, in order to extend it and, as a minimum measure, ensure that any time limit starts from the time when the victim became aware of the sterilisation or its full implications and not the time when the sterilisation was performed.

§86. Examples of *ex gratia* compensation mechanisms for victims of non-consensual sterilization exist in other countries and the Commissioner hopes that the Czech authorities will review these examples and consider establishing a similar one in the Czech Republic.

§87. In order to prevent the re-occurrence of coercive sterilisations, it is also important to ensure that the law and practice in this field are changed. The Commissioner hopes that by mid-2011 – as currently planned by the Czech authorities – healthcare legislation will be in place clearly defining the requirements of free, prior and informed consent with regard to sterilisations, in accordance with the relevant international standards. This includes a doctor's obligation to inform the patient in writing and orally about the nature of the sterilisation, its permanent consequences, potential risks and available alternatives, and a period of at least seven days between the provision of such information by the doctor and the expression of consent by the patient.

§88. The Commissioner also draws the Czech authorities' attention to the need, in the context of the satisfaction due to the victims, to ensure judicial and administrative sanctions against persons liable for the performance of women's sterilisations without the latter's full and informed consent. In particular, he stresses the need to ensure that the relevant police investigations meet the requirements of promptness,

thoroughness and effectiveness flowing notably from Article 3 of the European Convention on Human Rights and the Court's case law.

[ECRI report](#)

§121. ECRI notes with concern issues raised elsewhere in this report and that may have a direct or indirect impact on the health status or access to healthcare of members of certain groups, in particular the Roma. It stresses that health is an important social right and that discrimination in this field must be avoided, or eliminated where it has occurred. It refers in this respect to its recommendations made in other relevant sections of the present report and which may help to avoid future racial discrimination or eliminate past such discrimination in the field of health.

§133. In September 2004, the Ombudsman opened an investigation on the basis of complaints received from ten women regarding forced sterilisations. In the course of the next year, the total number of complaints received rose to almost 80. The complainants, most of whom were Roma, alleged that they had been sterilized without their informed consent, either because the sterilisation was done without their knowledge or because consent had been requested and obtained in a situation where they could not properly evaluate the long-term consequences of the sterilisation (for example, immediately before an emergency caesarean section, when the women were in great pain).

§134. The Ministry of Health set up a consultative body to investigate such complaints, which found that in the majority of cases, the key problem in the conduct of sterilisations was the method used to gain informed consent from the patient before the procedure was performed. Following his own extensive investigation, conducted with the participation of the Ministry of Health, the Ombudsman concluded that in the vast majority of cases reviewed, legal and procedural safeguards had not been followed, and that the sterilised women's consent lacked legal validity. He drew attention to the fact that under the Communist regime, policy and law had encouraged the sterilisation of Roma women, as part of an overall policy of assimilation of the Roma community. However, even following the official termination of those policies in 1991, a number of doctors appeared to have acted outside the law, continuing the practice. The Ombudsman referred five cases to the prosecution authorities for further criminal investigation and possible prosecution in 2005.

5. Housing

[Country report by the Human Rights Commissioner of the Council of Europe](#)

§89. The Commissioner has received reports indicating that around one third of the Czech Roma population continues to live in some 300 segregated localities (housing blocks, streets or whole town quarters) around the country, in substandard housing conditions and excluded from mainstream society. Unfortunately, it appears that the number of people living in these localities is growing, with a few dozen such localities reportedly turning into slums.

§90. The Czech authorities are aware of the problem, as also reflected in the fact that it constitutes one of the areas addressed by the Roma Integration Concept (see Section II a above). They have started to

address it, for instance through the work of the Agency for Social Inclusion of Roma Localities, which has promoted partnerships at local level aimed at improving living conditions in these localities that have in some cases produced results. However, with housing falling entirely within the competence of municipal authorities, many municipalities around the country regrettably continue to implement policies that perpetuate and compound Roma segregation in inadequate housing.

§91. There are many interlinked factors determining this situation, including poverty and indebtedness. Particularly crucial among these factors however, are reported to be the virtually total lack of any form of social housing in the Czech Republic, which particularly affects Roma to the extent that they are heavily over-represented among the poor, and direct and indirect racial discrimination.

§92. In this connection, the Commissioner notes that housing 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. Furthermore, as mentioned below (see Section II g), in these circumstances Roma parents are at risk of seeing their children being removed from them, since the municipal social services continue to regard inadequate housing conditions in practice as sufficient grounds to place children in institutional care.

§94. The Commissioner is deeply concerned at the reportedly increasing segregation of Roma in marginalized communities around the country and believes there is an urgent need to prevent the creation of segregated areas and reduce the number of existing ones.

§95. To this end, in line with the Czech Republic's obligations under the European Social Charter, he urges the authorities to develop and put in place as a matter of priority a coherent system of social housing, including a clear definition both of the concept of social housing and of the social criteria to be applied in allocating it to persons in need. In this context the authorities are also called upon to proceed to the ratification of the 1996 Revised European Social Charter and the 1995 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.

§96. The Commissioner emphasises that the municipal authorities' autonomy in housing matters should never result in discrimination in this field being tolerated. He therefore strongly encourages the Czech authorities to take all necessary steps to ensure the effectiveness of the Anti-Discrimination Act and its vigorous implementation, as highlighted above.

§97. Local partnerships aimed at desegregating Roma localities and improving living conditions are particularly important. The Commissioner hopes that the role of the Agency for Social Inclusion of Roma Localities in promoting such partnerships will be strengthened.

[ECRI report](#)

§113. The authorities have indicated that the legal provisions governing housing in the Czech Republic do not contain any anti-discrimination provisions; nor is there a legal definition or detailed regulation of social housing. They have emphasised that, given that housing falls within the competence of local

authorities, political will and specific decisions by local authorities play a key role in this field. The overall aim in the field of housing, which is a priority area for the government, is to prevent the emergence of new segregated localities, improve the situation in existing segregated Roma localities and improve access to housing for Roma in need. In 2005, the government entrusted the Minister for Regional Development, in accordance with the Plan for the Implementation of the Concept of Roma Integration and in co-operation with other relevant ministers, with the task of drawing up a concept and system of social housing by 31 December 2008. A draft plan for addressing problems faced by the Roma community, presented by the then Minister for Regional Development in October 2008, has not been discussed by the government since then. The plan included proposals to spend more than 10 billion CZK on upgrading housing, but attracted criticism from a number of Roma representatives, in particular for its proposal to classify Roma into three categories, the most “problematic” of whom would be accommodated in hostels and subject to strict supervision.

§114. Other institutional actors involved in housing matters include the Agency for Social Inclusion, the Office of the Government Council for Roma Community Affairs and the Ministry of Labour and Social Affairs. In recent months several municipalities, such as Brno, Most and Ostrava, have announced plans drawn up in conjunction with the Agency for Social Inclusion for improving living conditions in excluded localities within their jurisdiction. On a more general level, the authorities have indicated that they are also supporting social work programs in the field, with the aim of ensuring an individually tailored approach to meet the needs of each family, and of providing assistance to deprived persons to break the vicious cycle of poverty.

§115. Despite the measures taken or planned, many Roma continue to experience segregation in the field of housing, living in marginalised areas in towns or in isolated locations. The vast majority of communities also have no long-standing strategy or plan for solving housing problems experienced by the Roma population. The Ministry of Labour and Social Affairs reported in 2006 that more than 330 localities in the Czech Republic were almost exclusively inhabited by

Roma; more than a third of the country's Roma population lived in such areas, and their number was reportedly growing. Recent reports confirm that new segregated areas continue to emerge. In some cases, local authorities have themselves contributed to or even aggravated problems, evicting Roma families who had defaulted on their rent and forcing them into insalubrious living conditions. (...)

§116. NGOs emphasise that evicted families with no prospects of finding new rental accommodation because they are long-term unemployed, or because of landlords' prejudices against Roma, often end up forced into spending exorbitant sums – far higher than would be required to rent an apartment – on accommodation in a hostel or dormitory. Moreover, if the family does not have a roof over its head, this material consideration may, in the Czech Republic, constitute grounds for the state to remove the children from their parents and place them in institutional care. Families that do manage to find rented accommodation are especially vulnerable to loan sharks and easily caught up in a spiral of debt. The absence of a clear and comprehensive system of social housing in the Czech Republic is a significant additional difficulty.

§117. ECRI is deeply concerned at the continued marginalisation of Roma in the Czech Republic, which is expressed, in the field of housing, through a variety of mechanisms: perpetuation of existing segregated

localities, and creation of new ones; substandard living conditions; or the imposition of excessively high rents that lead quickly into a downward spiral of debt. It also observes that although the precise causes underlying these phenomena may vary from place to place, both private landlords and municipalities may contribute to creating or reinforcing situations of disadvantage. It also considers that, while strategies to achieve longterm change must be coherent, taking a blanket approach to resolving these issues may be too simplistic; whatever overall solutions are proposed, they must also leave room for the individual circumstances of families to be taken into account.

§118. ECRI strongly urges the Czech authorities to develop and put in place, as a matter of high priority, a coherent system of social housing in the Czech Republic, including a clear definition both of the concept of social housing itself and of the social criteria to be applied in allocating it to persons in need.

§119. ECRI urges the Czech authorities to take immediate steps to prevent the creation of new areas of segregated housing and to reduce the number of existing segregated areas. ECRI stresses in this context that the autonomy of local authorities in the field of housing can never excuse discriminatory measures, and emphasises once again the need to combat prejudices and discriminatory attitudes amongst local politicians and within local communities.

§120. ECRI strongly recommends that in designing strategies to achieve long-term improvement as regards both segregation and standards of housing, the authorities take into account the need to assist indebted families to break out of the cycle of debt. It underlines that indebtedness plays a role not only leading families towards eviction from their homes, but also in keeping Roma workers out of the formal labour market; breaking this cycle can thus have positive ramifications that extend well beyond the immediate and urgent question of a family's housing.

6. Access to other goods and service

[CERD Concluding Observations](#)

§13. The Committee is concerned by the results of a study conducted by the European Roma Rights Centre and a group of non-governmental organizations which show that, in 22 childcare institutions in the five regions of the State party included in the study, 40.6 per cent of children were Roma. While acknowledging the overarching need for adequate protection of children, the Committee is conscious that the overrepresentation of Romani children in State care institutions may reveal a disregard of Roma rights (arts. 2 and 5).

The Committee recommends that the State party include in its overall strategy the issue of overrepresentation of Romani children in State care institutions by addressing the root causes of this phenomenon, including poverty of Roma parents and limited resources of child protection authorities. The Committee also recommends that the State party organize further training and education for associated professionals and personnel on Roma rights.

[Country report by](#)

§98. The number of children in institutional care in the Czech Republic is high and reportedly growing. Roma children appear to be disproportionately represented among these children. In the regrettable absence of official disaggregated data, estimates put the percentage of Roma children in institutional care between 20 and 80% of the total.

§99. One issue that particularly affects the over-representation of Roma children in these institutions is the fact that children continue to be removed from their families on the sole ground that the latter do not have a suitable and stable home, or that their economic and social conditions are not satisfactory, all circumstances which are at present more common among Roma families.

§100. However, this practice is at variance with two judgments delivered by the Strasbourg Court against the Czech Republic, which indicate that poor housing conditions or financial situation cannot be the only reasons for placing children into institutional care. The Commissioner recalls in particular that in finding a violation of Article 8 of the ECHR (Right to respect for private and family life) in the case of *Wallová and Walla*, the Court indicated that it was not evident from the facts of the case that the social protection authorities had made serious efforts to help the applicants overcome their difficulties and get their children back as soon as possible.³⁴ In June 2010, it was announced that an action plan aimed at solving the specific problems identified by the Court in the abovementioned judgments would be submitted to the government. A national action plan for the transformation and unification of the care system of endangered children was also adopted in 2009. However, it is not clear the extent to which these plans have been implemented.

§101. 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.

[ECRI report](#)

§144. Studies have shown that the overall number of children in institutional care in the Czech Republic is very high, and that there is a disproportionately high number of Roma children in this situation. (...)The system in place is reported to prefer placing children in institutional care rather than helping families to improve their social situation and stay together.

§145. NGOs point out that in practice, children may be removed from their families very rapidly (within 24 hours in some cases), and that it is extremely difficult for parents to regain custody of their child later, as the families concerned are often poor, unfamiliar with the legal system, and at the same time unable to benefit from legal aid. Parents may also quickly lose contact with their child, placed in an institution that is too far away to allow the parent to travel for regular visits – and if they do not visit their child for a certain period of time, parents may be deprived of their parental rights altogether. Poverty is thus a key factor that contributes both to the initial removal of the child and the loss of parental rights that often ensues. While poverty exists among all groups in the Czech Republic, Roma are particularly affected, and

therefore disproportionately likely to suffer from the removal of their children. Moreover, owing to the high level of prejudice among the general population against the Roma, Roma children placed in institutional care frequently remain there for long periods, due to difficulties in finding foster families or adoptive parents.

§146. Against this background, ECRI welcomes the news that in January 2009, the Czech government approved a policy paper including proposals to unify the system of care for endangered children and to shift the focus of work in this field to a preference for keeping children in their family environment where possible, rather than placing them in institutions. It notes with interest that a detailed action plan is to be submitted to the government by the end of June.

§147. ECRI strongly encourages the Czech authorities in their present efforts to change the approach taken towards the removal of children from their parents, and welcomes the intended new focus on supporting and fostering development within the family rather than placing the accent on institutionalisation. It stresses in this context that the provision of intensive and through training to social workers will need to form an integral part of any final plans, in order to overcome practices and attitudes that have been firmly entrenched for many decades.

7. Availability of equality data

[CERD Concluding Observations](#)

§6. The Committee welcomes the 2011 population census, which gave respondents the opportunity to answer open-ended optional questions including on ethnic origin. However, it continues to regret the lack of sufficient disaggregated data to date to efficiently support assessments of racial discrimination and measures to address it. The Committee also notes inconsistency between some data provided in the periodic report and some in the common core document.

In light of its general recommendation No. 4 (1973) on demographic composition of the population and paragraphs 10 and 12 of its revised reporting guidelines (CERD/C/2007/1), the Committee recommends that the State party include disaggregated demographic data on the ethnic composition of the population in its next periodic report. The Committee reminds the State party that managing and monitoring racial discrimination requires measurement and that the analysis of disaggregated data is important in order to assess and track targets and goals.

[Country report by the Human Rights Commissioner of the Council of Europe](#)

34. (...) the Commissioner recommends that the Czech authorities consider introducing a system for collecting statistical information broken down according to categories such as ethnic origin. This should of course be done in all cases with due respect to the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group, and in close consultation with the groups concerned and all relevant actors. In this endeavour, the Czech authorities can find guidance in the study *'Ethnic' statistics and data protection in the Council of Europe countries* published by ECRI in 2007.

[ECRI report](#)

§78. The authorities have recognised that information on the situation of Roma children in the Czech education system is not available to the extent required, as data broken down by ethnic origin were not previously gathered. They have emphasised in this respect that the collection of data based on ethnic origin must be done on a voluntary basis, and that ethnic affiliation is also a question of personal conviction. A certain amount of statistical error must therefore be allowed for. According to the authorities, investigations in the area of statistical data collection were begun in 2008, and the results will be used on an ongoing basis to define and implement appropriate measures aimed at creating real opportunities to reintegrate into mainstream schooling socially disadvantaged Roma children who are presently excluded from it, and to prevent their departure from it. Specific measures will be developed depending on the number of Roma children found to be being educated according to the standards set for children with a low level of mental disability.

§83. ECRI strongly encourages the Czech authorities in their efforts to obtain more detailed information on the situation of Roma children in the education system. It strongly recommends that such research cover the impact of the new Schools Act in practice, as regards the composition of school populations as a whole, and in particular as regards the proportion of children of different national and ethnic origins enrolled in specialised primary schools. The results of this research should form the basis for remedial action to be taken wherever needed, in particular to ensure that the new School Act does not simply create a new form of separated education for Roma children.

§175. ECRI notes that, although figures are collected with respect to hate crimes, there continues to be a general lack of data disaggregated by ethnicity that could help to build a broader picture of the overall situation of persons belonging to various national or ethnic groups in the Czech Republic – for example in the fields of education, employment or the institutionalisation of children. It regrets that the absence of such data makes it difficult for the authorities not only to adopt targeted policies to reduce inequalities, but also to monitor the effectiveness of such measures, and to adapt the measures if and where results show that changes are needed.

§177. ECRI reiterates its recommendation that the Czech authorities establish a monitoring system to enable the collection of information about the situation of various minority communities, the assessment of the extent and causes of discrimination and the evaluation of actions intended to combat it. Such monitoring should also take into consideration the gender dimension, particularly from the viewpoint of possible double or multiple discrimination. It should be carried out with due respect to the principles of data protection and privacy and should be based on a system of voluntary self-identification, with a clear explanation of the reasons for which information is collected.

8. Positive action

[Country report by the Human Rights Commissioner of the Council of Europe](#)

§59. (...) the Commissioner welcomes the adoption by the Czech government in March 2010 of a National Action Plan of Inclusive Education (NAPIE), which sets out measures aimed at creating the preconditions for educating Roma children in mainstream education.

§62. (...) there are measures in place assisting Roma children to attend and remain in integrated mainstream schools. A first set of measures of this kind are those aimed at promoting participation of Roma children in pre-school education. The Commissioner understands that research carried out in 2008 and 2009 in schools close to areas of social exclusion indicated that Roma children who had attended kindergartens were clearly more successful.

§63. Another important measure is the appointment of teaching assistants in schools. This measure addresses some key obstacles, such as lack of confidence of Roma families in the school system, and the attitudes of other parents, children and teachers, towards having Roma children in mainstream classes. Unfortunately however, only some 250 such assistants are reported to be working at present in schools around the country. Reasons for this are connected with lack of funds, but also with the fact that the decision to request such assistants is entirely in the hands of school administrators, which results in these assistants being hired only in schools with progressive attitudes. In this respect, it was pointed out to the Commissioner that as many as 5 to 10 Roma assistants would be necessary in each school, at least in the most deprived areas of the country.

§65. The Commissioner is encouraged by the clear assurances provided by the Czech authorities he met that they are fully committed to inclusive education and the implementation of the NAPIE. As an illustration of this, the authorities have highlighted that they have revived the steering committee for the implementation of NAPIE and are determined to adopt the legal changes referred to above at the beginning of 2011. The Commissioner also hopes that as part of this commitment on the part of the authorities, efforts will be made to bring the special school administration and staff genuinely on board the inclusive education agenda. In this respect, the Commissioner notes that while inclusive education means that most children currently educated in special schools will be integrated in mainstream education, the expertise of the special education teachers will still be crucial to provide the necessary support to children who may need assistance in integrating into mainstream education.

§73. In a very positive development, in November 2009, the Czech government expressed regret over "instances of error" found to have occurred in the performance of sterilisations. However, in concrete terms, many of the Ombudsman's recommendations are still awaiting implementation today, as also found by different human rights monitoring bodies including the UN Committee for the Elimination of Discrimination against Women in October 2010.

§78. On the front of the adoption of legal changes to health care legislation aimed at preventing reoccurrence of coercive or non-consensual sterilisation, the Czech authorities have informed the Commissioner that draft legislation complying with the requirements set out by the Ombudsman is ready. The government plans to submit it to Parliament at the beginning of 2011 and expects the Parliament to adopt it in the first semester 2011.

§79. The Commissioner has taken note with interest of the initiatives described by the Ministry of Health aimed at increasing awareness among the medical profession of their obligations and among users of health services of their rights with respect to the issue of sterilisation.

[ECRI report](#)

§76. The authorities have emphasised that socially disadvantaged children, pupils and students are entitled to education of which the content, form and method correspond to their educational needs and ability; they are entitled to the creation of conditions necessary to facilitate this education and to counselling from the school and an education counselling facility. In evaluations of pupils and students with special educational needs, the nature of the disability or disadvantage is taken into account. The authorities have also indicated that work is under way to draw up new definitions of children, pupils and students in need of countervailing measures. The aim is to promote inclusive approaches in all areas of preschool, primary and secondary education, and to achieve the highest possible level of education in the educational mainstream. The authorities have stressed that since the entry into force of the new provisions, there are no longer any obstacles that would prevent Roma children from participating in ordinary education. It is now up to families to respond to the new approach in place by sending their children to ordinary schools. In addition, it has been pointed out that the formal validity of the diploma received from all primary schools is now the same. Thus, a child having attended a specialised primary school is not formally prevented from moving on to an ordinary secondary or vocational school.

§77. As regards the integration of children in mainstream schools, the authorities have referred to the implementation of a project creating five regional Minority Integration Centres, which are supported by European Structural Funds and entrusted with the development of guidance, education and support services for socially disadvantaged pupils, in particular the Roma. The project focuses on integrating Roma pupils into society, on their educational progress, and on the provision of social and educational-psychological advice and other support services. The centres co-operate with state child protection units, education departments at all levels of government, schools and other educational establishments, and non-governmental organisations.

§91. The Czech authorities have taken a certain number of measures to improve both integration in Czech schools and educational outcomes for Roma children. These include multicultural training and the inclusion of chapters on Roma history and culture in school curricula. A programme designed to support disadvantaged students in primary and secondary schools and reduce drop-out rates, and which includes financial aid for students, has also been established. At the same time, measures to equip children to participate in education on an equal footing from the very earliest years are also in place. These include the provision, under the banner of the 2005 Concept of a Project for the Timely Care of Socio-Culturally Disadvantaged Children, of preparatory classes, set up in primary schools for children from socially disadvantaged backgrounds who, for various reasons, do not attend a kindergarten. The aim of these classes is to prepare children for a successful start to compulsory full-time schooling. The authorities have indicated that in the 2007/2008 school year, 1 926 children attended 164 preparatory classes. Roma representatives welcome this measure with some caution: some fear that in practice, preparatory classes may serve only to prepare children for special schools, whether because the

educational level attained in the classes is not sufficient for ordinary schools or because the classes have the paradoxical effect of acting as a first step towards segregation, rather than integration. The authorities have indicated that the education programme in preparatory classes is conceived similarly to those in kindergarten and is based on the same curricular documents. Classes are however based more on the needs of children and families with social disadvantages. They are intended only for those children and families who for various reasons cannot use kindergarten. Free kindergarten is also available, although not all Roma children attend; to date, little research seems to have been carried out to identify the causes of non-attendance or possible additional measures that could be taken to increase access to kindergarten. The authorities have, however, indicated that an NGO study carried out in late 2008/early 2009 in schools near socially excluded localities and localities threatened with social exclusion found that 40% of Roma children attend a kindergarten, and 8% of them preparatory classes; measures subsequently prepared by the Ministry of Education are directed inter alia at developing the openness of kindergarten to working with children with social disadvantages, and to early care of these children from the age of 0 to 6 years.

§92. ECRI notes that one of the most positive measures taken to date towards assisting Roma children to attend and remain in ordinary schools appears to be the appointment of Roma assistants in schools. As pointed out earlier, one of the key barriers to effective education for Roma children is a lack of confidence of Roma families in the school system; another is the attitudes of other parents and children, as well as teachers, towards Roma children in ordinary classes. The creation of good contacts and positive human relationships at grassroots level can be one of the most effective means of overcoming this mutual lack of trust. However, in October 2008, there were only around 300 Roma assistants in the whole of the Czech Republic, and, although, the system was created in 1998, it seems that funding for it is still not stable. Nor are the functions and competences of Roma assistants clearly defined in the relevant decree (Decree No. 73/2005). Moreover, the decision to request that such assistants be hired is entirely in the hands of school administrators, meaning that such assistants are only hired in schools that already have progressive attitudes, and the assistants themselves are dependent on the good will of the administrators for their jobs. The authorities have indicated that in 2009, the Ministry of Education received 430 requests for a teaching assistant, and all requests were accommodated.

§105. The Czech authorities, through the Ministry of Labour and Social Affairs, have taken a number of measures aimed at reducing unemployment in general. These include measures taken together with employers to provide 12- or 24-month contracts, usually for public works, aimed particularly at the long-term unemployed. The authorities have stated that they do not support affirmative action, preferring to focus on an approach based on equal opportunities for all and especially on increasing the capacity to enter the labour market. At the same time, they have indicated their readiness to promote the establishment of local partnerships between Labour Offices and co-operating organisations (NGOs, job agencies, educational organisations). Several such projects implemented in the past have had a particular focus on Roma who are disadvantaged on the labour market.

§106. In 2008, an Agency for Social Inclusion in Roma Localities was established in 12 pilot localities. The Czech authorities have indicated that the aim of the Agency is to create and pilot an effective strategy for eliminating social exclusion, which could then be extended throughout the country. Its chief task is to encourage NGOs, schools, employers, municipalities and Labour Offices to work together to implement

projects oriented towards socially excluded Roma. ECRI notes that the Agency experienced some teething problems in 2008 but hopes that these will be rapidly resolved and that it will be able to pursue its work effectively in future. A joint research project of the Czech government and the World Bank was also carried out in 2008, to review the results of a special labour force survey conducted in marginalised localities where many Roma reside. This study aimed to provide new insights into the employment situation of Roma living in such localities, and to propose policy directions to redress problems identified.

§114. Other institutional actors involved in housing matters include the Agency for Social Inclusion, the Office of the Government Council for Roma Community Affairs and the Ministry of Labour and Social Affairs. In recent months several municipalities, such as Brno, Most and Ostrava, have announced plans drawn up in conjunction with the Agency for Social Inclusion for improving living conditions in excluded localities within their jurisdiction. On a more general level, the authorities have indicated that they are also supporting social work programs in the field, with the aim of ensuring an individually tailored approach to meet the needs of each family, and of providing assistance to deprived persons to break the vicious cycle of poverty.

§171. A National Strategy on Policing Minorities has been in place since January 2003. It focuses on educating police officers about policing minorities; developing mechanisms to employ persons belonging to national minorities in the Czech Police; reducing the risk that persons with xenophobic attitudes will be employed by the Czech Police; incorporating principles for the conduct of police officers in relation to minorities into the Code of Conduct of the Czech Police; carrying out surveys to gain a picture of the relationship between the police and minorities; and establishing a framework for preventive police activities in relation to minorities. The Strategy was updated for 2006-2007, and again for 2008-2011.

§172. ECRI notes that efforts have been made in all of the above fields and that the authorities have been able to report progress. Training on the policing of minorities has for example been incorporated into the further education of secondary police school students, basic professional training and the continuing education of serving police officers. The establishment of Liaison Officers for minority issues in regional police administrations, complemented by Police Assistants in socially deprived areas, has been well evaluated. Another successful initiative has been the organisation of summer camps for socially deprived Roma children by police in northern Moravia. Nonetheless, the authorities' analysis of the strategy's impact to date shows that there remains considerable room for progress, for example with respect to the recruitment of qualified police officers belonging to national or ethnic minorities. NGOs also report that police officers tend to associate Roma or foreigners with criminality, but that where crimes are perpetrated against the Roma by non-Roma, these tend to be downplayed by both the authorities and the general public.

§173. ECRI urges the Czech authorities to implement in full the measures set out under the National Strategy on Policing Minorities, to ensure that this is also done at the local level throughout the country, and to provide all the resources necessary to ensure that the implementation of the strategy is successful in improving relations between minorities and the police.

9. Equality bodies

[CERD Concluding Observations](#)

§9. While welcoming the information provided by the State party that the Ombudsman began functioning as the Equality Body according to the Anti-Discrimination Act, the Committee is concerned by the absence of an independent national human rights institution set up in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) (art. 2).

The Committee recommends that the State party establish an independent national human rights institution in line with the Paris Principles and provide it with adequate human and financial resources in order to carry out its mandate, including promoting the Convention and monitoring legislative compliance with the provisions thereof.

[ECRI report](#)

§35. In its third report on the Czech Republic, ECRI encouraged the Czech Republic in its efforts to create a Centre for Equal Treatment and recommended that the Ombudsman continue to accord special attention to the possible racist or discriminatory aspects of complaints and cases brought to his notice. ECRI also recommended that all the bodies engaged in combating racial discrimination be granted the necessary competences and financial and human resources to fulfil their terms of reference as effectively as possible.

§36. ECRI notes that since then, plans to create a Centre for Equal Treatment appear to have been abandoned. According to the Anti-Discrimination Act, which has not yet come into force,⁷ the Ombudsman was to be entrusted with acting as the Czech Republic's independent specialised body to enforce protection from discrimination, combat racism and xenophobia and promote equal treatment. ECRI observes that at present, the Ombudsman can receive individual complaints about acts or omissions of public authorities and conduct investigations into possible administrative malpractice. Where malpractice or an error is found, the Ombudsman may make his or her finding public, request the public body responsible to remedy the situation and make recommendations to eliminate the cause. The Ombudsman can also act as a mediator but has no direct means or mechanisms of enforcement at his/her disposal. The Ombudsman cannot, for example, order the payment of compensation to victims of racial discrimination; nor can he or she investigate complaints made against individuals or private companies.

§37. In recent years, the Ombudsman has carried out detailed investigations into certain issues of particular concern to the Roma community: most notably, investigations concerning sterilisations of Roma women carried out without their free and informed consent, and forced evictions of Roma families in Vsetín. Given the potential broadening of the institution's terms of reference with respect to discrimination, certain cases dealt with within the existing mandate and in which questions of discrimination arose have also been specifically highlighted in the Ombudsman's annual report. Nonetheless, given the importance and complexity of the issues at stake, it seems clear that additional resources will need to be provided to this institution to allow it to carry out its tasks effectively, should these indeed be expanded as expected under the Anti-Discrimination Act. This is especially true as, in order for the Ombudsman to be able to work effectively against all forms of racial discrimination, no

matter whether they are committed by an individual, a private company or a public body, the Ombudsman's competences will need to be significantly expanded. ECRI notes that the Ombudsman is one of the most trusted authorities in the Czech Republic and stresses that, should this institution be entrusted as expected with new responsibilities under anti-discrimination legislation without sufficient resources to carry out the relevant tasks, the institution will not only be unable to carry out its new tasks effectively, but may also lose the confidence of the public in the work it is presently carrying out well.

§38. ECRI strongly recommends that the Czech authorities take steps to establish a body at national level that is clearly entrusted with matters related to racial discrimination, including providing assistance to victims; investigation powers; the right to initiate, and participate in, court proceedings; monitoring legislation and providing advice to legislative and executive authorities; awareness-raising on issues of racism and racial discrimination among society and promotion of policies and practices to ensure equal treatment. It stresses that all the necessary financial and human resources must be granted to this body to enable it to carry out its tasks, whether this is in the form of additional resources provided to the Ombudsman's office or the creation of a new institution. ECRI draws the attention of the authorities to the more detailed recommendations made in this field in its General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level.

§39. ECRI encourages the Czech authorities to ensure that all the necessary conditions exist to allow the Ombudsman to continue investigating complaints involving possible racial discrimination as a matter of priority.

[Country report by the Human Rights Commissioner of the Council of Europe](#)

§17. The Anti-Discrimination Act designates the Defender of Rights (Czech Ombudsman) as the Czech Republic's anti-discrimination body. (...)

§19. While welcoming the adoption of the Act, civil society organisations have highlighted continuing difficulties in a number of areas. For instance, although the Act provides for a shared burden of proof in cases of discrimination, establishing discrimination remains reportedly difficult. The extent to which positive measures aimed at preventing or compensating for the disadvantage suffered by members of certain groups may be required in order to bring about effective equality is reportedly not yet fully clear. Furthermore, there is no adequate mechanism to address instances of discrimination affecting large number of victims or unidentified victims (such as discriminatory advertisements).

FRANCE

Sources

1. [CERD Concluding Observations](#) (September 2010, CERD/C/FRA/CO/17-19)
2. [ECRI report](#) (June 2010, CERD/C/FRA/CO/17-19)
3. [Memorandum by the Commissioner for HR of the COE](#) (May 2008, CommDH(2008)34)
4. OSF experts: Lanna Hollo, Costanza Hermanin; (February 2013)
5. Independent expert: Gwénaële Calvès

1. General trends and challenges

[CERD Concluding Observations](#)

§9. The Committee takes note of the information that the State party is preparing a national plan to combat racism. The Committee hopes that the plan will obtain the necessary support from all the authorities and stakeholders in France and that the drafting process will allow the State party to make its policy more coherent and consistent with the Convention and the Durban Declaration and Programme of Action. To that end, it recommends that the State party take the following into consideration as priorities:

- (a) Provision of greater detail in demographic statistics, particularly those concerning persons of immigrant origin or from ethnic groups, within the meaning of the Convention, and improved socio-economic indicators of discrimination in the State party;
- (b) Identification of victims of racial discrimination;
- (c) Investigation of the types and causes of racial discrimination;
- (d) Identification of measures to help persons of immigrant origin or from ethnic groups, within the meaning of the Convention, to integrate and advance in French society, including through the application of special measures, as provided for in article 1, paragraph 4, and article 2, paragraph 2, of the Convention and confirmed in the Committee's general recommendation No. 32 (2009);
- (e) Standardization and consolidation of existing measures in order to improve the handling of problems related to racial discrimination;
- (f) Study of and particular attention to populations in the overseas territories, especially indigenous peoples;
- (g) To ensure the effectiveness of the plan, the appointment of a senior government representative to take responsibility for its implementation and to advise the Government on all policies intended to prevent and counter racial discrimination.

[ECRI report](#)

§42. The legal texts concerning the prohibition of racial discrimination have been complemented and modified several times in the last few years. The relevant provisions are disseminated among different codes and laws. Since it is important that both legal specialists and the public at large have a clear idea of the scope of the prohibition of racial discrimination in French law, it would be useful to foresee a compilation of the relevant texts with their explanations. This would allow a better understanding of the scope of the legal provisions available at the moment.

§89. ECRI is concerned to note that, according to surveys conducted by the CNCDH, a degree of wariness of Muslims continues to exist in France, although it declined in 2008. ECRI regrets that this wariness sometimes takes the form of doubts about Muslims' real willingness, and even capacity, to "integrate" and to "respect French values". In some cases racist prejudice with regard to Muslims continues to be disseminated, in particular on the Internet. (...) As already mentioned in ECRI's third report, there has been a recent shift in anti-immigrant and anti-Arab/North African racism towards racism directed at Muslims, although the population targeted by this racism remains substantially the same.

§133. In other parts of this report ECRI refers to the ongoing problems of racism, xenophobia and discrimination in France. These problems primarily concern persons who can be seen to belong to a visible minority on account of their skin colour, their physical appearance, their clothing or their surname. This problem particularly affects Black persons, persons of North African or Arab origin and persons originating from the French Overseas Départements and Collectivities, especially the French Antilles, or persons perceived to be of those origins. The persistence of alleged cases of discrimination in access to entertainment venues such as discothèques should be noted.

§134. ECRI draws the authorities' attention to all of its recommendations on combating racism and racial discrimination set out in this report in so far as members of visible minorities are the principal targets of racism and racial discrimination in France.

§140. A number of sources have stressed that racial profiling is a serious problem in the case of identity checks. Racial profiling consists in the use by the police, with no objective or reasonable justification, of grounds such as race, skin colour, language, religion, nationality or national or ethnic origin when carrying out control, surveillance or investigation activities. According to the results of a recent study on identity checks carried out in Paris, persons perceived as "Black" and "Arab" are stopped at proportionally much higher rates than persons perceived as "White". Like this study, human rights NGOs draw attention to the impact on the frequency and practice of racial profiling of the new government policy to combat illegal immigration and the setting of targets in this field. In general, the NGOs stated that there was a lack of trust in the police among members of minority groups, which goes so far as to result in strong tensions and clashes between minority youth and the police

§143. ECRI urges the French authorities to take measures to combat all forms of discriminatory conduct by law enforcement officials, including racial profiling as defined above, in particular by clearly defining and prohibiting racial profiling by law, carrying out research on racial profiling and monitoring police activities to identify racial profiling practices. With regard to these issues and all other matters of relevance to the police, ECRI draws attention to its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing.

§144. ECRI recommends that the French authorities guarantee the existence of a body or bodies independent of the police and prosecution authorities, to be entrusted with the investigation of alleged cases of racial discrimination and racially-motivated misconduct by the police. It is essential to provide the body competent in such matters with all the necessary human and financial resources and to enable it to have access to all the expert know-how needed for it to exercise its task effectively. ECRI also urges the authorities to ensure that, where applicable, those responsible for the above-mentioned discrimination or misconduct are adequately and publicly sanctioned, and the sanctions made public.

§156. The Commissioner would like the French authorities to ensure better access to education, employment and medical care and assistance for Roma groups. A successful integration policy has to involve a role in the economy for adults and education for children.

2. Employment

[ECRI report](#)

§47. ECRI expresses its concern at a number of reports and discrimination tests showing that the problem of discrimination on grounds of origin in the area of employment, particularly access to employment, remains significant and affects inter alia persons perceived as being of immigrant, North African or sub-Saharan African origin or of the Muslim religion. Some cases of racial discrimination in access to employment have been sanctioned by the courts, although the anti-racism NGOs consider that the penalties are not always sufficiently dissuasive, particularly where large corporations are concerned.

§51. In the field of prevention, the HALDE has published a number of employment related guides, including a guide entitled "Preventing discrimination in access to employment: action taken by employment intermediaries", a good practice guide for medium, small and very small businesses and craft industry employers and a guide entitled "Preventing discrimination and promoting equality: businesses' response to the HALDE".

§52. In its third report ECRI recommended that the French authorities review all the occupations then inaccessible to non-EU citizens and remove any unwarranted obstacles to access to employment. In the meantime the HALDE has concerned itself with the issue of citizenship requirements in access to employment. It has underlined that, for certain jobs, the citizenship criterion is unfounded. It accordingly recommended that this criterion be eliminated for access to the three public service corps, jobs in public establishments and enterprises and private sector jobs, except those concerned with matters of national sovereignty or the exercise of public-authority prerogatives.

§53. ECRI recommends that the French authorities pursue their efforts to combat racial discrimination in all aspects of employment, including access to employment, pay and working conditions, promotions, professional training and dismissal, and to promote equal opportunities and diversity in all of these fields.

§54. ECRI strongly encourages the French authorities to follow the HALDE's recommendations when citizenship is set down as a condition of access to employment and limits such access for non-citizens.

3. Education

[Memorandum by the Commissioner for HR of the COE](#)

1§42. In many cases, the difficulties with regard to schooling for Traveller children seem bound up with the caravan parking issue. Frequent moves and the positioning of sites for Travellers a long way from schools are not conducive to adequate access for children to education. Notwithstanding the fact that schooling is compulsory and the growing demand from Traveller parents, some municipalities continue to refuse to enrol Traveller children in primary schools, on the grounds that they will not be there long enough, that an eviction procedure is under way or that classes are full. The HALDE was notified, for instance, of one mayor's refusal to enrol a group of 14 Roma children.

§143. Similar problems persist at secondary level, and distance learning is still preferred. The National Centre for Distance Education (CNED) has introduced some special courses and set up a support network used by 6,000 Traveller children. Schooling for Traveller children is thus a crucial issue which needs to be

addressed as a matter of urgency. The Commissioner recommends that the Education Ministry calculate the school enrolment rate of the children concerned.

§144. During the Commissioner's visits, families told him that time limits on stays at sites for Travellers (a maximum of six months in winter and one or two months in summer) could hinder school attendance. While acknowledging that such time limits are designed to enable Travellers to continue their itinerant lifestyle, the Commissioner is of the view that greater flexibility should more frequently be offered to those families who so desire. Travellers have long harboured a degree of mistrust towards schools, and parents do bear some of the responsibility for their children's failure to attend, but the efforts made by families should not be discouraged.

§20. The Commissioner recommends calculating the school enrolment rate, developing measures to facilitate access to education and setting more flexible site time limits for families with children at school.

§154. On the whole, Roma families are keen for their children to attend school. Under the 1998 Act, however, primary school enrolments take place at municipal level and require proof of address or an accommodation certificate, few of which are issued. It is possible to find a way round this problem; school heads can enrol a child even if the municipality is opposed. This option is rarely used, however. In addition, the financial insecurity of Roma families and the regular evictions to which they are subjected are an impediment to school attendance.

§155. The Commissioner wishes to commend the citizens' initiatives taken in this area, in particular by teachers and associations, to enable such children to have access to education. During his visit to a "Roma site" in Strasbourg, he noted that children's schooling did not raise any particular difficulties. Many mayors have understood the importance of school attendance, although some continue to show reluctance. The Commissioner was informed of numerous cases in which local authorities had refused children's admission to schools.

[ECRI report](#)

§56. A number of sources have drawn attention to the problem of disproportionate representation of children from immigrant backgrounds in certain schools, which is apparently linked to the formation of ghetto housing estates and also to the allegedly poorer school performance of immigrant children or children from immigrant backgrounds. At the same time, the French authorities are aware of the need to enhance equal opportunities in access to education for immigrant children or children from immigrant backgrounds and of the fact that, alongside other difficulties, they suffer the consequences of racism and discrimination in this field. ECRI notes with interest the adoption of a "Framework convention on fostering educational achievement and promoting equal opportunities", signed in December 2007 by a number of governmental players, including the Ministry of Education. The aim is to improve the education patterns of young immigrants or young people from immigrant backgrounds and to enhance their social and occupational integration.

§57. The French authorities have also taken a number of measures to foster the mixing of social groups in school by reinforcing support for schools in special educational needs areas (*zones d'éducation prioritaires* - ZEP) or for pupils from disadvantaged backgrounds. ECRI notes in particular the creation, in 2006, of "educational ambition" or "educational achievement" networks in the most severely affected areas. These networks aim to enhance the school performance of children with difficulties for example by

offering them the possibility of receiving support teaching in addition to attending mainstream classes or by diversifying the means of information and participation targeting pupils' parents. ECRI notes with interest that a charter on "Equal opportunities in access to top level training" has been signed by the government, the universities and the elite higher education establishments (*grandes écoles*). These measures are not aimed directly at immigrant children or children of immigrant origin but concern those of them who come from disadvantaged backgrounds. For children who are new immigrants, the principle of intensive daily instruction in French as a second language, carried out in an induction class (CLIN) at primary school and an "arrival class" (CLA) at secondary school, has been maintained. The education department centres for the schooling of new arrivals and Traveller children (CASNAV) provide teaching materials for the teachers concerned. ECRI notes with interest that the French authorities have continued their efforts to have regional languages or mother tongues other than French taught in schools.

§60. (...) The law of 15 March 2004 stipulated that the wearing of signs or apparel whereby pupils openly display a religious allegiance is forbidden in state primary, lower secondary and upper secondary schools. The law provides that disciplinary action in the matter, which can lead to exclusion, must be preceded by dialogue with the pupil.

§61. In recent years, the law in question has continued to be the subject of debate in France. ECRI notes that some pupils have been excluded from state schools by this law. The authorities underline however that its use has not caused any major problems and that those who are excluded have the possibility to continue their schooling in a different manner. Some NGOs have informed ECRI that overall there have been few difficult cases and that the application of this law generally does not cause any problems. Other NGOs consider that exclusions are not the solution and that in some cases there is no veritable dialogue preceding exclusion. They consider that the application of this law risks bringing about social exclusion of pupils and the radicalisation of their position. As in its previous report, ECRI recalls that it is important to avoid any negative consequences of this law on pupils affected, in particular young Muslim females wearing the veil, who form the majority of the population concerned. Muslim representatives have underlined the fact that this law has reinforced the stigmatisation of Muslim women who wear the veil. In addition, the erroneous interpretation of the ban on displaying religious allegiance has allegedly led to cases of discrimination against women wearing the veil. ECRI stresses that the effects of this law should be examined from the point of view of indirect discrimination and the possible stigmatisation of those concerned.

§62. ECRI recommends that the French authorities pursue and step up their efforts to ensure that the education system guarantees all children of immigrant origin equality of opportunity in access to education, particularly higher education, and ultimately access to employment. In particular, ECRI strongly encourages the authorities to seek means of avoiding the disproportionate representation of pupils with an immigrant background in certain schools. In this connection, ECRI draws attention to its General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education.

§64. ECRI recommends that the French authorities carry out an evaluation of the law on the displaying of religious allegiance at school from the point of view of issues of indirect discrimination and stigmatisation. ECRI recommends placing emphasis on the quality of the dialogue foreseen by the law to avoid where possible any exclusion of pupils when this law is being applied.

§99. With regard to access to education, ECRI had already noted in its previous report the existence of allegations of refusals to enrol children belonging to the Traveller community in school. ECRI regrets to

learn that this is still a problem and that Travellers continue to encounter many difficulties, and even refusals, when they seek to enrol their children in school, on account of their origin, although this is entirely against the law. In a number of cases the HALDE has taken action in respect of the municipal authorities behind these refusals and solutions have been found. However, 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. The NGOs have pointed out that the measures taken to ensure that the children concerned can successfully complete a full course of schooling remain inadequate or insufficient to meet the real needs, which are moreover difficult to assess for lack of reliable official data. Some initiatives, such as the itinerant schools project, are having a degree of success and the possibility of extending them should be studied.

§89. (...)A part of public opinion still sometimes draws inaccurate parallels between terrorists, religious extremists and the Muslim population as a whole. In some cases these prejudices are said to prompt discrimination, especially in access to employment in the security sector, with Muslims being refused jobs because of the suspicion hanging over them.(...)

§104. ECRI strongly recommends that the authorities find, as a matter of urgency, solutions for the effective, ongoing schooling of itinerant or semi-itinerant Traveller children, adapted to their lifestyle in consultation with the Traveller community. In particular, steps should be taken to prevent any refusal by a municipal authority to enrol such children in school.

4. Health care

[Memorandum by the Commissioner for HR of the COE](#)

151. (...) the Commissioner found that Roma in France have little access to medical care in practice. According to Médecins du Monde, the situation of women is of particular concern. It appears that the average age at which they first become pregnant is 17, with only 8.3% of women monitored during pregnancy. The situation of children is also very disturbing. Very few are up to date with their vaccinations, and tuberculosis cases continue to be reported.

5. Housing

[CERD Concluding Observations](#)

§16. The Committee remains very concerned at the difficulties faced by travellers, particularly regarding their freedom of movement, exercise of the right to vote and access to education and decent housing. In this respect, the Committee notes with concern that, despite the recommendations formulated in its previous concluding observations, the State party has still not provided travellers with the necessary number of encampment areas, as provided for in the Act of 5 July 2000 known as the "Besson Act". The Committee is also concerned at the legal requirement for travellers to hold a travel permit, which has to be renewed periodically.

The Committee urges the State party to ensure equal treatment for travellers in respect of the right to vote and access to education. The Committee recommends that the Besson Act be implemented swiftly to ensure that illegal encampment areas are no longer an issue. The Committee also recommends that travel

permits for travellers be abolished to ensure equal treatment for all citizens of the State party (arts. 2 and 5).

[ECRI report](#)

§65. In its third report ECRI recommended that the authorities take measures to combat racial discrimination in the housing sector. The situation in this field seems to be fundamentally unchanged, and the shortage of social housing and low-cost dwellings in major urban areas is still a problem. Immigrants or persons from immigrant backgrounds apparently continue to be particularly affected by difficulties of access to housing. ECRI notes with concern that, according to a number of sources, direct and indirect racial discrimination towards immigrants, persons of immigrant origin and other visible minority groups remains a problem in both the private and the public housing sectors. Concerning private housing, for example, a testing operation conducted by the HALDE in 2006 in three regions showed that applicants of North African or Black African origin were nine times less likely to obtain the apartment being offered than the benchmark applicants. With regard to social housing, a key problem is the lack of transparency of the system for allocating dwellings, which in the opinion of certain specialists can help create an environment conducive to potential discriminatory practices.

§68. ECRI strongly recommends that the French authorities continue their efforts to combat racial discrimination in access to housing in both the public and the private sectors. It recommends to the authorities that they continue to seek appropriate solutions to the structural problems of access to social housing, notably by continuing to increase the park of available social housing and by reviewing the system for allocating such housing so as to make it more transparent.

69. ECRI recommends that the French authorities continue to make private and public providers more aware of the prohibition of racial discrimination in the housing sector and inform the public of the right of housing applicants to not be victims of racial discrimination.

§97. Concerning stopping places for Travellers with an itinerant or semi-itinerant lifestyle, implementation of the laws making it mandatory to build such sites has progressed in recent years. The French authorities have indicated that, at the beginning of 2009, 40% of the required number of places on such sites had been made available and 60% were financed. ECRI notes with regret that the objectives of these laws have not been achieved and the number of stopping places available is therefore still insufficient to meet the demand. This situation apparently engenders tensions between local people and Travellers unable to find suitable stopping places, whereas, according to a number of sources, experience has shown that, where such sites exist, relations are considerably improved. The lack of information on the available stopping places and the existence of a system permitting the eviction of Travellers illegally occupying a site make it even more urgent that the obligation to build stopping places should be fully and duly fulfilled. The authorities have stated that a reflection is under way so as to answer the new housing needs resulting inter alia from the growing sedentarisation of Travellers. They are carrying out consultations in particular at national level, through the National Consultative Committee for Travellers, and at local level, through the similar consultative committees existing in the départements. Civil society organisations nonetheless point out that, in general, consultation of Travellers must be reinforced at both national and local level with regard to all the proposals and projects concerning their housing needs.

§101. ECRI strongly recommends that the French authorities identify without delay solutions to provide stopping places for Travellers by creating a sufficient number of well-equipped sites in suitable locations.

§102. Pending a permanent, generally applicable solution to the problem of stopping places, ECRI strongly recommends that the French authorities take all the necessary steps to identify, in consultation with Travellers, humane solutions which respect the latter's dignity and choice of an itinerant lifestyle.

[Memorandum by the Commissioner for HR of the COE](#)

§127. The main problem faced by Travellers is the lack of recognition of their nomadic lifestyle. In order to address the difficulty of parking their caravans, the Act of 5 July 2000 on the Reception and Accommodation of Travellers, known as the Besson Act, requires municipalities with a population of more than 5,000 to provide a site with facilities and access to water and electricity. Local authorities show continued reluctance to implement the Besson Act, resulting in a shortage of available places. Eight years after this legislation was passed, only 32% of the requisite 41,865 places had been created by 31 December 2007. The approaching deadline for a substantial government grant for the construction of sites for Travellers has encouraged local elected representatives to comply with the law over the last two years. This may make it possible to reach a total of 21,165 places in 2008⁷¹.

§128. In order to meet itinerant Travellers' needs for sites, families are not allowed to stay at a single site for more than a specified length of time. In winter, the maximum stay is usually five or six months. In summer, the authorised duration is often reduced to one month, and may or may not be renewable, depending on the individual site. The maximum stay is stipulated in the various sites' own regulations. Forced to move on, families do not have any means of finding out which other sites have places available. The Commissioner invites the French authorities to introduce a system, initially at the local level and subsequently nationwide, for informing families about available places.

§129. This requirement to move on causes obvious difficulties insofar as there is a shortage of available places. Given the lack of alternatives, many Travellers are forced to live in caravans that are parked illegally. This failure to comply with the Besson Act exacerbates tensions, since Travellers are not allowed to park at camp sites. Moreover, the penalties for camping on unauthorised sites are particularly harsh

§130. In exchange for building sites for Travellers, mayors are allowed to prohibit the parking of caravans elsewhere in the municipality, and to have Travellers evicted if they park their caravans outside the designated areas. The Crime Prevention Act of 5 March 2007 makes it even easier to evict Travellers, as it abolishes the requirement for judicial proceedings prior to eviction. Where caravans are parked unlawfully, the prefect, at the request of the mayor, the landowner or the person entitled to use the land, can serve the occupants with notice to leave within 48 hours. An appeal with suspensive effect may be made to the administrative court against this administrative decision.

§131. The Commissioner had the opportunity to meet some mayors who were eager to comply with the Besson Act and provide decent reception conditions. It is disappointing, however, that other local elected representatives are hostile to implement the Act.

§132. In some cases, for instance, sites are created outside urban areas or 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.

§133. These shortcomings prompted the European Committee of Social Rights to find against France in February 2008. The Committee holds that the deficient implementation of the legislation on stopping places for Travellers is discriminatory and violates the right to affordable housing.

§134. The Commissioner invites the French authorities to ensure the effective application of the Besson Act, reminding them that the problem is not a new one, and that these deficiencies were already pointed out in the 2006 report.

§139. Travellers' homes are also subject to special legislation. Their caravans are not considered to be housing units, and they are consequently not entitled to any housing assistance. Nevertheless, the French authorities have decided to make them subject to a special tax. The 2006 Budget Act provided for the introduction of an annual accommodation tax on land-based mobile homes from 1 January 2007. Owing to implementation difficulties, application of this measure has been postponed to 1 January 2010. It is disappointing that the new legislation is not coupled with housing-related social assistance. A caravan is now legally recognised as accommodation, but still not as a housing unit, meaning that it does not confer access to the same rights.

§140. The disqualification of mobile homes makes it very difficult for Travellers to gain access to some administrative services. Government agencies and private bodies hesitate, or even refuse, to offer their services to people unable to provide a permanent, fixed address. This is the case, for example, when it comes to opening a bank account, securing a bank loan or concluding an insurance contract.

§141. It is difficult not to consider this a situation of inequality. The Commissioner considers that the various special measures described give rise to a system that discriminates against Travellers. Most of these recommendations having already been made in the 2006 report, he calls on the French authorities to put a stop to this special treatment immediately, by developing appropriate policies as recommended by the Council of Europe.

§157. Most Roma groups in France live in squalid, shanty towns, often without access to water or electricity, as the Commissioner found during his visits. Rubbish is collected only sporadically. Hygiene conditions are often deplorable. Some camps do not even have toilets. According to a survey conducted by Médecins du Monde, about 53% of Roma live in caravans, many of which are not mobile, 21% in converted squats and 20% in huts. In his 2006 report, the Commissioner had already voiced alarm about such conditions. The general situation does not appear to have improved. These appalling living conditions must therefore be brought to an end.

§158. Evictions are a particularly problematic issue, plunging families into a climate of fear. Generally speaking, relations between these groups and the police are not always satisfactory. In addition, the Internal Security Act of March 2003 allows the police to intervene within 48 hours, without any need for a ruling by the administrative court or for the landowner's explicit agreement, where such intervention is warranted by "interference with law and order, hygiene or public peace and safety". Such expulsions often involve brutal methods, tear gas and the destruction of personal property. Following some evictions, the National Commission for Police Ethics (CNDS) has found that unjustified and disproportionate acts of violence were committed. Evictions are not usually subject to any prior negotiation, and Roma do not receive any warning. The Commissioner wishes to voice his disapproval of such practices.

6. Access to other goods and service

[CERD Concluding Observations](#)

§17. Bearing in mind that the State party has accepted the principle of linguistic and cultural diversity, the Committee is concerned at the partial implementation of this principle in France.

The Committee recommends that the State party step up its efforts to ensure the right to equal participation in cultural activities for all, without distinction as to race, colour or ethnic origin (art. 5 (e) (vi)).

§18. While appreciating the detailed information provided by the State party on efforts undertaken in its overseas territories to ensure increased representation of, and greater autonomy for, indigenous populations, the Committee is still concerned that the current system does not allow recognition of the collective rights of indigenous peoples, in particular the ancestral right to land. (...) The Committee recommends that the State party allow recognition of the collective rights of indigenous peoples, in particular with regard to property. It further recommends that the State party take the necessary legislative measures to ratify the International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169).

[ECRI report](#)

§89. (...)ECRI has been informed of a number of incidents in which Muslim women who wear the headscarf were asked to remove it by either public service employees or private individuals, which is against the law. In some cases this is due to erroneous understanding of the scope of the principle of secularity, on the one hand, and of the legislation banning the wearing of conspicuous signs of religious belief in public schools, on the other. ECRI notes, for example, that there have been a few cases of mothers accompanying their children on school outings or headscarf-wearing women attending training courses dispensed by vocational training organisations on public secondary school premises who were asked to remove their scarves, although there is no legal basis for this, as the HALDE pointed out in a number of decisions. ECRI has been informed that recent discussions on the possibility of extending the current scope of the prohibition of wearing the veil or on the possibility of introducing a ban on the wearing of burkas and niqabs in public, have increased feelings of victimisation and stigmatisation among Muslims and have reinforced the problem of discrimination or exclusion of Muslim women generally in everyday life.(...)

§98. A number of sources, including the HALDE and the CNCDH, have drawn attention to the need to reform the regulations and practices specifically targeting Travellers with an itinerant lifestyle. In particular, the latter are required by law regularly to present a travel permit (a "carnet de circulation" or "livret de circulation", depending on the circumstances) to the police or the gendarmerie of each place where they temporarily settle, failing which they incur criminal penalties. This measure has been denounced as discriminatory and disproportionate. The authorities informed ECRI that they were going to consider reforming it, but it seems that no tangible measure has been taken to date. The law also requires Travellers with an itinerant lifestyle to have been settled in a municipality for three years in order to exercise their right to vote, whereas for other categories of persons who cannot prove they have a fixed abode the duration is six months. Here too, this difference has been deemed unjustified and discriminatory. In addition, problems with regard to the issuance of national identity cards to Travellers, including unlawful refusals to issue such documents, have been reported to ECRI. This commission also

notes with concern that there are allegations of discrimination with regard to Travellers' access to public goods and services, in particular banking services, insurance cover, rental or purchase of property and access to ordinary campsites.

§133. In other parts of this report ECRI refers to the ongoing problems of racism, xenophobia and discrimination in France. These problems primarily concern persons who can be seen to belong to a visible minority on account of their skin colour, their physical appearance, their clothing or their surname. This problem particularly affects Black persons, persons of North African or Arab origin and persons originating from the French Overseas Départements and Collectivities, especially the French Antilles, or persons perceived to be of those origins. The persistence of alleged cases of discrimination in access to entertainment venues such as discothèques should be noted.

§135. It should be noted that Travellers of French nationality are subject to special legislation that does not apply to other French citizens. Under the Act of 3 January 1969, people over the age of 16 and of no fixed abode must hold a travel permit, of which 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 without a regular income, the travel permit has to be stamped by an administrative authority every three months; the permit for those in paid work has to be stamped every year. If this formality is not completed on time, the Traveller is subject to heavy fines (€ 750 per day overdue). Failure to hold the relevant document carries a penalty of up to one year in prison.

§136. Even if they hold an identity card, Travellers who fail to keep their permit with them at all times risk being fined. Given that most Travellers are of French nationality, they should be subject only to the same requirements as their fellow citizens, so an identity card should be sufficient. Moreover, this legislation was already criticised in the 2006 report, but no action has been taken on the latter's recommendations.

§137. Another provision of the 1969 Act makes Travellers feel that they are under constant surveillance. They are required to be administratively attached to a municipality. Once this has taken effect, two years must elapse before any change can be made. Reasons have to be given for such an application, which has to be accepted by the prefect. Such requirements are at odds with the very concept of travelling. These provisions consequently restrict the freedom to settle in the municipality of one's choice.

§138. Travellers are not entitled to vote until they have been administratively attached to a municipality for three years, whereas the qualifying period for other citizens is just six months.

§139. (...)Travellers also find it difficult to obtain social assistance in general. (...)

7. Availability of equality data

CERD Concluding Observations

§12. The Committee takes note of article 1 of the Constitution of the State party, whereby France is an indivisible republic and ensures the equality of all citizens before the law, without distinction on grounds of origin, race or religion, which is the reason given by the State party for not taking a population census based on ethnic and racial indicators.

§The Committee repeats its view that the purpose of gathering statistical data is to make it possible for States parties to identify and obtain a better understanding of the ethnic groups in their territory and the

kind of discrimination they are or may be subject to, to find appropriate responses and solutions to the forms of discrimination identified, and to measure progress made. The Committee therefore recommends, in line with its general recommendations Nos. 24 (1999), on article 1 of the Convention, and 30 (2005), on discrimination against non-citizens, that the State party take a census of its population based on anonymous and purely voluntary ethnic and racial self-identification by individuals.

[ECRI report](#)

§151. ECRI notes with interest that, since the adoption of its previous report, there has been genuine reflection and widespread debate on the question of measuring diversity and on “ethnic statistics” as tools for improving the fight against discrimination or for measuring diversity. For instance, on 16 May 2007 the National Commission for Information Technology and Liberty (*Commission nationale de l’informatique et des libertés*, hereafter: CNIL) published ten recommendations on measuring diversity and protecting personal data. The committee set up to reflect on the wording of the Preamble to the Constitution submitted a report to the President of the Republic in December 2008, which states that the committee would consider it incomprehensible for ethnic statistics to be banned in so far as combating discrimination entails being able to measure it. The Commissioner for Diversity and Equality of Opportunity, appointed on 19 December 2008, has been given the task of considering the issue of how to endow France with statistical tools for measuring the country's diversity and identifying with precision the areas where it is lagging behind or making progress in all social spheres, in particular schools, public service employment, the business sector, the media and politics. The commissioner has accordingly set up a Committee for Measuring and Evaluating Diversity and Discrimination (COMEDD), which has not yet published its findings at the time of drafting this report.

§152. ECRI notes that some people, including certain specialists in combating racism and discrimination, are speaking out against any form of ethno-racial categorisation or ethnic statistics, for fear that measures of this kind reinforce racism and racial discrimination rather than helping to combat them. In its decision No. 2007-557 DC of 15 November 2007 the Constitutional Council deemed unconstitutional a provision of the law on immigration aimed at allowing the processing of personal data indirectly or directly revealing individuals' racial or ethnic origins for the purpose of performing studies on the diversity of origins, discrimination and integration, subject to authorisation by the CNIL. The Constitutional Council held that the processing of data necessary to carry out studies on diversity could not be based on ethnic or racial origin without infringing the Constitution. On reading the official commentary on the decision, it can be seen that it is the use of ethno racial difference that would be in breach of the Constitution references, not the use of objective data such as the surname, geographical origin or nationality prior to the acquisition of French citizenship, or even the processing of subjective data such as those based on the “sentiment of belonging”. ECRI is satisfied in that this approach is close to its own position on the issue. The reflection and debate should therefore be pursued so as to identify appropriate statistical measurement tools making it possible to facilitate the fight against discrimination while avoiding the pitfall of reinforcing racist stereotypes through the statistics produced.

§153. ECRI strongly encourages the French authorities to pursue their efforts aimed at establishing a comprehensive, consistent system for collecting data making it possible to assess the situation regarding the various minority groups in France and to determine the extent of manifestations of racism and direct or indirect racial discrimination in different fields of life. In this connection it recommends that they

envisage collecting data broken down according to categories such as ethnic or national origin, religion, language or nationality, so as to identify manifestations of discrimination, while ensuring that this collection is systematically carried out in accordance with the principles of confidentiality, informed consent and individuals' voluntary self-identification as members of a particular group. This data collection system should be developed in close co-operation with all the operators concerned, including civil society organisations. The system should also take into consideration the potential existence of cases of double or multiple discrimination.

8. Positive action

CERD Concluding Observations

§5. The Committee welcomes the implementation of legislative instruments needed to combat racial discrimination, such as the Enforceable Right to Housing Act of 5 March 2007 and the Equal Opportunities Act of 31 March 2006, and the establishment of State mechanisms to prevent and combat racial discrimination at the departmental level, such as the commissions for the promotion of equal opportunities and citizenship (COPEC) and the anti-discrimination focal points in prosecution services.

§6. The Committee welcomes the constitutional amendment of 23 July 2008, which gives every person subject to the jurisdiction of the courts the right, as from 1 March 2010, to apply to the Constitutional Council for a ruling on the constitutionality of a law in the course of proceedings. The Committee also welcomes the fact that a constitutional challenge to any bill may be initiated by a sufficient number of parliamentarians.

§7. In particular, it welcomes the introduction of "high schools of excellence" in disadvantaged neighbourhoods, individual attention for some pupils with problems, "boarding schools of excellence" and preparatory classes for the *grandes écoles* for students from disadvantaged backgrounds on the basis of merit.

§8. The Committee welcomes the point made by the head of the French delegation on the duty of remembrance, when he recalled that, at the Durban Review Conference, France had expressed the wish that a tribute be paid to the victims of slavery, the slave trade, apartheid and colonialism.

ECRI report

§42. (...) Since ECRI's third report, the existing legislation has been reinforced on a number of occasions, with a view to transposing the relevant EU Directives, in particular subsequent to the passing of Law No. 2004-1486 of 30 December 2004 establishing the High Authority against Discrimination and for Equality, Law No. 2006-396 of 31 March 2006 on equality of opportunity and Law No. 2008-496 of 27 May 2008 concerning certain measures to adapt Community law in the field of fighting discrimination. Current French law defines direct and indirect discrimination and prohibits such behaviour on grounds of actual or assumed belonging, or not belonging, to an ethnic group, race or religion in the fields of social protection, health care, social benefits, education, access to goods or services or the supply of goods or services, as well as in matters of employment and trade union membership and activism. The law provides for the burden of proof to be shared. In other words, where a person submits to the competent court facts which permit a presumption of discrimination, it is for the defendant to prove that the impugned act

was justified by objective elements in no way entailing discrimination. The legal texts concerning the prohibition of racial discrimination have been complemented and modified several times in the last few years. The relevant provisions are disseminated among different codes and laws. Since it is important that both legal specialists and the public at large have a clear idea of the scope of the prohibition of racial discrimination in French law, it would be useful to foresee a compilation of the relevant texts with their explanations. This would allow a better understanding of the scope of the legal provisions available at the moment. (...)

ECRI recommends that the French authorities assess the civil and administrative law provisions to combat racial discrimination to determine whether they are sufficient, taking due account of its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. If this assessment brings to light deficiencies to be remedied or improvements and clarifications to be made, the necessary amendments should be implemented. In particular, ECRI encourages the authorities to consider the elaboration of a compendium or a compilation of the legal provisions to combat racial discrimination which would allow for easier comprehension of all of the standards applicable in this field.

§44. ECRI recommends that the French authorities pursue their efforts to inform the public of the provisions in force to combat racial discrimination and of any provisions adopted in future. It also underlines the importance of sustaining and reinforcing the efforts to train all justice system operators in the new legislation to combat racial discrimination, laying particular emphasis on the provisions concerning the burden of proof.

§48. ECRI notes with interest that the French authorities have already taken or are in the process of taking measures to (...) promote equal opportunities and diversity in the field of employment. It is not possible to list all of the measures adopted here. For instance, the 2006 law on equality of opportunity provides for the use of anonymised CVs in job applications in companies with 50 or more employees, although to the best of ECRI's knowledge this measure had not yet been implemented at the time of drafting this report. A diversity award was set up in 2008 and should begin to reward businesses having made efforts in this domain in 2009.

§50. With regard to public service employment, a number of measures have been taken to promote equality and diversity. For instance, on 2 December 2008 the competent ministry signed a Charter to Promote Equality in the Public Service. One of the concerns addressed by this charter is achieving discrimination-free recruitment conditions in meeting staffing requirements by ensuring that members of recruitment panels and selection committees undergo training and awareness-raising on the subjects of prejudice, stereotypes and the risk of discrimination.

§66. ECRI notes with interest that a number of bodies have addressed the problem of discrimination in access to housing and issued recommendations on the subject. For example, the government asked the HALDE and the National Council for Housing (*Conseil national de l'Habitat* - CNH) to organise a Consensus Conference on Social Diversity in Housing, which led to a series of recommendations that were submitted to the Ministry of Housing and the City on 23 October 2007. The Supreme Council for Integration issued an opinion on the housing of persons from immigrant backgrounds in December 2007, which contains relevant information on discrimination problems and makes recommendations on means of preventing them. The French authorities have continued to take measures aimed at facilitating access to housing for persons from disadvantaged backgrounds, pursuing urban renewal, desegregating urban ghettos and promoting a social mix in the housing sector.

§67. ECRI is pleased to learn that, in April 2008, the HALDE ran an information campaign including the distribution of brochures for landlords and housing professionals. It has similarly taken steps with regard to social housing organisations. In addition, in recent years court rulings or decisions by the HALDE Council have sanctioned cases of racial discrimination in access to private housing, which shows that the ban on racial discrimination in this field does not remain just an empty principle.

§141. The authorities have stated that they have taken a number of measures to improve the situation with regard to the activities of law enforcement officials. They include: human rights training and awareness-raising sessions in police colleges; measures to raise awareness of the need to combat racism and racial discrimination, the adoption of an equal opportunities policy in police recruitment; the 2008-2012 National Police Force Development Plan's focus on ethics and on the principle of respect for human dignity, and the similar focus of a number of circulars, including one issued in 2006 concerning police conduct with regard to juveniles. ECRI notes with interest the creation, in 2007, of the office of General Inspector of Places of Deprivation of Liberty. The inspector's role is to ensure that the fundamental rights of persons deprived of their liberty are upheld.

[Memorandum by the Commissioner for HR of the COE](#)

§145. Alternatives to conventional schooling may be envisaged for those Traveller families who so desire because of their high degree of mobility. At present, some 40 "school lorries" travel around the sites where itinerant families live, organised by the Education Ministry or by associations; the Education Ministry also has around 15 field schools located at or near to sites for Travellers. The Commissioner commends these initiatives, while expressing disappointment that there are still far too few of them. Such arrangements should be made generally available: as well as affording a means of providing schooling for these children, they serve as a springboard into conventional schooling and foster a more open attitude to the education system. Similarly, the reception agreements with schools introduced by the CNED in order to enable children enrolled on distance learning courses to receive help from conventional schools, should be encouraged and developed. Thirty-three lower secondary schools have signed such agreements to date.

§159. The action taken by some local authorities determined to rectify this situation of extreme uncertainty by providing such groups with health, social and educational assistance is nevertheless to be commended. Integration-through-housing projects have also been set up, *inter alia* in the Ile-de-France and Nantes areas. Such initiatives are all too rare, however. Accordingly, the Commissioner invites local authorities to follow the example set by these good practices with a view to providing decent living conditions for the groups concerned.

9. Equality bodies

[CERD Concluding Observations](#)

§19. The Committee takes note of the bill on the "Defender of Rights" but is concerned by the large number of functions to be taken on by this new institution and fears that the mandate to combat discrimination, including racial discrimination, currently devolved to the High Authority to Combat

Discrimination and Promote Equality (HALDE), will be only one aspect of the mandate of the Defender of Rights.

In light of its recommendation on the national plan to combat racial discrimination, and while calling for closer coordination between State mechanisms that address problems related to racial discrimination, the Committee recommends maintaining a separate, independent institution responsible for combating discrimination, including racial discrimination. In this regard, the Committee underlines the importance of the role of HALDE in fighting discrimination, particularly racial discrimination (art. 2).

[ECRI report](#)

§10. (...) In light of the problems of racism and racial discrimination highlighted in this report, ECRI considers that this Joint Ministerial Committee could meet on a more regular basis, and not just in cases of emergency. This would constitute a partial response to the need for co-ordination between all the central government authorities concerned, with a view to enhancing the effectiveness of the measures to combat racism and to communicate on the government's action. (...)

§13. ECRI notes with satisfaction the establishment, in 2005, of the High Authority against Discrimination and for Equality (*Haute autorité de lutte contre les discriminations et pour l'égalité*, hereafter the HALDE), following the passing of Law No. 2004-1486 of 30 December 2004. ECRI notes with interest that, in 2006, the mandate of the HALDE was reinforced and broadened to enable it better to perform its role, in particular by giving it the possibility of bringing matters before the courts of its own initiative and of proposing "penal transactions".

§14. The HALDE is an independent administrative authority. It is competent to deal with all forms of direct or indirect discrimination prohibited by law or under international instruments to which France is a party. Discrimination prohibited by law concerns a large number of grounds of discrimination, including those coming within ECRI's mandate. The HALDE is, for instance, competent to deal with discrimination on grounds of origin, physical appearance, surname, religious beliefs and actual or assumed belonging to an ethnic group, nation or "race". In addition, it has already concerned itself with issues linked to discrimination by reason of nationality or language.

§15. The HALDE is competent to handle claims of discrimination lodged by victims or associations fighting discrimination; it can also deal ex officio with cases of discrimination. So as to examine claims the HALDE has various investigative powers. (...)

§16. Taking stock of the HALDE's first four years in activity (2005-2008), it can be seen that it has a key and growing role in combating the kinds of discrimination that come within ECRI's mandate. A total of 7,788 claims (taking all grounds of discrimination together) was registered in 2008, compared with 1,410 in 2005. Origin is the most frequently cited ground. (...) It also noted some sticking points, that is to say cases in which the desired measures had not been taken in response to the Council's decisions. In particular, the percentage of positive follow-up to cases referred to the prosecution service was only 5%.

§17. Human rights and anti-racism NGOs point out that even though the HALDE is a recent institution, it has already achieved positive results. However, there is a need to ensure that its opinions are fully acted upon. To enhance its effectiveness it also still needs to make itself better known among victims of

discrimination. The HALDE has stated that it carries out an active policy aimed at informing the public at large of its existence and role. (...)

§18. A number of sources have underlined that the HALDE needs to be further consolidated, notably in the light of the discussions on the future Rights Defender. Following the adoption of constitutional law No. 2008-724 of 23 July 2008 on modernisation of the institutions of the 5th Republic, the French Constitution provides for the creation of an institution of Rights Defender to guarantee respect for rights and freedoms by public authorities and all bodies having a public service role or for which the Rights Defender is given jurisdiction under an organic law. At the time of preparation of this report, the relevant draft legislation provided that any individual or legal entity alleging a breach of rights or freedoms by a public authority would be able to lodge a complaint directly with the Rights Defender. The latter would also be able to receive complaints concerning acts by private individuals which affect a child's rights or constitute breaches of the rules of ethics in security matters, with the possible consequence that this institution would replace not just the Mediator of the Republic but also two other existing institutions, the Children's Defender and the National Commission on Security Ethics. This bill also provides that the Rights Defender shall be involved in the activities of the HALDE, on request. ECRI welcomes the fact that an institution such as the Rights Defender has been provided for in the French Constitution. At this stage it is not possible to foresee the final content of the organic law. ECRI underlines that it is important to ensure that, in the framework of the establishment of this new institution, the protection of rights currently safeguarded by existing authorities not be undermined, above all with regard to the HALDE's current responsibility for combating discrimination, not least in the area of racial discrimination which requires a degree of specialisation.

§19. In view of the key role played by the High Authority against Discrimination and for Equality (*Haute autorité de lutte contre les discriminations et pour l'égalité*, HALDE) in combating racial discrimination, ECRI recommends that the French authorities continue to support this institution. Particular care should be taken to ensure that this institution is regularly consulted and that real co-operation is developed between the HALDE and the authorities, notably by taking into account the opinions and recommendations issued by the HALDE in its fields of expertise.

GERMANY

Sources

1. [Country report by the Special Rapporteur on Racism](#) (February 2010, A/HRC/14/43/Add.2)
2. [CERD Concluding Observations](#) (September 2008, CERD/C/DEU/CO/18)
3. [ECRI report](#) (December 2008, CRI(2009)19)
4. OSF expert: Costanza Hermanin (February 2013)

1. General trends and challenges

[Country report by the Special Rapporteur on Racism](#)

§4. According to the Federal Statistical Office, the foreign-born population amounted to 8.8 per cent of the total population, or around 7.2 million persons. People of Turkish descent make up the largest group of foreign-born individuals, with over 1.7 million inhabitants.

§6. The religious composition of the population is predominantly Christian: 34 per cent of the population is Protestant and 34 per cent Roman Catholic. Muslims make up around 3.7 per cent of the German population. A large segment, 28.3 per cent of the population, consists of atheists, unaffiliated or other religious groups.

[CERD Concluding Observations](#)

§15. While noting the State party's reservations with regard to the use of the term "race", the Committee is concerned that the State party's strong focus on xenophobia, anti-Semitism and right-wing extremism may lead to the neglect of other forms of racial discrimination. The Committee is also concerned that the overall legislative design of key provisions of the Criminal Code may not be sufficiently precise in relation to racist elements in crimes. In this connection, the Committee also regrets the absence of a definition of racial discrimination in the State party's domestic legislation (art.1).

The Committee recommends that the State party consider adopting a clear and comprehensive definition of racial discrimination in its national legislation, in accordance with article 1, paragraph 1, of the Convention.

The Committee also recommends that the State party broaden its approach to combating racial discrimination with a view to countering such discrimination in all its forms, including expressions of racist prejudices and attitudes.

§21. While taking note that the State party recognizes German Roma and Sinti as a national minority, the Committee is concerned that many Roma and Sinti continue to experience discrimination in the fields of education, employment and housing. (art. 5(e))

The Committee, recalling its general recommendation No. 27 (2000) on discrimination against Roma, recommends that the State party take special measures to improve the situation of all Roma and Sinti to overcome the disadvantages brought about by persistent discrimination, in particular in the fields of education, employment and housing. Furthermore, the Committee recommends that the framework agreement for the protection of Roma and Sinti between Rhineland-Palatinate and the respective Land association of the Central Council of German Sinti in 2005 be replicated in other *Länder*.

[ECRI report](#)

§95. The German authorities estimate that approximately 3.4 million Muslims live in Germany. The great majority are not German citizens. As with other groups, Muslims who do not have German citizenship are referred to and perceived as foreigners, regardless of how long they or their family have lived in Germany, and, unless they are nationals of another EU member state, they do not have the right to vote in elections at any level. Given the increasing diversity of the backgrounds and beliefs of Muslims living in Germany,

they reportedly do not have a strong collective identity. Few Muslims hold high-profile positions in German political parties and very few have been elected to the Federal Parliament (*Bundestag*).

§105. The Turkish community in Germany comprises around 2.7 million people and is the largest single group of residents of non-German origin. Around 1.7 million of these persons do not have German citizenship, although the great majority have been living in Germany for more than 7 years. Frequently considered simply as a subset of the Muslim community, the Turkish community includes immigrants from a variety of backgrounds. Nonetheless, their experience of discrimination is similar to that of many Muslims: as children with a migration background, many children of Turkish origin experience below average education outcomes; members of the Turkish community also experience discrimination in access to employment and housing, for example on the basis of their name or their nonnative German. As the largest group of non-citizens in Germany, Turks are also particularly affected by the introduction of the new national integration policy, with the positive and negative effects described elsewhere in this report. They are moreover not immune from violent racist attacks. (...)

§109. Frequently referred to as visible minorities in relation to racist violence, members of the Black community (which is estimated to include 200 000 to 300 000 persons) complain that they are otherwise virtually invisible as active members of society. Subject to discrimination in access to employment, Black people find few professional role models, whether working as teachers, bank clerks or public servants. They also suffer from the streaming system in place in the field of education. Moreover, there is a relative lack of diversity in the media and where Black actors appear, the characters they play often merely respond to prevailing stereotypes. In the field of advertising, NGOs report that some advertisements depict Black persons as commodities rather than human beings. ECRI further notes that there appears to have been little research carried out into the situation of the Black community in Germany that would make the issues they face more visible to the authorities and to the public at large, and by the same token easier to tackle.

§111. German Sinti and Roma are one of the four national minorities recognised in Germany and as such, receive support from the federal state in order to defend and promote their interests as a minority. The state has also taken welcome steps to recognise officially the suffering experienced by these communities during the Holocaust. In daily life, however, members of the Roma and Sinti communities report that they continue to face discrimination, in particular in access to housing and in the field of education, where teachers frequently have little knowledge of the history of Sinti and Roma, and perpetuate negative stereotypes.

2. Employment

[Country report by the Special Rapporteur on Racism](#)

§46. (...) According to Ministry officials, the main problem Germany currently faces is not necessarily discrimination in the workplace, but rather discrimination in hiring practices. This problem affects in particular young people with a migration background, who are subject to high unemployment rates.

§48. As mentioned above, following his contacts with civil society organizations and associations representing migrant communities, the Special Rapporteur noted that a key problem faced by persons with a migration background is the recognition of diplomas obtained in their own countries. Some key areas such as medicine are particularly problematic. Interlocutors at the Federal Ministry of Labour and

Social Affairs recognize the problem and noted that this issue is being resolved at the regional level through EU standards. They also recognize that non-EU migrants in certain professions face considerable obstacles in obtaining equivalencies for their diplomas, which generally prevents them from integrating into the labour market in areas in which they are qualified.

§60. The Special Rapporteur also received information concerning the prohibition introduced by many *Länder* regarding the wearing of religious symbols by schoolteachers. None of these laws exclusively address the headscarf, but rather focus on the need to promote "religious neutrality". However, the Special Rapporteur noted that some of these laws may have a discriminatory effect on Muslim women and often engage in double standards, particularly with the introduction of some forms of exemption granted to the wearers of Christian symbols. In addition, these laws may also have the effect of further decreasing the number of qualified Muslim teachers in public schools, thus making it more difficult to promote cultural awareness among pupils.

§81. Restrictions to the wearing of religious symbols should not lead to either overt discrimination or camouflaged differentiation depending on the religion or belief involved, and exceptions to the prohibition of wearing religious symbols should not be tailored to the predominant or incumbent religion or belief. The Special Rapporteur therefore recommends that a review be undertaken of the existing legislation in several *Länder* which prohibits the wearing of religious symbols by public schoolteachers and may have a discriminatory effect on Muslim women.

[ECRI report](#)

(...) the employment rate of immigrants remains significantly lower than that of native-born Germans and in the labour market, and visible differences are reportedly a significant factor in discrimination in access to employment.

§56. Persons with a migration background in Germany continue to suffer from serious discrimination in access to employment, particularly in the case of qualified workers. Even with equivalent qualifications, immigrants and their children have greater difficulty finding work than the rest of the population. An OECD report published in 2007 found that, for immigrants with tertiary qualifications, the employment rate was 68%, compared with 84% for persons born in Germany. At the other end of the scale, for jobs requiring few or no qualifications, a slightly higher proportion of immigrants (45%) was employed than of persons born in Germany (40%). Young immigrants are more likely than Germans to seek apprenticeships, yet even so, their percentage of the overall number of apprentices remains lower than their percentage of the population in Germany. Even taking account of the lower educational attainment of children with a migration background, the employment rate of immigrants remains significantly lower than that of native-born Germans.

§57. NGOs report that in the labour market, visible differences – including a person's name – are a significant factor in discrimination in access to employment, especially where such differences are linked to a perceived Muslim or Turkish background. It is still common to include photographs on CVs in Germany and women graduates, even with high marks from highly respected German academic institutions, report that they are not invited to interviews if their photograph shows them wearing a headscarf. Black persons applying for work report being turned away as soon as employers see them. Advertisements requiring "mother-tongue German" have also been reported. Precarious residency status can also act as an added

barrier for non-citizens seeking access to work or apprenticeships. ECRI observes that the new anti-discrimination legislation should help to provide a remedy for some individuals who have been subject to discrimination and who are in a position to make a complaint within the required time-limits. However, structural approaches to combating discrimination are also required, and increased efforts to change employers' attitudes and promote a diversity approach in the workplace appear to be urgently needed.

§99. A major point of difficulty for Muslim women is the impact, in particular on their chances of finding employment, of the choice to wear a headscarf. Following a decision by the *Land* of Baden-Württemberg in 2000, prohibiting a female Muslim teacher from wearing a headscarf, in 2003 the Federal Constitutional Court – finding in favour of the teacher in that case – ruled that it was up to the *Länder* to legislate to define which religious symbols could be worn in which circumstances. Since then eight *Länder* – Baden-Württemberg, Bavaria, Berlin, Bremen, Hesse, Lower Saxony, North-Rhine-Westphalia and Saarland – have passed laws that explicitly prohibit the wearing of headscarves in schools. In Hesse, all civil servants are banned from wearing headscarves. The public discussion about headscarves is reported to have had even more detrimental effects than the laws themselves for Muslim women, who were portrayed in public discourse as oppressed and dependent. Muslim women moreover report that it has also become increasingly difficult to find employment in the private sector since these laws were passed, as they have sent the message that it is reasonable to reject an applicant solely because she wears a headscarf.

3. Education

[Country report by the Special Rapporteur on Racism](#)

§39. During the mission, the Special Rapporteur visited some educational projects that are addressing some of the main challenges related to the integration of children with a migration background. These projects highlighted the need for comprehensive measures, starting at the preschool level and continuing through secondary and university education. In particular, promoting language competence among preschool children with a migration background has been seen as one of the factors that can have a long-term impact on the performance of these children in the school system.

§40. In his discussions with civil society representatives, the Special Rapporteur noted that one of their central complaints is the impression, particularly held by minority communities, that for children of migrants the educational system is not conducive to good performance leading to university-level qualification. In particular, the Programme for International Student Assessment (PISA) studies has shown that there is a high correlation between migration background and school performance in Germany. The three-tiered system of German education, with early selection into separate levels of education, creates a bias against students whose mother tongue is not German. The Special Rapporteur believes that the overrepresentation of minority students in the lower school stratum is an indication of the problems in the three-tiered model. The Special Rapporteur also notes that the same finding was reached in 2006, when the Special Rapporteur on the right to education visited the country and recommended that the Government reconsider its multitrack school system (A/HRC/4/29/Add.3). The Special Rapporteur notes that existing experience in this area, such as in Hamburg, has proved successful and could provide lessons for education reform.

§41. Civil society organizations also pointed out that a key challenge for persons with a migration background is to receive recognition for university diplomas obtained abroad. Whereas recognition of

diplomas for individuals coming from other European Union members is generally straightforward, many non-European migrants who come to Germany with previously obtained qualifications in their home countries find it difficult to have their degrees formally recognized. The Special Rapporteur notes that these difficulties in diploma recognition have a direct impact on the integration of migrants in the workforce and this has a negative impact on the economy. Officials at the Ministry of Education and Research agreed that the question of recognition of diplomas was problematic but pointed to an initiative that they expected would be adopted in September 2009 by the parliament to facilitate recognition of qualifications that are similar to German qualifications. The Special Rapporteur also took note of the intention of the authorities to further improve the recognition of diplomas by introducing a certificate based on the Lisbon Convention.

§80. The Special Rapporteur recommends that:

(a) The Government continue its efforts to implement the recommendations presented by the Special Rapporteur on the right to education following his visit to Germany in 2006. In particular, the Special Rapporteur recommends that the Government engage in a profound reflection on how to address the underperformance of children with a migration background;

(b) An appropriate scheme be put in place to ensure that diplomas obtained abroad, particularly outside the European Union, are properly recognized so that the holders of such diplomas may present themselves to the job market on a competitive basis;

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§23. The Committee is concerned that children of immigrants are overrepresented in special schools for “under-achievers” (*Sonderschulen*), mainly on account of their lack of adequate German language skills, and underrepresented in secondary and tertiary education. (art. 5(e) (v))

The Committee, recalling its general recommendation No. 30 (2004) on discrimination against non-citizens, recommends that the State party take effective measures to ensure the integration of children of non-citizens in the regular school system, and reconsider the problem of transfer of such children to *Sonderschulen* including the criteria for any such transfer, as well as improving current arrangements to support the German language skills of such children.

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§28. A second question concerns the applicability of the AGG to the field of education. Whereas it is clear that private schools are subject to the provisions of the AGG, it appears that public (state-funded) schools are not. As it is the *Länder*, in the German federal system, that are competent in the field of education, it will be up to each *Land* to ensure that the prohibition on discrimination in this field is made effective in practice. In this context, ECRI stresses that education has a fundamental impact on children’s future life choices and that – bearing in mind the current inequalities in school outcomes in Germany – it is all the more urgent that discrimination be eliminated in this field.

§46. Both international studies and research carried out within Germany in recent years show that first- and second-generation immigrant children continue to have significantly lower chances of success in the German school system than German children – although their desire to succeed is as high as, or even

higher than, that of German children. In Germany's multi-track secondary school system, despite the mechanisms in place to ensure permeability between the different streams, the proportion of non-citizens in the lowest stream (*Hauptschule*) is well over twice as high as that of German children, and the proportion of non-citizens who do not even complete *Hauptschule* is considerably over twice the proportion of German citizens. At the same time, the proportion of non-citizens in the highest stream (*Gymnasium*), giving access to university education, is well under half that of German children. One study found that in Baden-Württemberg, non-citizen children were three-and-a-half times more likely to end up in a special school for children with learning disabilities than German children. Overall, only 62.6% of men and 51.3% of women with an immigrant background have completed education or training of some form, compared with 88% of men and 73.4% of women who do not have an immigrant background. ECRI emphasises that this contrast in the education received by, and the education outcomes of, non-citizen and German children with a migration background as compared with other German children is deeply worrying. It notes that studies on this situation have stressed two key factors that may help to redress the situation: first, providing support for developing linguistic skills in the language of instruction (German), and second, addressing the tendency to direct children with a migration background to schools with lower performance expectations, which are dominated by socio-economically disadvantaged student populations.

§49. As regards teacher training, it is reported that relatively few teachers are trained in teaching German as a second language. ECRI also notes that in a system where children with a migration background are considerably less likely to succeed in school than others, the number of teachers who are themselves first or second-generation immigrants is unlikely to increase rapidly. Efforts to increase the cultural awareness of teachers are thus all the more urgent. Not only do teachers' attitudes influence children's perceptions of their own capacities; in Germany, teachers also play a central role in directing students towards the different streams of secondary education. NGOs report that some teachers display openly discriminatory attitudes in the classroom, in particular towards Turkish and Muslim children, and some may have a tendency (for example, through the misguided belief that it will simply be easier for these students to cope in the lower levels of the system) to direct such students more often towards the lower streams of secondary education, even, in some cases, where the students have the skills to complete *Gymnasium*.

§51. Against the above background, ECRI draws the attention of the German authorities to its General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education. It stresses in particular the elements of this Recommendation that concern the development of policies at national and regional level to ensure the full participation, on an equal footing, of children from minority groups in education; combating racism and racial discrimination within schools, in particular through ensuring that the fight against such phenomena in schools, whether they emanate from pupils or educational staff, is part of a permanent policy; and training all teaching staff to work in multicultural environment.

§52. ECRI strongly encourages the German authorities to continue and intensify their efforts to ensure that no children suffer disadvantage in the school system due to inequalities in their linguistic skills in German, and recommends that they draw inspiration in this regard from ECRI's General Policy Recommendation No. 10. In this context, ECRI also recommends that the German authorities ensure that all children in Germany have access to free kindergarten education, at very least in the final year before primary school.

§53. ECRI strongly recommends that the German authorities step up the provision of training programmes to teachers and other school staff, in accordance with ECRI's General Policy Recommendation No. 10, in

order to increase their understanding of a variety of cultures and equip them to work effectively in increasingly diverse classrooms, including increasing their capacity to teach German as a second language to children with a different mother tongue.

§54. Bearing in mind that no immediate move away from the present streaming system for secondary schooling in Germany has been envisaged, ECRI recommends that the German authorities take urgent steps to implement targeted training programmes to ensure that all teachers have the capacity to assess objectively the skills of students due to enter the secondary school system, in order to ensure that students are not sent to schools in the lower academic streams unless this is strictly necessary.

§98. As regards practising and learning about the Muslim faith, it may be noted that religious education in schools is permitted in Germany, but Muslim religious education in schools is at present a relative rarity. In March 2008, the third official Islam Conference agreed to add Islam to the school curriculum in public schools. However, this initiative has been hampered by a lack of qualified Muslim teachers with sufficient knowledge of German to teach the Muslim faith in schools. (...)

4. Health care

(...)

5. Housing

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§42. In the Special Rapporteur's meetings with civil society representatives, discrimination in housing was highlighted as one of the major problems faced by migrant communities. Across the country, many interlocutors pointed out that this form of discrimination is prevalent with landlords who are generally reluctant to rent housing units to persons with a migration background. The Special Rapporteur notes that this behavior is often very hard to prove, as it occurs silently, when landlords inform the prospective tenant that the dwelling "is no longer available".

§43. The Special Rapporteur wishes to note that across the world, discrimination in the area of housing is one of the key factors that contribute to the process of ghettoization, where immigrants unable to find housing are forced to settle in certain "minority areas". The Special Rapporteur noted that this process of ghettoization also occurs across Germany. In particular, he wishes to point out that the formation of ghettos creates additional barriers to the integration of migrants, particularly with regard to language proficiency. It has also fostered the image of migrant communities as being "secluded" and "unwilling" to integrate. In this regard, fighting discrimination in the domain of housing is a key responsibility of the Government to ensure better integration of migrants into society.

§44. With regard to the enforcement of legislation for non-discrimination in housing, the Special Rapporteur recalls that one of the major problems is the production of evidence that would be valid in a court of law. In this regard, the Special Rapporteur believes that the assessment of discrimination in housing should be seen as a comprehensive set of obligations, in relation to which the State has a proactive role to play. He makes reference, in particular, to techniques such as paired testing, whereby public agencies or independent institutions compare the responses of landlords to prospective tenants of

different backgrounds, bringing enforcement actions against those landlords who are found to be discriminating.

§45. The Special Rapporteur notes with concern that one of the provisions of the General Equal Treatment Act formally allows for different treatment on the grounds of race or ethnic origin under section 19.3, which states that “in the case of rental of housing, a difference of treatment shall not be deemed to be discrimination where they serve to create and maintain stable social structures regarding inhabitants and balanced settlement structures, as well as balanced economic, social and cultural conditions”. The Special Rapporteur raised this provision with a number of interlocutors, many of whom were unaware of such an exception. Some authorities explained that the original purpose of this provision was to allow for affirmative action aimed at encouraging more integrated neighbourhoods. In any circumstance, this broad provision allowing for legal discrimination is detrimental to any possible affirmative action efforts, particularly in a domain as sensitive and problematic as discrimination in housing.

§58. The Special Rapporteur also met with a number of members of the Arab and Muslim communities and visited mosques, as well as cultural centres. According to official figures, there are approximately 4 million Muslims living in Germany, half of whom are not German citizens and the majority of whom are of Turkish origin. The Special Rapporteur noted that many Muslims, due both to their religious affiliation and ethnicity, face discrimination in many aspects of their life. In particular, a large number of Muslim residents live in ghettoized neighbourhoods, with few opportunities to interact with German society at large. Although ghettoization may at times be voluntary, the Special Rapporteur recalls that discrimination in housing has a substantial impact in creating these ethnically or religiously segregated communities (...). It should be noted in addition that the overlap of social status with religious affiliation and ethnicity further compounds the difficulties faced by these communities as far as integration is concerned.

§80. The Special Rapporteur recommends that:

(...) (c) The General Equal Treatment Act be amended in order to eliminate the exception granted to landlords, allowing them to discriminate in order to “create and maintain stable social structures regarding inhabitants and balanced settlement structures, as well as balanced economic, social and cultural conditions”. While this provision may have been created to promote integration, its broad nature can be detrimental to such efforts by in effect allowing for discrimination.

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§17. The Committee is concerned about the possible negative effects in terms of indirect discrimination on the grounds of ethnic origin, due to the exception to the principle of equal treatment as regards access to rental housing contained in paragraph 19, section III of the General Equal Treatment Act. According to this provision, landlords can refuse to rent apartments to persons applying for accommodation with a view to creating and maintaining socially stable residential structures and balanced housing estates and also balanced economic, social and cultural conditions. (art.3 and art. 5(e) (iii))

The Committee recommends that the State party guarantee the equal enjoyment of the right to adequate housing by ensuring that housing agencies and other providers of accommodation refrain from engaging indiscriminatory practices. Furthermore, the Committee encourages the State party to consider modifying paragraph 19 section III of the General Equal Treatment Act in order to conform with article 5 (e) (iii) of the Convention.

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In the housing sector, discriminatory practices of landlords and property managers are reported, and studies indicate that migrants are disadvantaged in this sector, in some cases facing so-called “ghettoisation”.

§61. In its third report, ECRI recommended that research be carried out into discriminatory practices and barriers or exclusionary mechanisms in public and private sector housing, in order to inform targeted policy responses to any problems found.

§62. Various studies carried out in the past have shown that on average, migrants living in Germany pay higher rent than German citizens but live in smaller houses or apartments. In some cities migrants also live mostly in specific districts, a fact that is readily used by conservative commentators to criticise migrants, and especially Muslims, for creating and living in “parallel societies”. In public debates on how to reduce the concentration of migrants in some neighbourhoods, the focus has at times tended to be on finding ways to make migrants relocate to new neighbourhoods or to prevent them from moving in to districts which already have a high proportion of migrants, rather than on, say, incentives that could be offered to German citizens to move into such neighbourhoods, or measures (such as improving schools or living conditions) to make such districts more attractive. NGOs report that a key role is played, however, by discriminatory practices of landlords and property managers, based for example on a person’s name or on their fluency in German. Cases in which rooms are advertised as available for mother-tongue German speakers only are also reported.

§63. The authorities have pointed out that housing is one of the fields covered by the General Equal Treatment Act (AGG) 2006. However, as noted above (§ 27), the inclusion in the Act of a provision expressly permitting differential treatment on the basis of racial or ethnic origin gives rise to doubts as to whether the AGG will be of assistance in turning this situation around.

§64. ECRI strongly recommends that the German authorities carry out research into discriminatory practices and barriers or exclusionary mechanisms in public and private sector housing, in order to inform targeted policy responses to any problems found. It recalls in this context its recommendation made earlier in this report that the authorities keep under review the impact of the new legislation in preventing discrimination and in ensuring that it is effectively sanctioned when it does occur, in particular as regards the provisions concerning housing.

6. Access to other goods and services

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§19. The Committee is concerned about the addition by some *Länder* of specific questions to citizenship questionnaires which may be discriminatory, in particular the questionnaire introduced in Baden-Württemberg, which was to be answered by citizens of the 57 member States of the Organization of the Islamic Conference (OIC) who apply for German citizenship. (art. 5 (d) (iii))

The Committee recommends that the Federal Government encourage the use of questionnaires without discriminatory content, for all applicants for citizenship.

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§97. ECRI notes with concern a new law on registration of personal data, which will come into force in January 2009. Under this law, Muslims, in contrast with persons affiliated to religions that are registered as corporate bodies under public law, are prohibited from registering their faith. ECRI is concerned that this may be a violation of the principle of equal treatment.

§98. (...) With respect to practising the Muslim faith, the construction of mosques has often been surrounded by controversy, and in some cases used by extreme right-wing parties to push their own anti-Islam agendas. In response to plans to build one of Europe's largest mosques in Cologne, a single-issue anti-mosque movement was created and won 5% of votes (as well as 5 seats) in recent local elections. The movement invited nationalist groups from around Europe to join a rally and congress in Cologne in mid-September 2008 to fight what it called the "Islamisation and immigration invasion" of Germany and Europe; however, the demonstration was stopped by several thousand anti-right demonstrators who blocked access to the square where it was planned. Not all such projects have been controversial, however: in a number of instances political leaders and the majority of the population have given their support to the building of a mosque. In Duisburg, Germany's largest mosque – combined, in an unprecedented move in Germany, with a local community meeting centre open to all members of the community – opened in October 2008 with general support.

7. Availability of equality data

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§5. Official data is not available concerning the ethnic background of the population. Many interlocutors within Germany highlighted the fact that there is general scepticism in the country regarding the gathering of ethnically disaggregated data in view of the insidious use of such type of data during the period of National Socialism.

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§14. While taking note of the explanations given by the delegation with regard to legislative provisions preventing the State party from identifying ethnic groups in a census or otherwise drawing a distinction between citizens on the grounds of ethnic, linguistic or religious origin, the Committee expresses concern regarding the lack of statistical data in the report of the State party on the ethnic composition of its population.

The Committee recommends that, in accordance with paragraphs 10 and 12 of its revised reporting guidelines (CERD/C/2007/1), the State party provide information on the use of mother tongues, languages commonly spoken, or other indicators of ethnic diversity, together with any information derived from targeted social surveys performed on a voluntary basis, with full respect for the privacy and anonymity of the individuals concerned, so as to be able to evaluate the composition of its population and its situation in economic, social and cultural fields.

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§162. In its third report, ECRI emphasised that, if done in accordance with European laws, regulations and recommendations on data protection and the protection of privacy, and the principle of freedom of declaration, the collection of data disaggregated by ethnic origin could help the authorities to better assess the situation of the various minority groups living in Germany in different fields of life, such as employment, housing and education.

§163. The German authorities have indicated that data are collected in Germany by reference to people's religion, citizenship, gender and age, but not on the basis of ethnic origin. Some minority groups do not wish the last criterion to serve as a basis for data collection; others, however, believe it is important. The authorities have indicated that there are other means to estimate the number of members of specific groups, that may be preferable. In the light of repeated recommendations by international bodies, they have, however, commissioned a study to examine whether it is desirable, permissible by law and necessary to collect such data.

§164. ECRI reiterates its recommendation that the German authorities improve their monitoring systems by collecting relevant information broken down according to categories such as religion, language, nationality and national or ethnic origin. It emphasises that this should in all cases be done with due respect to the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. These systems should also take into consideration the possible existence of double or multiple discrimination.

8. Positive action

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§37. Due to the federal system of government in Germany, responsibility for education lies with the *Länder*. However, the Special Rapporteur was informed that the Federal Government works in close cooperation with the *Länder* in the realm of educational policies, including in the framework of the education summit held in Dresden in 2008. The Special Rapporteur notes with satisfaction some of the measures adopted at the education summit, including the commitment to invest in language competence among children with a migration background and to increase public spending on education and research to 10 per cent of GDP by 2015.

§38. Officials at the Ministry of Education and Research noted that, insofar as primary and secondary education is concerned, in the majority of *Länder* the residential status of parents is not taken into account for the admission of students. This measure aims to ensure that all children of immigrants have a chance to obtain proper education. They further pointed out that the education of children with a migration background was one of the central topics of the National Education Report prepared by the Ministry. The National Integration Summit also addressed this same question at length and outlined over 400 measures to improve access to education for children and youth with a migration background.

§47. The authorities have been relying on a two-pronged strategy to address this question. On the one hand, a number of actions have been developed to promote professional training of young people with a migration background, such as through apprenticeships. Officials emphasized that in view of the projected population decline in the country over the next decades, a qualified workforce composed of

people with migration backgrounds will be essential to the sustainability of the German economy. On the other hand, the Government has also focused on developing actions to promote tolerance and respect for diversity in the workplace and among young people. In this regard, the Special Rapporteur was briefed about a large-scale programme called "XENOS - Integration and Diversity", which supports action against racism, discrimination and xenophobia in the interface between school, training and professional life.

§57. (...)ECRI notes with interest that a Charter of Diversity was initiated by the business community in 2006, to which several hundred businesses have subscribed.

§61. The Special Rapporteur notes with satisfaction that in order to address some of the challenges faced by the Muslim community, the Federal Ministry of Interior set up the German Conference on Islam, which brings together civil society representatives, religious leaders, representatives at the federal level, the *Länder* and municipalities, as well as scholars and academics. According to the authorities, the Conference aims to promote inclusive and constructive forms of dialogue, and to ensure better integration of Muslims in Germany.

§62. The Special Rapporteur observed some very positive trends within German society and political institutions regarding issues of racism. He would like to make reference to three key areas of progress in the fight against racism: (a) the reform of the legal and institutional framework to prevent discrimination; (b) the shift in Germany's approach towards recognizing the contribution of migrant communities in the country; and (c) the wide array of grass-roots projects to fight racism and promote integration.

§63. The Special Rapporteur noted with satisfaction that a number of important measures had been taken in Germany since the visit of his predecessor in 1997. In particular, he welcomes the efforts of the Government to reform the legal and institutional framework to combat all forms of discrimination, through the enactment of the General Equal Treatment Act, transposing a number of EU directives, and the establishment of the Federal Anti-Discrimination Agency. The Special Rapporteur considers that these legislative measures were important steps in creating a more robust framework to protect the victims of discrimination. Apart from creating justiciable rights, the enactment of the General Equal Treatment Act and the establishment of the Anti-Discrimination Agency also have an important symbolic role, demonstrating to society that racism and discrimination are unlawful and that such practices carry swift consequences.

§64. Beyond these legislative reforms, the Special Rapporteur was particularly pleased to detect a change in the mindset of authorities at the highest levels, starting with the Chancellor, in recognizing that Germany is today a country of immigration. Such statements were not common only a few years ago, including when the Special Rapporteur's predecessor visited Germany in 1997. This ground breaking change in rhetoric and mind-set has been well received by migrant communities, who previously felt that their decades-long contributions to Germany were not properly recognized by the population and the Government. In the Special Rapporteur's view, these statements reflect a commitment from the authorities to address underlying challenges stemming from migration and to devise a new approach for the integration of migrants in German society, including through the National Integration Plan. While a number of challenges remain in the continuation of the fight against racism in Germany, the Special Rapporteur believes that the recognition of the place of migrants at the heart of German society is a step in the right direction towards addressing the root causes of racism, racial discrimination, xenophobia and related intolerance.

§65. During his visit, the Special Rapporteur was able to visit a wide array of projects that are being implemented at the grass-roots level across Germany. He was positively impressed with the innovative approaches that lie behind many of these projects, which directly contribute to addressing the root causes of racism and promote real integration, particularly for children and adolescents. Such projects are generally implemented in partnership with active civil society organizations and often supported by the federal or local governments, including through public funds. While preserving independence and civil society leadership in these actions, the Special Rapporteur believes that the key challenge at present is to integrate these actions into a broader, national strategy to create adequate structures for the integration of racial or ethnic minorities in Germany.

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§5. The Committee welcomes the establishment of the Federal Anti-Discrimination Office within the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, which provides legal advice to individuals who claim to have been victims of racial discrimination.

§9. The Committee welcomes the creation of the Secretariat for Minorities, which strengthens the visibility of minorities' rights at federal level and offers greater opportunities for minorities to voice their concerns to the federal executive and legislative bodies.

§11. The Committee welcomes the entry into force in 2005 of the Immigration Act, the establishment of the National Integration Plan in July 2003 as well as the statement by the delegation that the policy of integration implemented by the State party is not aimed at the assimilation of minority groups.

§13. The Committee welcomes the establishment of the Islam Conference, as a forum in which representatives of the Muslim communities living in Germany meet with representatives of German authorities with the aim of establishing continuous dialogue to address Islamophobic tendencies and discuss relevant policy responses.

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Summary: The new General Equal Treatment Act (AGG) came into force on 18 August 2006. Its purpose is to prevent or to put an end to discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation. The AGG extends protection against discrimination on the basis of all of the grounds covered to a number of private-law fields as well as to public employment. It sets out the manner in which victims of discrimination may enforce their rights, and establishes a Federal Anti-Discrimination Agency entrusted with dealing with individual complaints, raising public awareness, taking measures to prevent discrimination and carrying out academic research into discrimination.

In recent years the authorities have expressly recognised that Germany is a country of immigration and have begun to develop a strong new focus on integration, aiming to help immigrants to master German and encourage them to participate fully in society. The new National Integration Plan has as its cornerstone the provision of integration courses for adult migrants, primarily focused on language learning. Successful participants in integration courses are eligible to apply for naturalisation earlier than other non-citizens. The National Integration Plan also includes measures in other fields, such as efforts to promote innovative television programmes with an integration approach.

The German authorities have taken a number of measures to eliminate inequalities or discrimination in the field of education and employment. These include efforts to promote and foster the linguistic abilities of children from the very earliest stages, as a key means of improving their school outcomes overall. At the same time, preventive measures against exclusion and discrimination on the labour market and in society are the focus of the "XENOS – Integration and Diversity" programme, to run from 2007 to 2013.

As regards the situation of minority groups, the creation of the German Islam Conference is an important symbol of change. The goal of the Conference is to promote inclusive and constructive forms of community, and to ensure better integration of Muslims in Germany. It is intended to show that Muslims have become apart of German society, to counteract segregation of Muslims in Germany, and to prevent Islamism and extremism. In 2008, the election of a German of Turkish origin as one of the leaders of a German political party was also hailed as a landmark event. The state has also taken welcome steps to recognise officially the suffering experienced by Roma and Sinti communities during the Holocaust.

§26. ECRI welcomes the enactment of the AGG, which constitutes a significant step forward in ensuring that victims of discrimination have justiciable rights in Germany. It notes that, as finally enacted, the AGG goes further than the EU directives in some respects, in particular in so far as it does not confine protection against discrimination on the grounds of religion or belief, disability, age or sexual orientation, to the sole field of employment, but extends protection against discrimination on the basis of all of the grounds covered to a number of other fields. While section 9 of the AGG does provide for a permissible difference of treatment on the grounds of religion or belief, where such grounds constitute a justified occupational requirement for a particular religion or belief, this provision has so far been interpreted narrowly. Thus, the Hamburg Labour Court ruled in December 2007 that a German evangelical social welfare organisation which aids immigrants had discriminated against a German citizen of Muslim faith when it refused to hire her as an integration counsellor for immigrants. The court found that the rejection of the applicant constituted a discriminatory act since in this context religious faith could not be interpreted as a genuine occupational requirement for the job.

§7. The German authorities have indicated that German as a second language and special remedial language courses for children whose mother-tongue is not German have become an important element in the German day-care, education and training system. Education is a competence of the *Länder*, and the latter have all developed binding education and training plans for pre-school facilities and schools, which fall within their sphere of competence. These plans are either already in place or are being implemented progressively. The key elements of these education and training plans are the promotion of language and intercultural skills. Indeed, in most *Länder*, the language skills of all children are assessed at pre-school level, and extra classes provided if required. These measures are not restricted to foreign children, but focus on all children with language deficits or children whose mother-tongue is not German. In parallel, specialists in the field of education working in day-care and educational facilities are required to undergo relevant training.

§48. ECRI welcomes these measures, which are no doubt a step towards providing children experiencing initial language difficulties with greater chances of achieving better outcomes in school. It welcomes in particular efforts made to promote and foster the linguistic abilities of children from the very earliest stages, as a key means of improving their school outcomes overall. While it seems that kindergarten attendance rates are in any case high, ECRI stresses that those children having missed out on kindergarten are likely to be those who subsequently perform less well in school, in particular due to language difficulties. Given the stark disadvantages faced by children with a migration background in the education

system, ECRI particularly emphasises the key role in improving the education outcomes of disadvantaged children that could be played by ensuring that all children have access to free kindergarten education, at very least for the final year before school.

§50. At an Education Summit held in Dresden on 22 October 2008, involving both the German authorities and the *Länder*, some significant targets were set. These included a pledge to provide more language assistance to immigrant children, and a proposal to increase spending on education and research to 10% of GDP by 2015. However, it was reported that the summit did not provide an opportunity to examine the entire education chain from kindergarten all the way through to university and life-long education. Concrete decisions on funding and on measures to translate the important agreements of principle into practice were moreover deferred pending their preparation by a strategy group that is not due to report until after the next federal elections, in autumn 2009.

§58. Since ECRI's third report, the implementation and effects of the 2000-2006 "XENOS – Living and Working in Diversity" programme, which included around 250 multi-year and nationwide projects against xenophobia and right-wing extremism and for tolerance and diversity on the labour market have been evaluated. The results of and recommendations made in this evaluation were incorporated into the follow-up programme drawn up by the Federal Ministry for Labour and Social Affairs called "XENOS - Integration and Diversity" (2007-2013 funding period). The goal of the new programme is to boost awareness of democracy and tolerance and to eliminate xenophobia and racism. The main focus is on preventive measures against exclusion and discrimination on the labour market and in society. Activities against xenophobia, racism, right-wing extremism, antisemitism and discrimination on the labour market are to be promoted in areas such as: work, administration, training, schools and vocational training in Germany and in the European context. Six priority areas have been identified: qualification and further training at school, in training and at work; cross-border and transnational measures; in-company measures and educational work in companies and public administrations; measures to integrate immigrants; teaching facts about and awareness-raising against right-wing extremism; and promoting moral courage and strengthening civil-society structures in local communities and rural regions.

§59. ECRI encourages the German authorities to pursue their efforts to create a workplace free of racism, racial discrimination, xenophobia and other related forms of intolerance, including through measures such as the programme "XENOS – Integration and Diversity".

§60. ECRI strongly recommends that, as part of their ongoing efforts towards creating a workplace free of racism, the German authorities launch an awareness-raising campaign aimed specifically at changing employers' attitudes towards persons with an immigrant background. This campaign should focus not only on employers' obligations and liabilities under the new General Equal Treatment Act (AGG) but also on the positive aspects of diversity in the workplace. It could form part of a regular series of such campaigns.

§101. Against this background, ECRI welcomes the creation by the Ministry of the Interior of the German Islam Conference (*DIK*), intended to create a permanent space for dialogue between the authorities at all levels and Muslims in Germany. Such a space had previously been lacking, in part due to the authorities' insistence on seeking a single partner for dialogue, to represent the full breadth and diversity of the country's more than 3 million Muslims from Europe, Northern and sub-Saharan Africa, the Middle East and Asia. The Conference is thus an important symbol of change for the authorities. The authorities have indicated that the goal of the Conference is to promote inclusive and constructive forms of community,

and to ensure better integration of Muslims in Germany. It is intended to show by example that Muslims have become a part of German society, to counteract segregation of Muslims in Germany, and to prevent Islamism and extremism. ECRI observes that the exercise at stake is a delicate one: as much as the new dialogue between Muslims and the authorities may send a positive message to society as a whole, this message risks being obscured by the focus on security issues. The risk is that the latter focus may create the false impression that extremism is a generalised phenomenon amongst Muslims, and a problem solely of Muslims. How this issue is managed will therefore have a strong influence on whether the Conference is able to achieve its goals.

§103. ECRI recommends that the German authorities take all necessary steps, in the field of registration of personal data, to ensure that persons practising the Muslim faith are treated on an equal footing with persons practising religions that are registered as corporate bodies under public law.

9. Equality bodies

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The Federal Anti-Discrimination Agency

§22. The Special Rapporteur met with the Head of the Agency, who emphasized that, of the 14.5 per cent of cases on racial discrimination, a large number are related to cases of mobbing at the workplace, discrimination in admission to night clubs and discrimination in the rental of housing. The Special Rapporteur was informed that the approach of the Agency is to rely on a mediation role between the alleged victim and the perpetrator of discrimination in order to find a mutually acceptable settlement. The Head of the Agency expressed satisfaction with this mandate, which in her view facilitates a successful resolution to many of the conflicts brought to its attention.

§68. Due to Germany's federal structure, the Special Rapporteur believes that the second key challenge for the realization of anti-racism commitments in Germany is to successfully involve the *Länder* and municipal administrations, where the real focus of political power often lies. Despite the range of federal laws and programmes, as well as international human rights commitments, it is at the local level that the real implementation of antidiscrimination provisions takes place. Unless local administrations transpose federal laws into local ordinances and guidelines, a core problem will continue to exist in the fight against racism. In this regard, the next phase of the struggle against racism in German society is to ensure that local administrations have effective legal and institutional frameworks that respond to the many challenges of the problem of racism.

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- Federal Government Commissioner for Migration, Refugees and Integration

§37. The Federal Government Commissioner for Migration, Refugees and Integration is responsible for combating discrimination against foreigners, and has competence to deal with and assist in individual cases within the framework of the AGG. The Commissioner's key tasks include dealing with racial discrimination and discrimination on account of ethnic origin and the elimination of structural forms of discrimination. The Commissioner also has lead responsibility for the coordination of the National Integration Plan.

38. In 2005 the Federal Government assigned the office of the Federal Government Commissioner for Migration, Refugees and Integration to the Federal Chancellery, thereby highlighting the importance attached to integration policy. At the same time, the Commissioner was also given permanent access to the Cabinet. The Commissioner is in regular contact with the Commissioners for Integration and the Commissioners for Foreigners' Issues of the *Länder* and the local authorities, and supports them in their work.

- Federal Anti-Discrimination Agency

40. Since ECRI's third report, a Federal Anti-Discrimination Agency has been set up under the AGG. In addition to the Agency's competences to carry out awareness raising work, take measures to prevent discrimination on any of the grounds covered in the AGG and conduct academic research into such discrimination, any person who believes they have been discriminated against on any of the grounds covered by the AGG may take their case to the Agency, which is entrusted with giving such persons independent assistance. This may include providing information, arranging for advice to be provided by another authority or endeavouring to seek an out-of-court settlement between parties. The Agency is not, however, entitled to investigate complaints itself or to bring proceedings before the courts. It is also required to co-operate with the competent Parliamentary Commissioners of the German Bundestag and Federal Government Commissioners, including the Federal Government Commissioner for Migration, Refugees and Integration, where their competencies overlap. To avoid duplication, in cases which come under the responsibility of these Commissioners, the Agency is required to forward the petitioner's complaint to them. The Agency is also required to involve in its work, in an appropriate manner, non-governmental organisations and institutions active in the field of the protection against discrimination.

§41. ECRI welcomes the creation in Germany of a body specifically entrusted with combating discrimination, and hopes that both its existence and activities will help to increase the visibility and effectiveness of the fight against discrimination in Germany. It notes in this context that the Agency has recently published a detailed brochure containing explanations and examples on the AGG. Other material with appeal to the broader public is also being prepared. ECRI is concerned, however, that so far, in the eyes of civil society actors working in the field of combating racial discrimination, the Agency is perceived as somewhat distant from victims and lacking an understanding of their perspective. From ECRI's perspective, one of the primary purposes of setting up a national body with special competencies in the fight against racism and racial discrimination is to bring avenues of redress closer to victims. ECRI therefore hopes that this perception will change rapidly, and that both the presentation of the Agency's first annual report to Parliament in 2009 and the publication in languages other than German of information about the new legal framework in place to fight discrimination will provide an opportunity not only to raise the Agency's public profile but also to make it more accessible to victims. It also hopes that the Agency will be able to strengthen its contacts with non-governmental associations working with victims of discrimination.

§42. As regards the guarantees of effective functioning of the Agency, ECRI observes that with a staff of 23 people and an annual budget of 2.8 million EUR in 2008 and 3 million EUR in 2009, the Agency would appear to have relatively few resources to carry out its statutory tasks; this will be even more the case as public awareness of the AGG and of the Agency itself increases.

§43. ECRI recommends that the German authorities examine, in line with ECRI's General Policy Recommendation No. 7, the possibility of extending the competencies of the Federal Anti-Discrimination

Agency to include the power to investigate individual complaints, as well as the right to initiate, and participate in, court proceedings.

44. ECRI recommends that the German authorities ensure that sufficient necessary financial and human resources are available to the Agency to enable it to carry out its current tasks, and that these resources are expanded as necessary to ensure that the Agency can keep pace with any increases in workload as its work becomes better known.

GREECE

Sources

1. [CERD Concluding Observations](#) (September 2009, CERD/C/GRC/CO/16-19)
2. [ECRI report](#) (September 2009, CRI(2009)31)
3. [REPORT BY THE COMMISSIONER FOR HR OF THE COE](#) (December 2008, CommDH(2009)9)
4. OSF expert: Simon Cox (February 2013)

1. General trends and challenges

[CERD Concluding Observations](#)

§16. While acknowledging the important special measures already adopted for the social integration of the Roma, the Committee is concerned about obstacles encountered by Roma persons with regard to access to work, housing, health care and education. The Committee recommends that the State party undertake an evaluation of the results of the "Integrated Action Program for the social integration of Greek Roma" in consultation with the respective communities, and adopt adequate measures to effectively improve the living conditions of the Roma, in accordance with article 5 of the Convention and general recommendation No. 27 (2000) on discrimination against the Roma.

[ECRI report](#)

§2. Greece signed Protocol No. 12 to the European Convention on Human Rights on 4 November 2000, but it has not yet ratified this instrument. The Greek authorities have emphasised the relatively small number of ratifications of this instrument; moreover, they expressed fear that its ratification would lead to a further burdening of the European Court of Human Rights' workload. However, ECRI wishes to draw Greece's attention to the importance of this instrument, which entered into force on 1 April 2005, in the fight against racism and racial discrimination. ECRI considers that this Protocol will enable Greece to combat these phenomena more effectively at national level.

§3. ECRI urges Greece to ratify Protocol No. 12 to the European Convention on Human Rights.

§21. (...) Law 3304/2005 does not cover discrimination based on colour, language or nationality and Chapter III, which prohibits discrimination based on, inter alia, religious or other beliefs, does not extend the scope of this prohibition to social protection, education and access to goods and services. (...)

§22. Although Law 3304/2005 provides that legal entities which have a legitimate interest in ensuring that the principle of equal treatment is applied can represent the victim before the courts or administrative authorities, they are required to obtain the latter's written consent. As a result, NGOs cannot bring cases to court if they do not represent a specific victim. Few cases have been brought to court or before the Greek Ombudsman under this law by the victims themselves, as the overwhelming majority have been filed on their behalf by civil society actors. Therefore, in order to ensure their full enjoyment of the protection afforded by Law 3304/2005, victims should be able to invoke this piece of legislation without facing unnecessary legal hurdles. In this regard, ECRI wishes to bring to the Greek authorities' attention, paragraph 25 of its General Policy Recommendation No. 7 in which it recommends that Member States' antidiscrimination law provide that organisations such as associations, trade unions and other legal entities which have, according to the criteria laid down by the national law, a legitimate interest in combating racism and racial discrimination, are entitled to bring civil cases, intervene in administrative cases or make criminal complaints, even if a specific victim is not referred to.

§23. As indicated above, very few complaints have thus far been filed by victims of racial discrimination under Law 3304/2005. According to a report published in August 2006 by the Greek Ombudsman, since the entry into force of Law 3304/2005, his office had received 26 complaints concerning various forms of discrimination: 9 complaints were still under investigation at the time of the report's writing, 4 resulted in a positive outcome, 7 were deemed not to fall under Law 3304/2005, 3 were set aside as groundless and 3

were considered to be outside the Ombudsman's remit. The complaints for racial or ethnic discrimination related to employment, access to public goods, housing and education.²⁰ It is noteworthy that all the complaints mentioned in the report for housing discrimination were brought by or on behalf of Roma.²¹ In the reported period of time, the Ombudsman also received complaints for discrimination based on religious or other beliefs and in the provision of services.

§24. Some measures have been taken by the authorities to raise public awareness of Law 3304/2005, but widespread and long-term information campaigns are a still necessary tool for ensuring a more active implementation of Law 3304/2005.

§25. ECRI recommends that the Greek authorities reinforce Law 3304/2005 by extending its scope to discrimination based on colour, language and nationality as recommended in its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination. ECRI also recommends that the law be amended to include protection against discrimination in education, social protection and access to goods and services on the basis of religious or other beliefs.

§26. ECRI strongly recommends that the Greek authorities take measures to ensure a more vigorous implementation of Law 3304/2005 in cases of racial discrimination by, inter alia, amending it to enable civil society actors to bring cases to court, even if a specific victim is not referred to, as indicated in paragraph 25 of its General Policy Recommendation No.7.

§27. ECRI recommends that the authorities carry out awareness-raising campaigns on Law 3304/2005 among the public in general and minority groups in particular.

100. In its third report, ECRI strongly recommended that the Greek authorities maintain and increase their efforts to end all direct or indirect discrimination against Roma and to raise the awareness of local authorities, such as municipalities or local administrative agencies, of the need to respect the rights and the culture of the Roma. It also strongly recommended that the Greek authorities impose sanctions on municipal councillors who make racist remarks. ECRI considered that civil servants who had committed acts of discrimination should be appropriately sanctioned.

§101. ECRI notes with concern that, as mentioned above, Roma continue to suffer discrimination and social exclusion in various areas such as education, housing and employment from members of the majority as well as public officials, including at the local level. There are also cases of police violence against Roma. ECRI notes in this regard that the European Court of Human Rights has condemned Greece for, inter alia, violation of Articles 14 and 2 (prohibition of discrimination and right to life, respectively) of the European Convention on Human Rights for police brutality, failure to carry out effective investigations or to investigate the racist motivation of crimes committed against Roma.⁷¹ ECRI has also received reports of Roma not being treated equally in the judicial system, with cases brought against members of this group being 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. ECRI is not aware of any measures taken to increase awareness among civil servants of the prohibition on discrimination, but this appears necessary, including at the local level, where ECRI has noted in Spata and Aspropyrgos, that Roma living in settlements do not benefit from the requisite attention from the local social services.

§102. ECRI recommends that the Greek authorities take vigorous measures to combat the discrimination faced by Roma in various areas, including the justice system. In this regard, it recommends again

awareness-raising for civil servants on the prohibition on discrimination, as well as on the legislation in this regard. ECRI also recommends that any allegations of discrimination brought by Roma be promptly investigated and appropriate sanctions meted out where they prove founded.

[Report by the Commissioner for HR of the COE](#)

§7. The Commissioner notes that the Greek authorities recognise the existence of only one minority on Greek territory, the 'Muslim' one in western Thrace (north-eastern Greece), by virtue of the Lausanne Peace Treaty of 24 July 1923. This minority group (and the 'Greek inhabitants of Constantinople') had been expressly excluded from the compulsory exchange of populations between Greece and Turkey under the Lausanne Convention of 30 January 1923. According to the authorities, it now 'numbers around 100 000 persons and consists of three distinct groups, whose members are of Turkish, Pomak or Roma origin', each representing respectively 50%, 35% and 15% of this minority population.

§8. At the same time, the Greek authorities have affirmed that Greece 'subscribes to the right of each person to self-identification [and that] the members of the Muslim minority in Thrace are free to declare their origin, speak their language, exercise their religion and observe their particular customs and traditions'. The Commissioner has noted that 'persons of Roma origin' outside Thrace are not considered by the Greek authorities as members of a minority but of a 'vulnerable social group'.

§9. The Commissioner has observed that despite the non-recognition of any other national or linguistic minority, Greek authorities have acknowledged that in northern Greece there exist 'a small number of persons who... use, without restrictions, in addition to the Greek language, Slavic oral idioms, confined to family or colloquial use'. According to the authorities, this 'Slav-oriented group of Greek citizens in [the Greek region of] Macedonia have been freely participating with their own political party in parliamentary elections in Greece'. In fact, in the 2004 elections for the European Parliament this party ('European Free Alliance – Rainbow', based in the town of Florina as from 1995) received 6 176 votes, that is a national percentage of 0,10%.

2. Employment

[ECRI report](#)

§47. Most Roma who live in settlements continue to earn their income from scrap and garbage collection and few are employed in the mainstream labour market, primarily due to discrimination and prejudice, although their lack of qualifications (as a result of a low education level) also play a role.

48. As concerns the Muslim minority in Western Thrace, ECRI has been informed that 80 per cent of the active population work in the agricultural sector whilst a number are employed as civil servants. The recent decision to introduce, by virtue of Law 3647/08, a quota for members of this minority in the civil service is a positive development in addressing the high level of unemployment (60% according to some estimates) among members of this minority. However, it does not appear that measures have been taken to implement this quota. A comprehensive long-term programme has not yet been established by the authorities to improve the integration of Muslims from Western Thrace into the labour market. Reports indicate that they continue to be under-represented in the public sector and state owned corporations.

§50. As indicated above, the Labour Inspectorate which is empowered to combat, inter alia, racial discrimination in employment under Law 3304/2005, has not been very active in this area. ECRI is also not aware of any measures taken to specifically gather comprehensive statistical ethnic data in the employment sector to establish the situation therein of various groups living in Greece and to devise policies to address the problems they face. On this issue, the Greek authorities have indicated that specific measures have been taken to gather and process comprehensive statistical data on a national basis, in order to establish whether there have been violations of the above law, but that since 2005, no case seems to have been reported either in the course of an inspection or further to a complaint of racial discrimination in the employment sector.

§51. ECRI urges the Greek authorities to take further measures to improve the integration of vulnerable groups such as Roma, the Muslim minority in Western Thrace and immigrants into the labour market. It recommends that combating discrimination, strengthening measures taken to provide vocational training and language lessons, and reinforcing the role of the Labour Inspectorate form part of a comprehensive and long-term strategy to that end.

§105.(...) it appears that the predominance of the Greek Orthodox Church, which continues to enjoy a strong influence in Greek public life, affects the manner in which members of minority religious groups are treated, as they sometimes face discrimination and prejudice in various areas, including employment in some public sectors. In this regard the European Court of Human Rights has found Greece in violation of, inter alia, Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights in a case brought by a lawyer who was obliged to publicly declare that he was not Christian Orthodox before making a solemn declaration.

§122. Since the publication of ECRI's third report, the issue of the appointment of Muftis in Western Thrace remains. The authorities continue to appoint Muftis and the local population elects Muftis of their own. The European Court of Human Rights has found Greece in violation of Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights for having found a second applicant, a Mufti elected by "the Muslims who attended prayers at the mosques", guilty of having usurped the functions of a minister of a "known religion".

§123. Law 3536/2007 envisages the appointment by the Greek authorities of 240 professors of Islamic law, some of whom may officiate as Imams. Representatives of the Muslim minority in Western Thrace have indicated to ECRI that the selecting committee in charge of these appointments is composed of members of the Ministries of Education, Interior, Economy and Foreign Affairs and no one from the Muslim minority in Western Thrace. They have pointed out that other religious groups are free to select their religious representatives. The Greek authorities, in their turn, stressed that the selection process for teachers and preachers of the Holy Koran is conducted by the Muftis and Muslim theologians, who process the applications and assess the competence of the candidates. They have indicated that the state committee's sole responsibility is to ensure that the chosen candidates fulfil certain formal requirements (absence of criminal record, military service, certificate of primary or secondary education etc.), a standard procedure for all public-sector appointments.

§124. As concerns the issue of private charitable foundations (wakfs), since ECRI's third report, new legislation (Law 3647/08) allowing for the election of their three managing committees by the minority itself has been adopted. ECRI has no information, however, on the manner in which this legislation is

implemented. ECRI was also informed by some representatives of the Muslim minority in Western Thrace that the legislation which previously exempted minarets from being of a certain height has been repealed.

§125. ECRI recommends that the Greek authorities open a dialogue with members of the Muslim minority in Western Thrace to find a solution to the issues of the appointment of Muftis as well as to the issue of the appointment of Imams. ECRI strongly recommends that the authorities ensure that any decisions made regarding these questions be in full compliance with international and European human rights standards.

§126. ECRI recommends that the Greek authorities take measures to ensure the implementation of the legislation concerning private charitable foundations, including the provisions concerning the election of their managing committees. ECRI also recommends that the authorities find a solution, in cooperation with representatives of the Muslim minority in Western Thrace, to the question of the height of minarets.

3. Education

[CERD Concluding Observations](#)

§17. The Committee is concerned about the alleged limited access to quality minority education for the Turkish speaking minority in Western Thrace. The Committee recommends that the State party improve the quality of education for the vulnerable ethnic groups and the Muslim minority, including through the training of teachers belonging to these groups, to ensure that there is a sufficient number of secondary schools, and to create pre-schools that teach in the mother tongue of their students.

[ECRI report](#)

§53. ECRI notes with concern that Roma remain at a great disadvantage with regard to education. There are still cases of schools refusing to register Roma children for attendance, in some instances due to pressure by some non-Roma parents. ECRI is deeply worried by the fact that there are also cases of Roma children being separated from other children within the same school or in the vicinity thereof. In one case, the European Court of Human Rights deemed Greece in violation of Article 14 of the European Convention on Human Rights (prohibition of discrimination in the enjoyment of the rights contained in the Convention) in combination with Article 2 of Protocol 1 (right to education). ECRI has been informed that in Spata, where there was an initial refusal to register Roma children for school attendance, these children are currently attending school in a separate class to enable them to gradually adapt to the school environment. While understanding the need to gradually integrate the children into the school environment, ECRI wishes to bring to the Greek authorities' attention its position on this issue as outlined in its General Policy Recommendation No.10 on combating racism and racial discrimination in and through school education. In this General Policy Recommendation, ECRI recommends that provisions be made, in particular cases and for a limited period of time, for preparatory classes for pupils from minority groups, if it is justified by objective and reasonable criteria and is in the best interests of the child.

§54. As the Greek authorities have pointed out themselves, and the Ombudsman has confirmed, there is a very high drop-out rate among Roma pupils. The authorities have indicated that special programmes providing psychological and social support, including inter-cultural education, have been established to address this problem. However, the absence of disaggregated data on the situation of Roma pupils

makes any in-depth assessment of their situation and the ability to devise specific programmes targeting this group difficult. In this regard, ECRI wishes to draw the Greek authorities' attention to its General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education in which it recommends that member States undertake, in conjunction with civil society organisations, studies on the situation of children from minority groups in the school system, by compiling statistics on their: 1) attendance and completion rates; 2) drop-out rates; 3) results achieved, and 4) progress made. In this General Policy Recommendation ECRI further recommends that member States gather the information required to identify problems facing pupils from minority groups in the school environment in order to introduce policies to solve them.

§55. The authorities have indicated that a programme co-funded by the EU and the Greek State addresses issues such as remedial Greek language, Mathematics and History classes for Roma children as well as in-service teacher training. ECRI has, however, been informed of the need for preparatory classes for Roma pupils and adequately trained teachers. This is all the more necessary as it has been noted that these types of classes and properly trained teachers yield very positive results for Roma children. However, ECRI wishes to stress in this regard, as indicated above, that children should remain in these preparatory classes for the limited period necessary for their integration into the school. The Integrated Action Programme for the social integration of Roma launched in 2002 includes education as one of its goals. However, more measures appear to be necessary, inter alia, within the framework of this programme to address the problems faced by Roma in education. An Inter-Ministerial Committee within the Ministry of Interior coordinates the activities of all relevant ministries in the implementation of the Integrated Action Programme for the social integration of Roma. The concerted actions of all the relevant ministries are crucial as the problems faced by Roma children in education are inextricably linked with their socio-economic situation, including their housing conditions and their parents' high unemployment rate.

§60. Some representatives of the Muslim minority in Western Thrace have informed ECRI that the problem of the lack of properly trained teachers remains because the Thessaloniki Pedagogical Academy provides Turkish language teachers with a 2-3 year training course, while other pedagogical academies offer a training period of 4 or more years. They have expressed their approval of the quota established for Muslim students in universities (0.5%), but they consider the improvement of the quality of education to be even more important. The Greek authorities have indicated that the Ministry of Education has prepared a draft law, by virtue of which the Special Thessaloniki Pedagogical Academy is to be converted into a postgraduate Higher Education Training Centre for Intercultural Education.

§61. ECRI further notes that several issues of concern to some representatives of the Muslim minority in Western Thrace, including the lack of bilingual kindergartens and the need for additional minority secondary schools are as yet unresolved. ECRI hopes that a dialogue between the authorities and minority representatives on the situation in Western Thrace as concerns education will serve to resolve these issues as there appears to be a divergence between the authorities and some representatives' view on progress made and on the remaining necessary measures.

§62. ECRI encourages the Greek authorities to continue measures taken thus far to improve the situation of the Muslim minority in Western Thrace in the area of education. It recommends that special attention be paid to the situation of the two other components of the Muslim minority, Roma and Pomaks, in that region.

§63. ECRI recommends that the Greek authorities open a dialogue with representatives of all Muslims in Western Thrace to find a common ground for resolving remaining issues in education, namely the quality of teacher training and the creation of bilingual kindergartens. It draws the Greek authorities' attention to its General Policy Recommendation No. 10 which contains useful guidelines on solving these problems.

§105. In the field of education, ECRI notes with concern reports according to which some schoolbooks continue to contain negative references to Catholicism, Judaism and the ancient polytheistic Hellenic tradition. The authorities have, however, countered that no school textbook has been found to contain these types of references.

4. Health care

[ECRI report](#)

§76. While welcoming the above measures, ECRI is not aware of the human and financial resources allocated to them. As noted in situ (in Spata and Aspropyrgos), there are still Roma settlements which need to benefit, to a greater extent, from these measures as they have no easy, direct and permanent access to health or social services. As indicated above, this leaves groups such as women and children in a particularly vulnerable situation, especially due to the above-mentioned living conditions in those settlements.

§77. As concerns immigrants, public hospital staff are obliged by law to refuse medical treatment to irregular immigrants except in emergencies and to minor children. Although reports indicated that in practice, this law is largely not implemented by medical staff, ECRI considers that the authorities should envisage repealing this provision to avoid any discriminatory practices, as also requested by the Greek National Commission for Human Rights. With regard to immigrants in general, reports indicate lacunae in the imparting of information on their rights and in the availability of translation services. ECRI also notes with concern reports of stereotypes and discrimination against immigrants in the health services. Although an action plan for the integration of immigrants in Greece has been devised, ECRI is not aware of any measures taken by the authorities to address these problems. On these questions, the Greek authorities have informed ECRI that the Hellenic Centre for Infectious Disease Control carries out regular medical checks at entry points for the protection of public health.

§78. ECRI encourages the Greek authorities to continue the measures taken to address health and social problems faced by Roma. It recommends in this regard that adequate human and financial resources be allocated to that end. ECRI also recommends that the Greek authorities closely monitor the implementation of these measures and engage in regular consultations with Roma representatives on their effectiveness.

§79. ECRI recommends that the Greek authorities provide, in law, for access to public medical care for everyone living on Greek territory, irrespective of their legal status. ECRI further recommends that they take measures to address, within the framework of the integration action plan for immigrants, the problems faced by immigrants in the area of health, such as discrimination, access to information, and interpretation.

5. Housing

[ECRI report](#)

§70. While noting the above measures, as ECRI noted in an on-site visit to Roma settlements in Aspropyrgos and Spata near Athens, the living conditions of some Roma continue to fall unacceptably below international standards. ECRI recognises that some settlements have been established within the framework of the law and others not. However, it is concerned by the fact that as noted in Aspropyrgos and Spata, some Roma settlements are in complete isolation from the rest of the population, without running water or electricity and without a sewage system or access to public transport. These settlements are not easily accessible as there are no tarmacked roads leading to them and their inhabitants live in makeshift or pre-fabricated houses, with no heating in winter and leaking roofs in some cases, thus leaving the vulnerable such as children, pregnant women and the elderly particularly susceptible to illness. Roma living in those settlements also face at best indifference and at worst hostility (as noted in Aspropyrgos) on the part of some local authorities and non-Roma. ECRI was informed in the Aspropyrgos settlement that the Greek government had resettled some communities in the northern part of the country in better conditions. In view of the seriousness of the problems encountered in this settlement, assistance from the government to resettle the Roma who remain there is necessary. This is all the more important as the situation has created tensions between Roma and non-Roma in the area. ECRI is not aware of additional measures taken by the government or local authorities to build a sufficient number of transit camps for Roma who wish to preserve their nomadic lifestyle.

§71. As concerns the housing loan scheme, although the authorities have indicated that it is evaluated, reports indicate that there may have been irregularities in the implementation of this scheme, such as loans not being provided to the intended beneficiaries. ECRI thus hopes that all such allegations will be duly investigated and sanctions taken should they prove grounded.

§72. ECRI encourages the Greek authorities to continue implementing the housing loan scheme for Roma. ECRI strongly recommends reinforcing measures taken thus far to monitor its implementation to ensure that all targeted groups within this community benefit from it. ECRI recommends in this regard that any allegations of irregularities be investigated and appropriate steps be taken to sanction the culprits, should they prove grounded.

§73. ECRI recommends that the authorities act more vigorously to address the situation of Roma who live in settlements of inadequate standards by, among others, imparting on local authorities their obligations under international and national law, including the Municipal and Communal Law as amended, as concerns housing rights, including the right to non-discrimination. ECRI further recommends cooperation between national and local authorities to set up a coherent strategy to improve the situation concerning these settlements.

§76. While welcoming the above measures, ECRI is not aware of the human and financial resources allocated to them. As noted in situ (in Spata and Aspropyrgos), there are still Roma settlements which need to benefit, to a greater extent, from these measures as they have no easy, direct and permanent access to health or social services. As indicated above⁵¹, this leaves groups such as women and children in a particularly vulnerable situation, especially due to the above-mentioned living conditions in those settlements.

§78. ECRI encourages the Greek authorities to continue the measures taken to address health and social problems faced by Roma. It recommends in this regard that adequate human and financial resources be allocated to that end. ECRI also recommends that the Greek authorities closely monitor the implementation of these measures and engage in regular consultations with Roma representatives on their effectiveness.

6. Access to other goods and services

[ECRI report](#)

§107. ECRI notes that Law 3448/06 (article 35) permitted the cremation of foreigners or Greeks whose religious convictions allow cremations. ECRI has been informed that the Greek authorities have promised land for building a mosque in Athens, but that the administrative process to that end has not yet started. Muslim representatives in Athens have informed ECRI of the need for this mosque as they are currently carrying out their prayers in places such as private apartments. ECRI therefore regrets that no new developments have occurred on this question since its third report and it hopes that this issue will be resolved as soon as possible. ECRI notes information according to which Muslim burial places and related religious functions are unavailable in Athens. However, reports also indicate that the Greek Orthodox Church has donated three hectares of land in Attica to be used as a Muslim cemetery, but ECRI has no information on whether it has been established.

§110. ECRI recommends that the Greek authorities remove any administrative and other obstacles towards building a mosque in Athens.

§112. The situation of the recognition of the right to freedom of association as concerns certain groups living in Greece (Macedonians and Turks) remains. In this regard, since ECRI's third report, the European Court of Human Rights has rendered three judgements against Greece for violating Article 11 of the European Convention on Human Rights (freedom of assembly and association) as concerns members of the ethnic Turk community. Concerning ethnic Macedonians and the judgement of *Sidiropoulos and Others v. Greece* mentioned in its third report, ECRI was informed that the issue of the registration of the organisation in question (the Home of the Macedonian Culture) is pending before the Supreme Court as it has not yet been registered. It further appears that the ethnic Turkish organisations which were the subject of the abovementioned judgments have not been registered either. ECRI wishes in this regard to bring to the Greek authorities' attention the European Court of Human Rights' finding that associations seeking an ethnic identity were also important to the proper functioning of democracy. It considered that pluralism was also built on the genuine recognition of, and respect for, diversity and the dynamics of, inter alia, cultural traditions, ethnic and cultural identities and religious beliefs.

§113. ECRI notes that progress still has to be made on the recognition of the right of members of minority groups to freedom of association and also freedom of expression.

§115. ECRI strongly recommends that the Greek authorities take measures to recognize the rights of the members of the different groups living in Greece, including to freedom of association, in full compliance with the relevant judgements of the European Court of Human Rights.

[Report by the Commissioner for HR of the COE](#)

§13. One year later, the UN Human Rights Committee noted 'with concern the apparent unwillingness of the [Greek] Government to allow any private groups or associations to use associational names that include the appellation "Turk" or "Macedonian", based upon the State party's assertion that there are no ethnic, religious or linguistic minorities in Greece other than the Muslims in Thrace. The Committee note[d] that individuals belonging to such minorities have a right under the [International] Covenant [on Civil and Political Rights] to the enjoyment of their own culture, the profession and practice of their own religion, and the use of their own language in community with other members of their group (art. 27)'.

§14. In its latest Report on Greece, ECRI deplored the fact that, five years after the 1998 judgment of the European Court of Human Rights in the relevant case of *Sidiropoulos and others*, the 'Home of Macedonian Civilisation', a non-profit-making association that a number of Greek nationals who claimed to be of Macedonian ethnic origin aimed to establish in the town of Florina, had not been registered in accordance with the provisions of the Greek Civil Code. The domestic courts' refusal to allow registration of this association had been grounded, inter alia, in a perceived 'intention on the part of the [above association's] founders to undermine Greek territorial integrity' and found that 'the promotion of the idea that there is a Macedonian minority in Greece...is contrary to the country's national interest and consequently contrary to law'.

§15. The Commissioner has been informed that the above association's legal personality is still not recognized, even though the Greek government submitted to the Council of Europe Committee of Ministers in 2000, before the conclusion by the Committee of the examination of this case under ex Article 54 (now Article 46, paragraph 2) of the European Convention on Human Rights, that 'considering the direct effect today given to judgments of the European Court in Greek law...the Greek courts [would] not fail to prevent the kind of judicial error that was at the origin of the violation found in this case'.¹⁷ ECRI, having noted that 'representatives of the Macedonian community have asked the authorities to recognize their right to self-identification, as well as the existence of a Macedonian national minority', inter alia, encouraged the authorities 'to take further steps toward the recognition of the freedom of association and expression of members of the Macedonian and Turkish communities' in Greece.

§16. The Commissioner has taken note with particular concern that the Greek authorities' refusal to recognise the existence of any other kind of minority apart from the 'Muslim' one has led in fact to a number of applications before the European Court of Human Rights, especially concerning minority members' right to freedom of association, as provided for by Article 11 of the European Convention.

§29. The Commissioner has observed that the continuing practice of appointment of the Muftis by the Greek state, excluding their direct election by members of the Muslim minority, has caused in the past and continues to cause deep disappointment and reactions by members of the Muslim minority. In this context, the Commissioner recalls a number of judgments against Greece by the European Court of Human Rights concerning prosecutions for having 'usurped the functions of a minister of a 'known religion'', against an elected Mufti issuing and signing messages to the Muslims attending his prayers in Thrace, while the Greek state had appointed another Mufti. In its judgment in the case of *Agga v Greece (N° 2)* (17/10/2002) (concerning the Mufti post at Xanthi) the Court had found a violation of Article 9 of the Convention (freedom of religion) on account of the above-mentioned prosecution. The supervision of execution of this and the similar, earlier case of *Serif* was concluded by the Council of Europe Committee

of Ministers in 2005 following the adoption by Greece of individual as well as of general measures to prevent a similar violation of the Convention.

§30. Nonetheless, two very similar judgments against Greece were rendered by the Court on 13 July 2006 (*Agga N° 3; Agga N° 4*),³⁵ finding anew, unanimously, violations of Article 9 of the Convention due to other prosecutions against the same applicant for the same reasons. The Court noted, as in the 2002 *Agga N° 2* case, that 'the domestic courts that convicted the applicant did not mention in their decisions any specific acts by the applicant with a view to producing legal effects...[but they convicted him] on the mere ground that he had issued messages of religious content and that he had signed them as the Mufti of Xanthi'. Hence, the convictions were not justified by a 'pressing social need', provided for by the exclusion clause of Article 9, paragraph 2, of the Convention.

7. Availability of equality data

[ECRI report](#)

§127. ECRI has received conflicting reports from the Greek authorities and some representatives of the Muslim minority in Western Thrace on the identity of Roma and Pomaks in the region. On the one hand, the authorities indicated that Roma and Pomaks' identity is not always recognised by the majority ethnic Turks in the region and that they are sometimes the victims of discrimination on their part. On the other hand, some representatives of the Muslim minority in Western Thrace refute this. On this issue, ECRI wishes to recall that the principle of voluntary self-identification should be enforced for all and measures taken to ensure respect for the identity of all the groups living in Western Thrace.

§181. As indicated in other parts of this report, there is no established system for collecting ethnic data in Greece, other than for the needs of the implementation of the housing scheme programme for Roma, although this information may enable the authorities to better assess the situation of minorities such as Roma and the Muslim minority in Western Thrace as well as refugees and immigrants in order to improve the response given to the problems they face in various areas such as education, housing and employment.

§182. ECRI recommends that the Greek authorities consider ways of establishing a coherent, comprehensive data collection system in order to monitor the situation of minority groups, including Roma, Muslims in Western Thrace, refugees and immigrants by means of information broken down according, for instance, to ethnic origin, language, religion and nationality. Data should be collected in different public policy areas and the authorities should ensure full respect for the principles of confidentiality, informed consent and voluntary self-identification of people as belonging to a particular group. This system should also take into consideration the possible existence of double or multiple discrimination.

8. Positive action

CERD Concluding Observations

§3. The Committee welcomes the adoption of Law 3304/2005 on the "Implementation of the principle of equal treatment regardless of race or national origin, religion or other beliefs, disability, age or sexual orientation" in 2005.

§6. The Committee welcomes the "Integrated Action Program for the social integration of Greek Roma" (...).

§15. The Committee is concerned about the obstacles encountered by some ethnic groups in exercising the freedom of association, and in this regard takes note of information on the forced dissolution and refusal to register some associations including words such as "minority", "Turkish" or "Macedonian", as well as of the explanation for such refusal. The Committee recommends that the State party adopt measures to ensure the effective enjoyment by persons belonging to every community or group of their right to freedom of association and of their cultural rights, including the use of mother languages.

ECRI report

One area of progress as far as ECRI's mandate is concerned, is the adoption of Law 3304/2005 on the "Implementation of the principle of equal treatment regardless of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation", which is a positive development in the fight against, among others, racial discrimination in Greece. This law prohibits direct and indirect discrimination, and protects against harassment and an instruction to discriminate. It applies to both the public and private spheres and covers employment, social protection, education and access to public goods and services, including housing. It provides that the adoption or maintenance of special measures aiming at preventing or compensating for disadvantages on the grounds of racial or ethnic origin shall not be considered discrimination. Law 3304/2005 further provides for the sharing of the burden of proof in anti-discrimination cases. ECRI thus notes that this law is broadly in keeping with international and European standards on the protection against racial discrimination. The Ombudsman, the Equal Treatment Committee and the Labour Inspectorate are the bodies entrusted with ensuring and monitoring the implementation of Law 3304/2005. (...)

The Greek authorities continued to implement the Integrated Action Plan for Roma, by taking measures in the areas of education, employment, health and housing. In the area of health, Socio-Medical Centres providing basic health care services such as primary health care and vaccination in Roma settlements were created. With regard to wakfs (charitable foundations), a question of concern to the Muslim minority in Western Thrace, Law 3647/08 allowing, inter alia, for the election of their managing committees by the minority itself was adopted on 29 February 2008. Moreover, a number of measures have been taken by the Greek authorities to improve the situation of this minority in the field of education. As concerns immigrants, the Greek authorities have also implemented a programme for combating racism and xenophobia in the labour market. 11,300 migrants benefited from this programme and 87 support structures which provided information and advice on, among others, regularisation were created. Moreover, in 2006 and 2007 the situation of thousands of irregular immigrants was regularised. Since ECRI's third report, a reception centre for unaccompanied minors (both immigrants and asylum seekers) was opened in Mitilini in 2008.

§44. As concerns Roma, the Greek authorities have informed ECRI that an EU programme entitled "Progress" aims to train 40 Roma on issues of discrimination and on the legislation to enable them to provide the necessary information to Roma communities. According to the authorities, vocational and employment placement programmes have been created to assist Roma in joining the labour market and establishing their own businesses, and 500 individuals have benefited from these programmes. The authorities have also informed ECRI that Muslims from Western Thrace and Roma participated in EU Social Fund Programmes which provide vocational training.

§45. The Greek authorities have informed ECRI that an Integrated Action Plan has been implemented in the areas of employment and access to social services. Within the framework of this plan, a programme for combating racism and xenophobia in the labour market has been implemented: 11,300 migrants benefited from this plan and 87 support structures which provided information and advice on, among others, regularisation were created. (...)

§54. As the Greek authorities have pointed out themselves, and the Ombudsman has confirmed, there is a very high drop-out rate among Roma pupils. The authorities have indicated that special programmes providing psychological and social support, including inter-cultural education, have been established to address this problem. (...)

§55. The authorities have indicated that a programme co-funded by the EU and the Greek State addresses issues such as remedial Greek language, Mathematics and History classes for Roma children as well as in-service teacher training.

§58. The Greek authorities have informed ECRI that for the 2007-2008 school year, in Western Thrace, there were 198 minority primary schools where pupils were taught both in Greek and Turkish (in Evros, Xanthi and Rhodopi), 2 minority high schools and 2 theological schools in Xanthi and Rhodopi. The Greek authorities have also indicated that between 2002-2007, approximately 50% of registered students in primary school were female and that there has also been a steady increase in the number of Muslim children, including Roma, who have registered in primary and secondary school in that region. However, ECRI notes with concern, as acknowledged by the authorities themselves, that there is a 12% drop-out rate among Pomak children.

§59. Since ECRI's third report, the Greek authorities have also continued to implement the three-phase project entitled "Education of Muslim Children", the last phase having been implemented from 2005-2008. The Greek authorities have indicated that books used in the Greek-speaking programme in minority primary schools were the final product of this project and that 55 books were produced for students while 15 were elaborated for teachers. The authorities have further informed ECRI that in minority primary schools, there is a total of 436 teachers for the minority educational programme and 544 of the Greek-speaking education programme, whilst for minority secondary schools, there are 70 Greek-speaking teachers and 37 minority programme teachers. ECRI notes with interest that in the 2007-2008 school year, the Greek authorities introduced Turkish as a second language, as an optional subject, in high schools. The Greek authorities have further informed ECRI that, in the framework of a broader programme entitled "Education and Counselling to Roma families / members of the Muslim Minority / expatriated people / migrants", Greek language and civilisation courses were taught (2006 – 2007 / 2007 – 2008) to Muslim parents.

§69. The housing loan scheme established by the Greek authorities for Roma continues to be implemented and the authorities have informed ECRI that out of the 7,331 families which have been

granted these loans, 5,896 have received them. The authorities informed ECRI that the housing loan scheme has been constantly evaluated and improved with adjustments since its launch in 2002. Large families with school-age and other under-age children, single-parent families, persons with health problems as well as those within the lower income bracket are given priority. The authorities have indicated that in Kalamata, 85 houses have been built as part of an on-going project for the establishment of a transit camp with social and hygiene facilities and that approximately 30 local authorities per year receive financing to take housing measures for Roma. Furthermore, the Municipal and Communal Code, as amended, provides that local authorities are obliged to secure the right to access to housing without discrimination and should participate as concerns Roma housing.

§75. The Greek authorities have indicated that in the framework of the Integrated Action Plan for the Social Integration of Roma, Socio-Medical Centres provide basic health care services such as preventive medicine, primary health and social care, vaccination, support services and vocational counselling in Roma settlements. A total of 32 such centres have been established in as many municipalities and are co-financed by the European Union Social Fund and the state budget. ECRI notes with interest that these centres which consist of medical and social services staff, include a mediator from the Roma community. Since April 2004, a project on the Safeguard, Promotion and Socio-Psychological Support of Greek Gypsies has been established and it is financed by the state budget. The authorities have indicated that the mobile units visit transit camps to provide clinical tests and vaccination as well as to monitor the living conditions and solve existing problems. They have also informed ECRI that these units operate in almost all Roma settlements, including the areas of Spata and Aspropyrgos. Another project⁵⁰ has established a Network of Social Services in 150 municipalities and is fully operational in 140. The aim of this network is to combat poverty and social exclusion by providing basic social services. The Greek authorities have further indicated to ECRI that a pilot programme for establishing a health care e-card for Greek Roma in the area of Trikala started in 2009.

9. Equality bodies

[CERD Concluding Observations](#)

§18. The Committee notes the sharing of competence between the Office of the Ombudsman, the Committee for Equal Treatment and the Labour Inspectorate (para. 253 of the State party's report). As the Office of the Ombudsman is the only independent body, the Committee recommends that the State party consider giving it overall powers to receive complaints of racial discrimination, while cooperating with the other bodies when examining them.

[ECRI report](#)

§29. The following three institutions are entrusted with combating racism and racial discrimination in the public and private sectors in Greece.

- Ombudsman

§30. The Greek Ombudsman ensures and monitors the implementation of the abovementioned anti-discrimination law (Law 3304/2005) as concerns: 1) the public sector; b) local and regional authorities; 3) other public bodies, private law corporate entities, enterprises and organizations which are controlled by

the state, or by public law entities. (...) The Ombudsman addresses recommendations and proposals to the public administration, but does not impose sanctions on, or annul the illegal actions of the public administration although he can refer cases to a prosecutorial or disciplinary examination. ECRI notes with interest that where there is a violation of the principle of equal treatment in employment, the Ombudsman also has the power to examine the acts of individuals as well as legal entities. (...) ECRI therefore notes with satisfaction that the Greek Ombudsman's powers and work in relation to anti-discrimination are broadly in keeping with the basic principles laid out in its General Policy Recommendation No. 2 on specialized bodies for combating racism, xenophobia, antisemitism and intolerance at national level.

§31. However, some lacunae in the Greek Ombudsman's powers are worth filling to strengthen this body's role in combating discrimination in general and racial discrimination in particular. The Ombudsman cannot intervene if more than six months have elapsed from the time the complainant initially learned of the public administration's illegal action, or failure to act. In view of the complexity of discrimination cases, including the reluctance of victims to file complaints and difficulties in obtaining evidence of discriminatory acts, this period of time should be extended to provide sufficient time to victims to bring their complaints to the Ombudsman. As the Ombudsman does not provide general information or legal advice, ECRI also wishes to bring to the Greek authorities' attention Principle 3 d) of its General Policy Recommendation No. 2 in which it recommends that one of the functions of an anti-discrimination body include the provision of aid and assistance to victims including legal aid, in order to secure their rights before institutions and the courts.

§34. ECRI recommends that the Greek authorities ensure that the Ombudsman is empowered to provide aid and assistance to victims, including legal aid, as recommended in its General Policy Recommendation No.2 on specialised bodies for combating racism, xenophobia, antisemitism and intolerance at national level. ECRI also recommends that the delay within which individuals may file a complaint before the Ombudsman after learning of the administration's illegal action or failure to act be extended to at least a year, inter alia, in order to encourage victims to file complaints to this body. ECRI further recommends that the Greek authorities take measures to raise public awareness of the role of the Ombudsman in implementing Law 3304/2005.

- Committee for Equal Treatment

§35. The Committee for Equal Treatment has informed ECRI that since November 2005, this body which is chaired by the Secretary General of the Minister of Justice has been empowered to monitor the implementation of Law 3304/2005 in areas which fall outside the competence of the Ombudsman and the Labour Inspectorate. The above-mentioned Committee for Equal Treatment comprises five persons (1 chairman and 4 members), 1 secretary and 2 alternate members, and its powers include monitoring mediation in case of violation of the principle of equal treatment, drafting reports when conciliation efforts fail and subsequently forwarding them to the Prosecutor for action on his part. The Committee also provides opinions ex officio or on the basis of a complaint and is empowered to carry out investigations and require that private and public entities, which are obliged to respond, provide information.

§36. (...) The Committee has indicated that it has established a hotline, but that complainants are reluctant to provide their personal information. ECRI further notes that this body, which as indicated above is chaired by the Secretary General of the Minister of Justice and functions within the administrative structure of the Ministry of Justice, is not independent as recommended in its General Policy Recommendation No.

2.37 Furthermore, a substantial increase in its human and financial resources is necessary to enable it to function more effectively.

§37. ECRI recommends that the Greek authorities ensure the full independence of the Committee for Equal Treatment and provide it with the necessary human and financial resources. In this regard, ECRI recommends that the Greek authorities draw inspiration from its General Policy Recommendation No. 2 on specialized bodies for combating racism, xenophobia, antisemitism and intolerance at national level. ECRI also recommends that the Greek authorities carry out awareness-raising campaigns to inform the general public as well as vulnerable groups such as immigrants, Roma and Muslims in Western Thrace of the existence and powers of the Committee for Equal Treatment under Law 3304/2005.

§38. ECRI recommends that the Greek authorities take measures to facilitate the ability of victims of racial discrimination to file complaints to the Committee for Equal Treatment, including by improving the hotline service.

- Labour Inspectorate

§39. Article 19 of Law 3304/2005 empowers the Labour Inspectorate to ensure equal treatment in employment and Article 22 places an obligation on this body to submit an annual report on the promotion of equal treatment in work and employment. Article 17 of this law provides for administrative sanctions of up to a 30,000 EUR fine. The Labour Inspectorate's headquarters are located in Athens, but this body has established regional services (16 directorates and 80 Departments). It employs 500 Social Labour Inspectors. The Labour Inspectorate has informed ECRI that all bodies are required to provide it with the necessary assistance. It has indicated that it has received no complaints of racial discrimination. However, immigrant groups and NGOs working on issues of racism and racial discrimination have reported to ECRI the existence of discrimination in employment against, among others, Roma and immigrants.

§40. ECRI recommends that the Greek authorities strengthen the role of the Labour Inspectorate as concerns Law 3304/2005 including by conducting research on the reasons for the lack of complaints for racial discrimination in employment brought before this body. ECRI further recommends that measures be taken to encourage victims of this type of acts to report them to all the relevant bodies, including the Labour Inspectorate.

§41. Another body dealing with issues relating to racism and racial discrimination in Greece is the National Commission for Human Rights, which is, as the Greek authorities have indicated, a statutory human rights institution subject to the Prime Minister, having a consultative status within the Greek State. This body has published a number of studies, including in February 2009 on the situation of Roma in Greece.³³ The National Commission for Human Rights has also published reports on the health situation of immigrants in an irregular situation, problems in the asylum procedure, as well as the situation of immigrants trying to enter Greece through the Aegean Sea and the practices of the Coast Guards.

§42. ECRI recommends that the Greek authorities continue to take into account reports and recommendations made by the National Commission for Human Rights on issues pertaining to racism and racial discrimination.

HUNGARY

Sources

1. [Country report by the Special Rapporteur on Racism](#) (April 2012 /A/HRC/20/33/Add.1)
2. [ECRI report](#) (February 2009, CRI (2009)3)
3. OSF experts: Eva Foldes, Independent expert: anonymous (February 2013)

1. General trends and challenges

[Country report by the Special Rapporteur on Racism](#)

§7. According to the 2001 census, out of a total population of 10,198,315 there were 190,046 Roma (1.9 per cent); 62,233 Germans (0.6 per cent); 17,693 Slovaks (0.17 per cent); 15,620 Croatian (0.15 per cent); 7,995 Romanians (0.07 per cent); 5,070 Ukrainians (0.04 per cent); 3,816 Serbs (0.03 per cent); 3,040 Slovenians (0.02 per cent); 2,962 Poles (0.02 per cent); 2,509 Greeks (0.02 per cent); 1,358 Bulgarians (0.01 per cent); 1,098 Ruthenians (0.01 per cent) and 620 Armenians (0.006 per cent). There are also an estimated 100,000 Jews in Hungary. Unofficial estimates variously put the number of Roma between 250,000 and 800,000 of the population. Hungary has a growing immigrant population, dominated by numerous Chinese.

§11. The new Hungarian Constitution, adopted (...) on 25 April 2011 (...) contains (...) relevant provisions concern the Hungarian ethnic and national minorities referred to as "Nationalities". Article XXIX affirms that "(1) Nationalities living in Hungary shall be constituent parts of the State. Every Hungarian citizen belonging to any nationality shall have the right to freely express and preserve his or her identity. Nationalities living in Hungary shall have the right to use their native language and to the individual and collective use of names in their own languages, to promote their own cultures, and to be educated in their native languages. (2) Nationalities living in Hungary shall have the right to establish local and national self-governments. (3) The detailed rules for the rights of nationalities living in Hungary and the rules for the elections of their local and national self-governments shall be defined by a cardinal Act". The Special Rapporteur notes with concern that the new Constitution no longer stipulates explicitly whether the rights recognized as belonging to minorities will be guaranteed and supported by the State.(...) Finally, while the new Constitution declares the right for minorities to use their native languages, article H only provides for the protection of the Hungarian language without referring to other languages.

§26. Hungary officially recognizes 13 minorities, including Armenians, Bulgarians, Croatians, Germans, Greeks, Polish, Roma, Romanians, Ruthenians, Serbians, Slovaks, Slovenians and Ukrainians.

§29. (...) According to the authorities Roma mainly face economic and social difficulties that have their origins both in the collapse of the Communist regime, when the majority of Roma lost their jobs, and the current economic situation. The authorities do not consider it to be primarily a matter of racial discrimination or racial prejudice as such. Civil society interlocutors tended to argue that the current problems experienced by Roma are due to racism, racial discrimination and deeply rooted negative stereotypes against Roma.

§42. As stated earlier there are an estimated 100,000 Jews in Hungary. The Jews are not recognized as an ethnic or national minority recognition.

[ECRI report](#)

As regards the Roma minority, their situation of disadvantage is such that long-term but intensive efforts will be needed to turn it around; while many of the measures taken to date may have a positive impact, they need to be continued and in some cases intensified in order to achieve lasting results.

§143. Finally, ECRI notes with concern reports that Roma children are substantially over-represented in the child protection system, and thereby exposed to a risk of rejection by their own community, while still

being subject to discrimination by members of majority society on the basis of the latter's perceptions of them as Roma. The term "endangerment" also appears to be sometimes wrongly interpreted as authorising the removal of children on purely material grounds, meaning children in families having undergone forced evictions are also at greater risk of unwarranted removal from their families. Moreover, it appears that Roma children in the child protection system are also disproportionately qualified as having mental disabilities. All of these factors are likely to have a particularly negative impact on the life-chances of children who experience them, leaving them especially vulnerable to further discrimination in later life.

§144. ECRI recommends that the Hungarian authorities intensify their efforts to ensure that discrimination by local authorities is not tolerated. In this respect it emphasises that it is essential to ensure that national policies and legislation in favour of the Roma community are understood and applied at local level.

§146. ECRI recommends that further emphasis be placed on ensuring that the Roma community is involved at all stages of the planning and implementation of measures which concern them, at as local a level as possible.

§147. ECRI recommends that the Hungarian authorities investigate in depth the situation of Roma children within the child protection system and take all necessary action both to eliminate the root causes of disproportionate representation of Roma children in the system and return children to their families wherever appropriate.

§150. ECRI encourages the Hungarian authorities to implement the Decade of Roma Inclusion Programme Strategic Plan with due attention to involving members of the Roma community in ensuring that the measures taken are well suited to achieving the aims sought, as well as to monitoring the impact in practice of the measures taken and adjusting them if necessary.

§169. ECRI is pleased to note that, except in a few rare cases, members of the twelve recognised national and ethnic minorities other than the Roma community do not report discrimination in their daily lives.

2. Employment

[Country report by the Special Rapporteur on Racism](#)

§33. (...) given the overwhelmingly low educational levels attained by the Roma the Special Rapporteur is concerned that the public jobs to be created may be temporary low-skilled and low-paid employment similar to those already existing in the framework of some public work programmes implemented at the local level, as for instance in Pécs, where the Special Rapporteur met with the Mayor of the City.

§37. According to civil society representatives, Roma are often discriminated against in employment and as a result face a high rate of unemployment. The unemployment rate of Roma is estimated at 70 per cent, more than 10 times the national average; most are reported to live in extreme poverty. According to the authorities, an important solution to the integration of Roma is the creation of public jobs. However, civil society representatives argue that public jobs have produced limited results in reducing the Roma unemployment rate and lifting them out of poverty and social exclusion. The majority of Roma continue to be largely unemployed and dependent on social benefits. They also stressed that the number of public jobs available to Roma is very limited, and that these are short-term, low-skilled jobs, with low salaries, such as garbage collectors or street sweepers. In this regard the Special Rapporteur would like to express his extreme concern at information received subsequent to the mission about a public work programme

implemented in Gyöngyöspata under which Roma had to work in inhuman circumstances under the surveillance of guards while receiving low salary for such jobs.

§59. The Special Rapporteur urges the Government to take all the necessary measures to reduce the high Roma unemployment rate. A first step in this direction is to properly address racial discrimination against Roma in the labour market, and ensure that discriminatory attitudes against the Roma in employment are effectively sanctioned. The Special Rapporteur also recommends that the Government ensure that institutions financed by the State budget employing more than 50 persons and the legal entities in which the State has a majority ownership effectively establish and implement equal opportunities plans and recruit Roma.

§60. The Special Rapporteur also urges the Government to ensure decent and qualified jobs for Roma by avoiding addressing their unemployment mainly through public work programmes that have already yielded limited results in reducing the Roma unemployment rate and removing them from poverty and social exclusion. He encourages the Government to adopt more special measures to promote the employment of Roma in both the public and private sectors.

[ECRI report](#)

§114. The unemployment rate of Roma in Hungary remains extremely high. Hungary's rapidly changing and increasingly competitive economy has left many Roma with few or no educational qualifications marginalised, and with few prospects of finding employment. But Roma also continue to experience both indirect and direct discrimination in seeking employment – with many employers not afraid to admit to openly discriminatory attitudes, saying clearly that they have refused to hire a Roma solely because of their ethnic origin. Direct discrimination experienced by Roma has been documented in empirical studies but also recognised in the decisions of the Equal Treatment Authority. The latter reports that since its inception the majority of complaints it has dealt with have concerned the field of employment, and many of these complaints are lodged by Roma.

§118. ECRI strongly encourages the authorities to continue their efforts to improve the employment situation of the Roma community and reiterates the view that, against the background of the long-term and endemic nature of the disadvantage Roma experience on the labour market, special measures continue to be necessary to place them in a position in which they can compete on an equal footing with members of the majority population. These measures should also be directed towards overcoming prejudices and negative stereotypes on the part of employers.

§119. ECRI recommends that the authorities keep under review the effectiveness of the measures taken in improving the situation of Roma with respect to employment, refine their monitoring of the impact of the measures taken if necessary, and adapt the measures where needed to improve their effectiveness.

135. ECRI strongly encourages the authorities to implement the planned measures to increase the number of Roma working within the health care system, as a cornerstone of the efforts needed to improve the confidence of Roma in the health care system as a whole. In parallel, it encourages the authorities to continue and intensify their efforts to combat stereotypes and prejudices that can lead to discriminatory treatment of Roma patients, through continuing training aimed at all levels of the health care system.

3. Education

[Country report by the Special Rapporteur on Racism](#)

§38. (...) As witnessed by the Special Rapporteur, segregation of Roma children in the area of education and their poor educational achievements remain an issue of great concern. (...) some of the interlocutors of the Special Rapporteur reported a decline in the quality of education in regions inhabited by Roma and the placement of Roma children in special schools. While the authorities reported during the mission that five more years were needed to eliminate segregation in the area of education, the Special Rapporteur strongly reiterates his call to the Government to urgently reinvigorate the education of Roma with all the necessary resources.

57. The Special Rapporteur encourages the Government to build upon the richness and diversity of its population to develop a more tolerant and inclusive society. In this regard he strongly recommends that the Government invest in education. School classes which are inclusive and representative of the society's ethnic and cultural diversity, unbiased schoolbooks aimed at reflecting with objectivity and accuracy the history of minorities, well-trained teachers and human rights courses are in this respect essential to instil a tolerant and respectful mindset from an early age.

[ECRI report](#)

§80. Actors outside the education system stress two key points of concern. First, the local rehabilitation committees – which assess, upon referral of a child by their kindergarten teacher, whether the child should be oriented towards the special school system, and whether children already attending special schools should remain there – are also the bodies that run the special schools, for which funding increases with the number of children, and is higher per capita than in mainstream schools. They thus have a vested interest in maintaining, or even increasing, the number of children attending their schools. While some safeguards have been put in place, such as the requirement of parental consent to enrol a child in a special school, many parents who accept the placement of their child in a special school may not understand the long-term implications of that decision for their child, and doubts may be raised as to whether their consent is in all cases genuine and informed. Moreover, the significant number of children who were returned to mainstream schools following the 2004 rehabilitation programme would seem to confirm that decisions to place children in special schools need to be carefully monitored.

§81. Second, of the three levels of disabilities into which children in special schools may fall (“very serious” (requiring residential care), “medium-severe” or “mild disability”), the vast majority of children assessed as having a “mild disability” could, in the view of many NGOs, be integrated relatively easily in the ordinary school system: many children are misdiagnosed due to a failure to take due account of cultural differences or of the impact of socio-economic disadvantage on the child's development, and others suffer from only very minor learning disabilities that do not warrant the child's removal from the mainstream system. ECRI repeatedly heard that investments in teacher training should primarily be directed towards ensuring that teachers in the mainstream school system are equipped to deal with diverse, integrated classes, rather than towards perpetuating a system from which children, once streamed into it, are unlikely to break out, and which overwhelmingly results in low levels of educational achievement and a high risk of unemployment. Some actors have suggested that – bearing in mind that the best way of ensuring that children do not wrongly become trapped in special schools is to ensure that

they are never sent down that track in the first place – the category of children with mild disabilities should simply be deleted from the Education Act and all children with mild disabilities integrated in the mainstream school system.

§82. ECRI notes that the efforts made to date to combat the disproportionate representation of Roma children in special schools for children with mental disabilities, though they have had some positive effects, cannot be said to have had a major impact in practice so far. It stresses that, in parallel to assisting wrongly diagnosed children already in the special school system to return to the mainstream system, putting an end to this form of segregation also implies ensuring that children are not wrongly streamed into special schools.

§83. ECRI urges the Hungarian authorities to intensify their efforts to reintegrate Roma children currently enrolled in special schools into mainstream schools. It urges them in this context to monitor carefully the effectiveness of the new cognitive assessment instrument (WISC-IV) in taking account of socioeconomic disadvantage and cultural diversity, and to adapt it further if necessary. ECRI furthermore strongly urges the Hungarian authorities to ensure that only those children who cannot cope with education in an integrated classroom are sent to special schools. To this end, all possible avenues should be explored, including the option of removing from the Education Act the possibility of placing children with “mild disabilities” in special schools.

§84. ECRI recommends that the Hungarian authorities intensify their efforts to train teachers working in mainstream schools to deal with diverse classes including children from different socio-economic, cultural or ethnic backgrounds.

§85. ECRI strongly urges the Hungarian authorities to review the procedures by which children’s aptitude for commencing or returning to mainstream schools is examined, in order to eliminate all possible conflicts of interest of persons involved in the process.

- Separate or remedial classes in mainstream schools including solely or mainly Roma children

§90. ECRI strongly encourages the Hungarian authorities to continue their efforts to desegregate classes within mainstream schools, and to monitor the effectiveness in practice of the measures currently targeting multiply disadvantaged children in ensuring the integration of Roma pupils in mainstream classes. It draws attention in this context to its recommendation elsewhere in this report that the Hungarian authorities introduce an independent monitoring system at national level to ensure the compliance with centrally enacted legislation of measures taken by school maintainers; this system should in particular be instrumental in ensuring that the prohibition on segregation is respected in practice.

- Schools attended solely or mainly by Roma children

§91. (...) In a landmark judgment under the Equal Treatment Act in 2006, the Debrecen Appeal Court found that the authorities had violated the prohibition on segregation on the basis of ethnic origin. However, several sources reported that, in 2007, the local authorities once again separated the catchment areas of the merged schools.

§92. Two main causes for the phenomenon of segregated mainstream schools are widely referred to. First, as the proportion of the Roma population in small, declining villages and in the poorer urban areas increases, Roma are becoming increasingly isolated, meaning that schools in many areas where they live are more and more frequently attended only by Roma pupils. Second, the system of granting parents free

choice of schools has allowed parents to request to enrol their children in any school, and has in the past also allowed schools to accept or reject whichever pupils they wished. In practice, segregation has actually worsened in recent years. Serious disparities in the quality of schooling available to children depending on their socio-economic status have in turn been reported. Schools with high proportions of Roma students are in particular reported to have lower quality infrastructures – in some cases, with no running water, toilets or heating – and sometimes unqualified, frequently less well trained teachers than schools with few or no Roma pupils.

§95. ECRI welcomes the steps taken to reduce disparities between schools as to the socio-economic background of their pupils, which should serve to benefit Roma students falling within the category of multiply disadvantaged children. Nonetheless, it observes that in the field of education, the high degree of autonomy granted to local authorities in Hungary would unfortunately appear to leave little sense of collective responsibility for quality education for all children. (...) ECRI emphasises that autonomy does not entitle local authorities to ignore nationally applicable standards, and can never justify a breach of the prohibition on segregation.

§96. ECRI strongly encourages the Hungarian authorities to pursue their efforts to desegregate schools, and to monitor the effectiveness in practice of the measures currently targeting multiply disadvantaged children in ensuring the integration of Roma pupils in mainstream schools.

§97. ECRI strongly recommends that the Hungarian authorities introduce an independent monitoring system at national level to ensure the compliance with centrally enacted legislation of measures taken by school maintainers; this system should in particular be instrumental in ensuring that the prohibition on segregation is respected in practice.

- Channelling of Roma children into "private" (at home) education

§100. ECRI encourages the authorities to continue to monitor closely the impact of the new rules on registering children as private pupils, in order to ensure their effectiveness in eliminating past discriminatory practices in this area.

§104. ECRI strongly encourages the authorities to continue their efforts to improve the access of multiply disadvantaged children, including Roma, to the full cycle of kindergarten education, as a cornerstone of any measures to eliminate longterm discrimination against Roma in the field of education; these measures should cover all the relevant practical aspects, including infrastructures, teachers' skills and financial support to parents.

105. ECRI further recommends that the authorities take measures, with a view to reducing the numbers of children required to undergo cognitive testing, to raise the awareness of all kindergarten teachers to the impact that cultural factors and socio-economic disadvantage may have, without constituting a learning disability, on children's educational development

- Access to secondary and tertiary education

§109. ECRI encourages Hungarian authorities to pursue their efforts to promote equal access to secondary and tertiary education, and recommends that they monitor closely the impact of the measures in improving outcomes for Roma students in particular, in order to allow them to be revised and fine-tuned if necessary.

- Combating prevailing prejudices and stereotypes and other transversal issues

§110. In its third report, ECRI recommended that further steps be taken to combat prejudice and discrimination in schools, including specific training for headmasters and teachers, who should then be responsible for countering any hostility or prejudices among parents from the majority population.

§111. The authorities have stated that social awareness-raising and integration promotion training continue to form part of the training organised for teachers in the framework of two overarching programmes to ensure equal opportunities for disadvantaged children in the educational system and to ensure integration. ECRI welcomes these initiatives but emphasises the importance of ensuring that they produce an impact in practice, as it is all too easy for teachers to leave this training at the door once they return to the school environment. In one telling case, a headmaster who had followed such training nonetheless ran a segregated school.

§112. ECRI encourages the Hungarian authorities to continue incorporating social awareness-raising and integration promotion in the training programmes organised for teachers; it further recommends that follow-up assessments be carried out with teachers having undergone such training, in order to assess the degree to which it has had a practical impact on their work and adjust training programmes if necessary.

4. Health care

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132. ECRI (...) observes that the overall health status of Roma in Hungary remains for the moment, however, §considerably less favourable than that of non-Roma. The average life expectancy of Roma in Hungary is more than ten years shorter than that of non-Roma. Their situation continues to be compounded by difficulties in access to health care. Though nation-wide statistics are lacking, empirical studies show that Roma continue to suffer difficulties in receiving treatment in hospitals. Emergency assistance is reportedly slow, or even denied altogether, and the isolation of Roma communities in rural areas in particular means that access to a general practitioner is often more difficult. Patients report that doctors refuse to touch them, or make only cursory examinations, leading in some cases to misdiagnosis or the prescription of inadequate medicines. Patients are also subject to discriminatory attitudes or to extortion from health workers when they do receive treatment. Segregation of Roma women in maternity wards has also been reported, in one case reportedly leaving the women in a ward which they were required to clean themselves.

§133. On 29 August 2006, the Committee on the Elimination of Discrimination against Women found that Hungary had breached the relevant Convention in the case of A.S. v. Hungary, in which the author, a Roma woman, had been sterilized without her informed consent. The Committee recommended that the victim be awarded compensation, that the legislation allowing sterilisation to be carried out without following the standard information procedure in certain circumstances be reviewed, that all health workers be fully informed of the Committee's standards, and that the practice in all public and private health centres be monitored. ECRI is concerned that to date, it would seem that none of the recommendations in this case has yet been followed up in practice. ECRI stresses that failing to remove the possibility, provided for by law, of performing "emergency" sterilisations on women without their informed consent is unacceptable and serves to undermine Roma women's confidence in the health system.

§134. ECRI strongly encourages the Hungarian authorities to pursue their efforts to reduce inequalities in health care status and in access to health care across Hungary, and to monitor the impact on Roma of

these measures, in terms of both their health status and access to health care, in order to enable them to be fine-tuned if needed to improve their effectiveness.

§136. ECRI urges the authorities to implement the recommendations of the Committee for the Elimination of Discrimination against Women in the case of *Ms A.S. v. Hungary*, and to repeal the legal provisions allowing for “emergency” sterilisations to be performed without a woman’s informed consent; it emphasises that Roma women’s experience of and overall confidence in the health system can only be positively affected by such a step.

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§39. (...)In addition, while the health system was reformed in 2006, a supervisory authority set up to receive complaints in case of infringement of the rights of patients, and several programmes elaborated by the authorities to raise awareness among medical staff of the specific situation of Roma, the Roma minority continue to face discrimination in the access to health care and services and have a lower life expectancy rate.

§62. The Special Rapporteur recommends that the Government: (...) (b) Take all the necessary measures to ensure that Roma enjoy the full right to health and health care, and address discriminatory practices among medical professionals, including through further sensitization measures on Roma rights, culture and identity among such personnel.

5. Housing

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§62. The Special Rapporteur recommends that the Government:

(a) guarantee the right of Roma to housing without discrimination as provided in article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention) and act firmly against any discriminatory practices affecting them in this area, taking into consideration general recommendation No. 27 (2000) of the Committee on the Elimination of Racial Discrimination on discrimination against Roma and general comment No. 7 (1997) of the Committee on Economic, Social and Cultural Rights on forced evictions; (...)

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§120. In its third report, ECRI recommended that urgent measures be taken to improve the housing situation of Roma, and particularly to ensure that no arbitrary forced eviction of Roma families took place. ECRI strongly encouraged the authorities to develop a social housing policy that could benefit members of the Roma community living in poor conditions. In particular, it recommended that Roma families who were living without access to even basic amenities be provided with a decent standard of housing and infrastructure.

§121. ECRI also stressed the need to address the problem of segregation of Roma communities from the majority community, and the attitudes on the part of the majority community that contributed to such

segregation, and considered that the principal objective of housing policy should be to allow Roma communities to live as a part of majority communities.

§122. Since ECRI's third report, Roma families have continued to face disproportionate numbers of evictions. According to one study, victims were identified as Roma in 55% of eviction or threatened eviction cases reported by the media, though Roma constitute only around 6% of the population of Hungary. Forced evictions are now widely and frequently reported in Hungary: since May 2000, local government notaries have been entitled to order the eviction of tenants without official papers, and appeals against such decisions do not have a suspensive effect. While this provision applies to all tenants, it has been found to have a disproportionately adverse effect on Roma, due to their difficult socio-economic situation.

§123. The majority of Roma in Hungary live outside the main cities and towns, with large numbers living in unfavourable or even slum-like conditions, a phenomenon that has worsened over the past decade. The authorities have stated that their primary aim in the present context is to reduce segregation in housing by eliminating Roma ghettos. They have thus introduced a programme to refurbish social housing and encourage Roma living in segregated settlements outside towns and villages to move into the refurbished social housing inside the town or village. In addition, in order to ensure that the principle of desegregation is taken into account in the award of state or European Union funding for various projects, the authorities are introducing an equal opportunities subsidy policy. Thus, in order to receive funding for urban development projects, whether or not these are directly related to desegregation efforts, a town will be required to submit a desegregation plan aimed at the elimination of segregated living in the town. There are, however, reports of occasional resistance from local authorities and individuals when a Roma family has sought to move into a new neighbourhood; these have involved members of the local population causing physical damage to, or even destroying, houses bought by Roma; locals forming human chains to prevent Roma families from moving in; or local authorities acting to prevent Roma families from moving in, following petitions by local inhabitants.

§124. Access by Roma to social housing is also hindered, partly by the sale in recent years of significant proportions of public housing stocks (including social housing), and in some areas by the adoption by local authorities of arbitrary rules as to eligibility for public (including social) housing, which in practice result in indirect discrimination against Roma. In some cases, access to social housing has, for example, been made conditional on demonstration by the applicants that they possess large amounts of money, thereby, almost by definition, excluding persons who are unemployed, reliant on social welfare or otherwise in situations of poverty or extreme poverty from gaining access to social housing. This impacts many Roma, who are disproportionately represented in these groups. In other cases, the rental of social flats is auctioned off, with bids outreaching the resources of many Roma families who are most in need of such flats, or auctions of social flats are notified only to a select few, again excluding Roma from access to such housing.

§125. Many local governments have also enacted provisions barring persons caught squatting in property from having access to social housing for a number of years, generally between three and five years (ten in Debrecen). These provisions result in indirect discrimination against Roma, who are proportionally far more often unable to afford even nominal housing costs, forcing them into occupying homes without legal authorisation. Their impact may be especially negative on the neediest families, as the refusal of social housing may lead to the removal of children from their families. One such provision was struck down as unconstitutional by the Hungarian Constitutional Court on 22 February 2005, and in March 2006

the Hungarian Housing Act was amended to include as an explicit requirement that of retaining social criteria for the allocation of social housing. ECRI notes that the impact in practice of this amendment remains to be seen, and observes that, as in the field of education, the principal source of the discrimination experienced in everyday life by Roma in the field of housing is not the contents of legislation enacted at central level, but appears rather to be the manner in which local authorities exercise their powers.

§126. ECRI strongly encourages the Hungarian authorities to continue addressing segregation in housing through measures designed to facilitate their moving into more mixed neighbourhoods, and, in parallel, to intensify their efforts to combat negative community attitudes towards Roma neighbours.

§127. ECRI recommends that the authorities intensify their efforts to ensure that Roma are not arbitrarily deprived of social housing; it recommends in particular that the authorities take all the necessary measures to ensure that local authorities, in applying legislation enacted at central level, do so in accordance with the law, and in conformity with the prohibition on discrimination.

§128. ECRI recommends that the authorities keep under review the impact in practice of the amendments made to the Housing Act in 2006 in safeguarding Roma in particular from forced and arbitrary evictions, and strengthen the measures taken if necessary to ensure their effectiveness.

6. Access to other goods and services

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§137. ECRI did not examine, in its third report, discrimination in the field of access to public places. However, it notes that the Equal Treatment Authority has underlined in both its 2005 and 2006 annual reports the discrimination faced by Roma in this field, and that Roma NGOs also stress that it is an issue of particular concern. The Authority has particularly emphasised that the denial of services in the establishments of the commercial and catering industries (shops, bars, restaurants) not only affects members of the Roma minority, but is in fact almost exclusively experienced by them.

§138. ECRI draws the Hungarian authorities' attention to this phenomenon, and recalls its related findings elsewhere in this report regarding latent racist and xenophobic attitudes in Hungarian society. It emphasises that, while the Equal Treatment Act has made it easier for individuals who are victims of discrimination in this field to seek redress, litigation cannot on its own provide an adequate means of overcoming entrenched negative stereotypes and attitudes.

§139. ECRI recommends that the Hungarian authorities take comprehensive measures to implement the law prohibiting discrimination in access to public places, in particular as it is applied to Roma and visible minorities.

7. Availability of equality data

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54 (...) The Special Rapporteur (...) also recommends the collection of ethnically disaggregated data and statistics in accordance with international human rights standards, including respect for the principle of self-identification.

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There is also a real lack of data disaggregated by ethnicity that could assist the Hungarian authorities in clearly identifying problems that need to be addressed and in monitoring the effectiveness of measures already taken.

(...) ECRI also recommends in this report that ways of measuring the situation of minority groups in different fields of life be identified, stressing that such monitoring is crucial in assessing the impact and success of policies put in place to improve the situation, and that it should be carried out with due respect to the principles of data protection and privacy and should be based on a system of voluntary self-identification, with a clear explanation of the reasons for which information is collected; ECRI also requests priority implementation for this recommendation in the next two years.

§142. ECRI also notes that at a more general level, Roma are able (as are persons belonging to other minorities) to choose whether or not to identify themselves as Roma in order to benefit from specific minority rights such as minority education or enrolling to vote in minority self-government elections.

§189. The main reason given by the authorities for the lack of data disaggregated by ethnic origin is the high level of protection of personal data afforded by Hungarian legislation; the experience of the Second World War in particular is cited as underpinning the desire to ensure that individuals are not identifiable on the basis of their ethnicity. However, as described repeatedly, throughout this report – in the fields of education, employment, racist violence, administration of justice, to name a few – the absence of such data makes it particularly difficult for the authorities to monitor the effectiveness of the many measures they have taken in order to improve the situation of certain groups, and to adapt the measures accordingly if needed. Proxies are frequently used in designing measures, such as targeting multiply disadvantaged children in the field of education. These provide a clearly legitimate basis for improving the situation of a clearly disadvantaged group and are by no means a problem in themselves. However, they do not suffice to provide a means of assessing whether the specific situation of children belonging to the Roma minority is in fact improving as a result of the measures taken.

§190. ECRI recognises that the collection of ethnic data is a sensitive issue, but emphasises that it can also play an important role in measuring whether some groups are disproportionately adversely affected by given phenomena, whether programmes designed to assist certain groups are effectively achieving their goals, and whether new or different measures need to be taken to redress such situations. Provided that certain key requirements are met – that is, that any data collected is anonymous, confidential, used only for the purposes for which it is collected, and is collected on a voluntary basis – the collection and publication of data broken down according to ethnicity can act as a key element in effectively fighting discrimination.

191. ECRI reiterates its recommendation that ways of measuring the situation of minority groups in different fields of life be identified, stressing that such monitoring is crucial in assessing the impact and success of policies put in place to improve the situation. Such monitoring should also take into consideration the gender dimension, particularly from the viewpoint of possible double or multiple discrimination. It should be carried out with due respect to the principles of data protection and privacy and should be based on a system of voluntary self-identification, with a clear explanation of the reasons for which information is collected.

8. Positive action

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§16. (...) the Special Rapporteur welcomes the fact that the payment of different salaries wages or other benefits to individuals on the basis of their colour, race, nationality, national or ethnic origin is always considered to violate the principle of equal treatment. The Special Rapporteur further notes with appreciation that institutions financed by the State budget and employing more than 50 people, as well as legal entities in which the State has a majority ownership, are required to adopt an equal opportunities plan.

§26. (...) The Government has made significant efforts to fulfil its international human rights obligations with respect to the situation of its national and ethnic minorities. Commendable measures have been taken, especially in the areas of culture and education, where the Government has developed a very elaborate policy which recognizes and promotes the languages of the 13 minorities. The authorities have also continued to provide support for activities to preserve and develop the cultural heritage of national minorities, which is very much welcomed. However, at the time of the mission the Special Rapporteur was informed of a decrease in the Government financial support for bilingual schools. Some interlocutors also indicated that mainstream schools do not provide sufficient space for minority language teaching and that the most common model remains one where minority languages are taught as a second or foreign language.

§30. Key legal, policy, and institutional measures were initiated and implemented by the Government with regard to Roma. The Special Rapporteur welcomes in particular the adoption in 2007 by the parliament of the resolution on the Decade of Roma Inclusion Programme Strategic Plan for 2007-2015, which sets a framework for action to improve Roma access to education, employment, housing and health care; the development and adoption of the European Union framework for national Roma integration strategies under the Hungarian Presidency of the Council of the European Union in 2011; the National Social Inclusion Strategy "Extreme Poverty, Child Poverty and the Roma" for 2011-2020 set up as part of the implementation of the European Union Framework for National Strategies for Roma Integration; and the Framework Agreement between the Government and the National Roma Self-Government drawn up in the course of the mission.

§32. The newly adopted Framework agreement between the Government and the National Roma Self-Government was presented by the Government as a major step in moving forward to the improvement of the situation of Roma. According to the authorities the programme aims to improve the living conditions of Roma and facilitate their social inclusion through more employment and educational measures. The agreement establishes a joint decision-making system between the Government and the National Roma

Self-Government. The authorities indicated that special measures should be implemented in this context. Short- and long-term objectives have been set, some to be achieved by 2015, including inter alia the involvement of 100,000 unemployed Roma in the labour market, the realization of a comprehensive education reform which will result in 20,000 young Roma people learning marketable skills in one of the 50 vocational schools taking part in the inclusion programme, and support for the education of 10,000 Roma young people in high schools. The Government indicated to the Special Rapporteur that the authorities will take responsibility for financing the implementation of the programme.

§38. Some measures have been initiated to tackle discrimination and segregation against Roma in the area of education, including for instance the 1993 Act LXXIX on Public Education, which prohibits segregation, the reconsideration of the configuration of catchment areas in cases where segregation occurs, as well as public education equal opportunity action plans, which according to the authorities is an obligation for the schools and the municipalities.(...)

§39. (...) The Special Rapporteur was informed that some housing programmes have been developed, some of which as part of the Decade of Roma Inclusion Program Strategic Plan. They include for instance the "Housing and Social Integration Programme for Residents of Roma settlements" implemented in 30 municipalities, and the setting up of 160 anti-segregation plans to address the segregation of Roma in the area of housing. The Special Rapporteur welcomes such initiatives but, with regard to housing, remains concerned at the continuing discrimination, segregation and substandard living conditions of Roma and reports of forced evictions of Roma. (...)

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In June 2007, the Parliament approved a resolution on the Decade of Roma Inclusion Programme Strategic Plan, setting a framework for action in a series of fields where Roma experience discrimination and disadvantage in daily life. This resolution complements a large number of measures that have been taken in recent years that may serve to improve the situation of Roma in fields such as education and employment. Particularly wide-ranging measures have been taken in the field of education, with steps taken to address segregation through facilitating the access of multiply disadvantaged children to kindergarten, introducing stricter requirements on the manner in which local authorities draw the boundaries between catchment areas or may organise the composition of classes within schools, and the drawing up of new cognitive tests designed to take better account of cultural differences and socioeconomic disadvantage in testing children's development. Some landmark decisions of courts in this field have also been handed down in recent years, including on the basis of the provisions of the Equal Treatment Act. A number of measures have also been taken to increase the number of Roma employed in the police force.

§78. In 2003 a programme was launched to fight the practice of classifying Roma and socially disadvantaged children, without just cause, as children with mental disabilities. According to information provided by the authorities, 2100 children who had been classified as having mental disabilities were reassessed by independent medical experts (the Rehabilitation Expert Committees Examining Learning Skills) in 2004 and 11% of these children, who were found to be mentally sound, were reintegrated into the school system.

§79. Despite these advances and the financial means provided to support them, the authorities have observed that no radical improvements or breakthroughs have been achieved in the field of equal opportunities for these children. Thus, in the last two years, the authorities' focus has shifted from a review and reintegration approach to influencing broader processes, such as financing and diagnosis. A new cognitive assessment instrument ("WISC-IV"), designed to take account of socio-cultural differences, has thus been introduced for use by rehabilitation committees from 2008 onwards. These processes are financed under the New Hungary Development Plan.

§88. Since 2003, the authorities have introduced new measures, targeting the integration of multiply disadvantaged children. (...) Many – though by no means all – of these children are Roma. (...) Schools that have adopted equal opportunity plans can apply for (financial) integration support if the proportion of multiply disadvantaged children in their various classes remains below 50% (with the exception of one class, for which the proportion of multiply disadvantaged children must not exceed 70%). The difference between the ratios of multiply disadvantaged children in parallel classes must furthermore not exceed 25%. (...) The National Education Integration Network (OOIH) – the basic tasks of which are to promote the integrated education of multiply disadvantaged pupils, provide professional services with the aim of ensuring the successful education and further education of such pupils, and establish a professional network based on the horizontal co-operation of teachers and their institutions – concludes co-operation agreements with the schools having joined the programme and provides professional support to them. Schools that are not entitled to apply for integration support because over 50% of their students are multiply disadvantaged children may apply for skill development support. More than 2 billion HUF (€8 million) were allocated to these programmes and to kindergarten development programmes in 2007. The number of institutions having participated in the program has moreover grown each year, from 9 935 in the 2003-2004 school year to more than 25 000 in 2007-2008.

§89. ECRI welcomes these measures, which, though not explicitly targeted at Roma children, should benefit them. However, it notes that the way in which the funds provided by the central authorities are used in practice depends on the local authorities responsible for administering the schools, which appear to be subject to little effective subsequent monitoring. Monitoring is not carried out by the central authorities but at local level, by experts appointed by the local authorities themselves, leaving civil society with little confidence in the impartiality or objectivity of the exercise. ECRI has moreover received reports that in practice, schools granted funds under the programme described above have not always used them to create integrated classes, meaning that in these cases, at least, the expected desegregation was not achieved.

§94. At the same time, schools' rights to choose among children having applied for first-grade places have been drastically limited, without changing the principle of parents' freedom to apply to schools they choose. Schools are now required to accept children in clear priority order: first, all applicants from within their catchment area; second, if places remain, any multiply disadvantaged children that apply; third, if places still remain, special situations should be taken into account (for example, children having a sibling already attending the school); finally, if any places still remain, the school must apply a lottery system. It should be noted, however, that this obligation applies only to public (statefunded) schools, and not to church-run schools, although these too receive state funding. Villages have been cited where practically all non-Roma children attend a church-run school, leaving only Roma in the state-funded school. The Public Education Act, while imposing less stringent conditions on church-run schools, now requires them

to provide at least 25% of their places to local children; they also cannot refuse entry to any multiply disadvantaged child.

§102. Since 2003, and recognising the importance of effective access to kindergarten education in ensuring better outcomes for Roma children, the government has adopted wide-ranging measures in this field. First, in order to promote the attendance of multiply disadvantaged children at kindergartens, school maintainers are obliged to provide admission to all multiply disadvantaged children in their area. Three-year kindergarten education must therefore be put in place even in villages that previously had no kindergarten. Around 120 billion HUF (nearly € 500 million) has been allocated in recent years to developing the necessary infrastructure. To ensure that multiply disadvantaged children start attending kindergarten as early as possible, maintainers of kindergartens can also apply for state support, provided at least 70% of multiply disadvantaged children in their districts attend kindergarten, and provided that these children form at least 15% of the children in kindergarten. Free meals have also been provided, and it is also planned to introduce kindergarten admission support, to be paid to parents of kindergarten-aged multiply disadvantaged children, to allow them to buy the necessary clothes and supplies for their children.

§103. ECRI welcomes these measures, and stresses the importance of continuing to invest in increasing the attendance of Roma children at kindergarten level in order to ensure better long-term educational outcomes for them. Increasing Roma children's access to the full three-year pre-school programme may in particular be an influential factor in reducing the number of Roma children wrongly oriented into special schools when they reach primary school age. ECRI further notes in this context that not all children are assessed for streaming into the special schools described at the beginning of this section: only children selected by their kindergarten teachers are obliged to undergo the tests. ECRI observes that the basis on which children are referred for assessment seems unclear. Greater awareness on the part of teachers of the impact that cultural factors and socio-economic disadvantage may have, without constituting a learning disability, on children's educational development may constitute a further key to reducing the number of Roma children wrongly directed from kindergarten into special schools.

§107. Several programmes are currently in place to promote equal opportunities for disadvantaged pupils and encourage them to pursue their education beyond primary level. 17 000 pupils in 2006-7 and 11 000 in 2007-8 received grants and tutorial assistance under the "Provision for Pupils" grant programme, aimed at helping them to reach and complete secondary level education. A further 3 450 especially disadvantaged pupils participated in Arany János programmes to prepare them to enter secondary education, and an additional facet of these programmes was launched in the 2007-8 school year, covering vocational schooling. Finally, a programme was launched in 2005 to assist disadvantaged young persons in entering and pursuing higher education, under which the students' course fees are paid and tutorial assistance is provided.

§108. ECRI welcomes these steps taken to promote access to secondary and tertiary education of disadvantaged students, particularly Roma.

§115. The antidiscrimination provisions in the Labour Code and the Equal Treatment Act – including the power granted to the Equal Treatment Authority to publish a list of employers who have been fined for violating the principle of equal treatment, which disqualifies these employers for two years from benefiting from state aid – at least theoretically constitute a deterrent, and do provide a basis in practice for seeking redress in individual cases. However, as NGOs point out, these provisions alone cannot suffice to advance

the situation of Roma with respect to employment, not least because they cannot address the broader causes for inequality experienced by large groups of people in a disadvantaged position.

§116. The government has taken a number of initiatives in recent years to reduce exclusion from the labour market, including through specific programmes targeting disadvantaged people or long-term unemployed, many of whom are Roma. Some of these programmes aim to give unskilled workers new skills; others, such as some public works programmes, combine short-term employment and education. Still others provide incentives to employers, in the form of reduced employer contributions, to employ workers from specific groups; an example of the latter is the Start-Extra programme, targeting long-term unemployed who either are over 50 or have completed no more than 8 years of school education. A Roma Employment Network has also been set up to ensure that there is a Roma desk officer in each labour exchange centre and employment office. Moreover, the authorities have pointed out that employment is a key chapter of the Decade of Roma Inclusion Programme Strategic Plan, and the government will be required to report to Parliament on progress achieved with respect to all the tasks set out in the Strategic Plan.

§117. ECRI notes that the initiatives taken are generally well received, but that civil society actors nonetheless point out that their impact is limited and not lasting: the programmes provide helpful and rewarding experiences in the short term for the participants concerned, but the solutions they provide are only temporary and concern only a limited number of participants (a few thousand in each case). In short, they constitute positive steps, but are not enough on their own to remedy the widespread long-term unemployment of disadvantaged groups such as the Roma. Moreover, their overall impact remains difficult to evaluate due to a lack of available data disaggregated by factors such as ethnicity; government estimates in fact rely on census figures as to the proportions of the population that are Roma in the various counties of Hungary in order to build a picture of how many Roma may have benefited from a given measure.

§130. In 2006, the authorities launched a wide-ranging reform of the health care system in Hungary. As part of this reform, a new Health Insurance Supervisory Authority was created, with the primary goal of reducing territorial inequalities in health care. It is also responsible for dealing with complaints about the health care system, and like the Equal Treatment Authority, can impose fines on health service providers who infringe patients' rights and publish the list of providers that have been fined. The authorities have stated that, of a total of 7000 complaints that it has received since its inception, of which proceedings were initiated in about one-sixth of the cases, direct discrimination related to ethnicity has to date been established in only one case. Indirect discrimination could be assumed to have occurred in a few dozen cases.

§131. As regards measures to combat prejudices and stereotypes, the authorities have indicated that cross-cultural nursing is included as part of the training of nurses studying at college level, and health visitors who go out to see patients in their homes also have cross-cultural features in their curriculum. (...) A programme is also planned for 2008-9 with the aim of increasing the sensitivity of medical staff in general to cultural differences, with the specific target of increasing the percentage of Roma in the medical professions to 3-5%. (...)

§132. ECRI welcomes the recent steps taken towards reducing inequalities experienced with respect to the health care system, including measures set out under the Decade of Roma Inclusion Programme Strategic Plan. (...)

§149. ECRI is pleased to note that on 28 June 2007, the Hungarian Parliament adopted a resolution on the Decade of Roma Inclusion Programme Strategic Plan for 2007-2015. This Resolution explains the background to the Strategic Plan and sets out a series of tasks to be accomplished in the fields of education, employment, housing, healthcare and equal treatment (non-discrimination), as well as culture, media and sports. The government is required to frame two-year action plans, monitor their implementation, keep public and civil actors informed and report at regular intervals to the Parliament. Specific measures to implement the plan in 2008 and 2009 were thus set out by the government in December 2007, in its Resolution 1105/2007. In parallel, the Resolution requests other concerned parties (such as NGOs, local authorities and Roma minority self-governments) to make every effort towards the implementation of the Plan; the mass media to contribute to its dissemination and to the promotion of positive changes in social attitudes towards the Roma; and members of the Roma population to take an active role in initiating and participating in steps taken at all levels to improve their daily lives.

9. Equality bodies

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§21. The Authority is responsible for ensuring equality and equal treatment by monitoring the implementation of the Equal Treatment Act. It is competent to receive complaints and investigate matters in response to individual complaints, *actio popularis* submitted by NGOs and other stakeholders, or on its own initiative. The Authority may also impose fines. Its decisions are binding and may be made public. The Authority also gives opinions on draft legislation, makes proposals to the Government, and works closely with civil society actors. (...)

§22. The Special Rapporteur welcomes the large number of complaints received by the Authority, which demonstrates its effectiveness. However he is surprised that among the nearly 1,500 complaints the Authority launched proceedings in only 377 cases. This may indicate a limited knowledge among the general public of the competence of the Authority and the concept of discrimination.

§23. Furthermore while the Special Rapporteur takes note of the assurances provided by the authorities regarding the independence of the Authority, reports and information received before the mission expressed concern at the effective independence of the Authority, which operates under the direction of the Minister of Public Administration and Justice. The lack of adequate resources was also reported.

§24. The Special Rapporteur is concerned that following the adoption of the new Constitution the Parliamentary Commissioners for Civil Rights, Future Generations, and the Rights of National and Ethnic Minorities were merged into a single institution, namely the Commissioner for Fundamental Rights. He deeply regrets the abolition of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, an independent body which was designated to address the rights of national and ethnic minorities. According to article 30 of the Constitution "(1) The Commissioner for Fundamental Rights shall protect fundamental rights and shall act at the request of any person. (2) The Commissioner for Fundamental Rights shall examine or cause to examine any abuses of fundamental rights of which he or she becomes aware, and shall propose general or special measures for their remedy. (3) The Commissioner for Fundamental Rights and his or her deputies shall be elected for six years by a two-thirds vote of the Members of Parliament. The deputies shall defend the interests of future generations and the rights of nationalities living in Hungary. The Commissioner for Fundamental Rights and his or her

deputies shall not be affiliated to any political party or engage in any political activity. (4) The Commissioner for Fundamental Rights shall present to Parliament an annual report on his or her activities. (5) The detailed rules for the Commissioner for Fundamental Rights and his or her deputies shall be determined by an Act”.

[ECRI report](#)

§37. The enactment of the Equal Treatment and Promotion of Equal Opportunities Act in December 2003 introduced into Hungarian law a prohibition on discrimination in a variety of public- and private-law relationships, on nineteen grounds, including racial origin, colour, nationality, national or ethnic origin, mother tongue and religious convictions, and the subsequent establishment of the Equal Treatment Authority on 1 February 2005 provided individuals with a direct avenue of redress for violations of that prohibition. The creation of this body has generated considerable interest in Hungarian society, with nearly 500 complaints being lodged the first year, a number that has risen steadily ever since. The Act also includes an important innovation in Hungarian law, in the form of the possibility for non-governmental organisations to act as plaintiffs in cases where they consider a provision to be discriminatory even though no individual has yet suffered any harm, and provisions on the sharing of the burden of proof that are designed to overcome the difficulties often experienced by victims of discrimination in proving their case. The possibility of turning to the Equal Treatment Authority – empowered to impose fines on offending parties and to publish the names of bodies that have breached the requirement of equal treatment – co-exists with other remedies such as seeking compensation through the courts, or turning to one of the Parliamentary Commissioners where public authorities are concerned.

§38. The Equal Treatment Authority commenced functioning on 1 February 2005, and its case-load has increased significantly each year since then. 491 cases were filed with the Authority in 2005, 592 in 2006, and 756 in 2007. Of the cases filed in 2006, 202 were closed by a binding decision. Amongst these, infringements of the requirement of equal treatment were found in 13% of cases; arrangements were found between the complainant and the party complained against in 6% of cases; 35% were dismissed as unfounded after an examination on the merits; a further 20% were dismissed without an investigation on the merits as they fell outside the Authority’s powers; and 26% were dismissed on procedural grounds. The Authority has noted that many individuals introduce complaints without having first received legal advice; it provides information to these complainants to help increase their understanding of the law. It also provides information on the availability of free legal advice and refers complainants to the Anti-Discrimination Lawyers’ Network of the Ministry of Justice and Law Enforcement where appropriate.

§39. In parallel with its key role in dealing with individual complaints, the Authority has taken a number of steps to increase public awareness of its work and of the important issues that fall within its remit. (...) ECRI welcomes these initiatives and observes that the continually rising number of cases lodged with the Authority no doubt indicates a growing level of public awareness of the existence of this body. However, the high proportion of cases (a total of 55% in 2006) dismissed either as unfounded on the merits or because they fell outside the Authority’s remit would seem to indicate that, for the moment at least, there remains a certain lack of understanding in Hungary of the concept of discrimination, as well as a certain lack of knowledge of the Authority’s fields of competence. In this context, ECRI regrets that no follow-up appears to have been given to the Authority’s proposal that both the obligation to observe the principle

equal treatment and the relevant legal avenues of redress available to members of the public form part of the compulsory training of public servants.

§40. As part of the recent amendments to the Equal Treatment Act, the Equal Treatment Authority was given the power to investigate whether employers obliged to do so have approved an equal opportunities plan. ECRI understands, however, that this power is limited to examining whether or not such a plan exists, and to imposing a fine if not; it does not appear to extend to investigating the adequacy of the contents of the plan. Even so, the new power imposes a considerable new workload on the Authority, with all the financial and human resource implications that entails.

§41. Since ECRI's third report, the legal status of the Equal Treatment Authority has changed, in that it is no longer subject to ministerial supervision but to ministerial direction. This would appear to signal a diminishing of the Authority's independence. ECRI notes that, as regards preservation from interference in the substance of the Authority's work, Article 13(2) of the Equal Treatment Act, which previously provided that the Authority worked "under the instruction of the government, under the supervision of a member of the government", has been repealed, and the Act now simply provides (Article 13(3)) that "[t]he Authority shall not be instructed in relation to exercising its duties defined in this Act". In budgetary terms, however, the situation is not so clear, as the Authority's budget is now placed (albeit with its own budgetary line) within the budget of the Ministry of Social and Labour Affairs. It may be noted in this context that the Authority continues to have jurisdiction throughout the territory of Hungary; however, it does not have regional or local branches. In the majority of cases occurring outside the capital, the investigating officers of the Authority are therefore obliged to travel to the seat of the local government where the applicant resides in order to hold a hearing. The Authority has drawn up a proposal to formalise its present arrangements with the Houses of Equal Opportunities and in particular to ensure that a certain number of procedures are completed at local level before applications are sent to the Authority itself. However, despite these measures and despite an increase in staff previously granted by the government, in the light of the Authority's continually increasing workload, further resources may again be needed in future.

§42. ECRI recalls its recommendation above with respect to the resources available to the Equal Treatment Authority. It further recommends that the Hungarian authorities take measures to raise awareness among national and ethnic minority groups of the anti-discrimination legislation now in force – including as to what is meant by discrimination – and the mechanisms available for invoking this legislation.

§44. ECRI notes from the outset that the Commissioner continues to provide a highly valuable avenue of recourse to members of national and ethnic minorities regarding unconstitutional practices essentially in the public domain. This body's powers, based on the Hungarian Constitution, have remained as strong as they were at the time of ECRI's third report. The creation of the Equal Treatment Authority and the absence of any clear legislative delineation of the limits of the two bodies' respective powers has not reduced the scope of action of the Parliamentary Commissioner but means that in some cases, concerning public authorities in particular, applicants who belong to a national or ethnic minority may have a choice of avenues of redress, providing different remedies: whereas the Equal Treatment Authority can impose a fine on parties that have breached the requirement of equal treatment, the Parliamentary Commissioner primarily seeks an amicable solution and may make recommendations for broader change.

46. Finally, ECRI notes that the Parliamentary Commissioner for the Rights of National and Ethnic Minorities has a specific role to play in protecting the rights to which members of national and ethnic

minorities may be entitled, and which is distinct from the antidiscrimination role played by the Equal Treatment Authority.

§50. ECRI recommends that the Hungarian authorities make available clear and comprehensive information to the public regarding the various avenues of redress available to individuals where they feel that they have been victims of violations of the principle of equal treatment or, where applicable, of their rights as members of national or ethnic minorities; this information should cover the rights and grounds protected, the various remedies available, the procedures to be followed and the effects of bringing several sets of proceedings simultaneously.

§51. ECRI reiterates its recommendation that the Hungarian authorities ensure that sufficient human and financial resources are given to the anti-discrimination network to enable it to act as an efficient tool to help combating any form of discrimination against Roma throughout Hungary.

ITALY

Sources

1. [Country report by the Commissioner for HR of the COE](#) (July 2012, CommDH(2012)26)
2. [CERD Concluding Observations](#) (March 2012, CERD/C/ITA/CO/16-18)
3. [ECRI report](#) (February 2012, CRI(2012)2)
4. OSF expert: Costanza Hermanin (February 2013)

1. General trends and challenges

[Country report by the Commissioner for HR of the COE](#)

§62. The Commissioner reiterates the view that the situation of Roma, Sinti (and migrants, including asylum seekers, see the next section) poses some of the most pressing human rights challenges Italy has to face, and that the treatment of these vulnerable groups should be seen as a litmus test regarding the effective observance of Council of Europe human rights standards.

§63. The Commissioner welcomes that the present government has marked, in particular in the declarations of the Minister for International Co-operation and Integration, a shift towards social inclusion of Roma and Sinti, after many years of policy focused essentially on security concerns and emergency legislation. For the moment however, these indications have not translated into concrete and unambiguous policies and actions. As a result, many Roma and Sinti in Italy still find themselves in a situation of serious exclusion and marginalisation and are subjected to continuing practices that are at variance with human rights standards, such as forced evictions and the construction of segregated camps. The coming period will be crucial for the announced shift in policy to have a concrete impact on the ground throughout the different regions of Italy.

[CERD Concluding Observations](#)

§12. The Committee regrets that the equality provisions of Article 3 of the Italian Constitution do not include non-citizens nor is it clear to the Committee that the offence of racial discrimination in the State party's legislation includes both the purpose and the effect of prohibited acts (art. 1).

In view of its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee urges the State party to ensure that non-citizens enjoy equal protection and recognition before the law. The Committee recommends that the State party ensure that its legislation and policies do not discriminate, in purpose or effect, on grounds of race, colour, descent, or national or ethnic origin. The Committee draws the attention of the State party to the importance of ensuring that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status.

[ECRI report](#)

Most Roma in Italy experience severe marginalisation and discrimination in terms of access both to housing and to other social rights. The general climate regarding Roma is strongly negative: many stereotypes and prejudices exist concerning them, which are sometimes reflected in, and even reinforced by, the attitudes and policies adopted by politicians. In its third report, ECRI noted with regret that no or very little progress had been achieved in virtually all the fields already highlighted in its second report. It can but be noted that the situation has scarcely improved since; on the contrary, it has worsened in some respects.

§31. ECRI recommends that the Italian authorities further strengthen the legislation against racial discrimination, having regard to the elements contained in ECRI's General Policy Recommendation No. 7, in particular as regards the need to protect individuals from discrimination based not only on grounds such as "race", colour, religion and ethnic origin but also language and nationality, and the need to place

public authorities under a duty to promote equality and prevent discrimination in carrying out their functions.

§105. In its third report, ECRI recommended that the Italian authorities take urgent action to improve the situation of Roma and Sinti in the fields of employment and health and to combat general prejudice in society.

§108. ECRI strongly encourages the Italian authorities to pursue and intensify their efforts to combat discrimination against Roma in different fields of life such as employment and health. ECRI strongly recommends that the Italian authorities incorporate these efforts in a comprehensive national policy to address the situation of marginalisation, disadvantage and discrimination of the Roma. It also invites them to establish an effective mechanism to co-ordinate these efforts at national level with the participation of all the national, regional, provincial and local authorities concerned and of representatives of the Roma communities and of civil society.

2. Employment

[CERD Concluding Observations](#)

§23. (...) The Committee expresses its concern that discrimination against non-citizens in the labour market persists. It is also concerned by the lack of appropriate legal protection for migrants, in particular against exploitation or abusive working conditions.(...)

[ECRI report](#)

§107.(...) In the field of employment, on account of their low level of education and training, Roma and Sinti cannot easily access the labour market, especially if they do not hold identity documents. Prejudices against Roma and Sinti also exacerbate the difficulties they encounter in the employment field. (...)

§114. ECRI encourages the Italian authorities to continue their efforts to promote integration of migrants with legal status and reduce the disparity between citizens and non-citizens on the labour market. (...)

§170. (...) Prejudice against foreigners and migrant workers also persists, affecting their access to jobs and their position in the workplace; in its worst manifestations, it has led to violent clashes. Migrant workers have, moreover, been particularly affected by the economic downturn, suffering a disproportionate number of redundancies. According to the information supplied by the authorities, the number of jobs held by non-citizens has nevertheless increased concurrently with a rise in their unemployment rate: this would seem partly attributable to the regularization measures introduced in 2009 to ensure continuity of domestic and care services. ECRI recommends that the Italian authorities step up their efforts to reduce the disparity between citizens and non-citizens on the labour market, ensuring in particular that existing anti-discrimination legislation in the field of employment is properly and strictly applied. It recommends that the authorities conduct an awareness-raising campaign focusing on employers' obligations and responsibilities on the one hand and on the positive aspects of diversity in the workplace on the other.

3. Education

[CERD Concluding Observations](#)

§20. The Committee expresses its concern that children of Roma and Sinti communities continue to experience discrimination with regard to access to education. It is concerned by the information that forced evictions and inadequate housing conditions have negatively affected school enrolment and attendance of children from these communities. The Committee is also concerned about the high school drop-out rate and the low number of Roma and Sinti children enrolled in secondary schools and about the fact that very few of them progress to higher education (art. 5).

The Committee encourages the State party to intensify its efforts to ensure effective access to education by Roma and Sinti children and other vulnerable groups. The Committee recommends that the State party take all necessary measures to facilitate the inclusion of all Roma and Sinti children in the school system. In this regard, the Committee encourages the State party to avoid implementing policies which may indirectly discriminate against these groups or affect their school attendance. (...)It recommends that the State party ensure that the administrative measure limiting to 30 % the number of children with non-Italian nationality in each class does not negatively affect the enrolment in education of children from the most vulnerable groups.

The Committee encourages the State party to recruit school personnel from among members of Roma and Sinti communities, to promote intercultural education in schools and to provide training to school staff and awareness-raising activities for Roma and Sinti parents.

[ECRI report](#)

§102 (...) Roma children living in illegal settlements are not systematically known to the education authorities and are therefore not enrolled in school; children concerned by forced evictions often find themselves unable to continue attending their school because no alternative housing is offered to them; the drop-out rate among children attending school remains high, particularly in post-primary education; the level of illiteracy among the Roma, particularly Roma women, is still high; as a result of all these factors, few Roma undertake a course of further or higher education, and measures do not appear to be in place to facilitate their access to this level of education. ECRI remains concerned about this situation, which leads to Roma being trapped in a situation of severe marginalisation and extreme poverty.

§103. ECRI strongly recommends that the Italian authorities ensure that all Roma children are enrolled in school and invites them to take all the necessary measures, in co-operation with the communities concerned, to promote regular school attendance by these children. ECRI encourages the authorities to pursue the measures already in place to this end and invites them to strengthen their efforts to counter school drop-outs and interruptions in the schooling of Roma children.

§104. ECRI again invites the Italian authorities to take steps to facilitate participation of Roma students in further and higher education.

§164. ECRI encourages the Italian authorities to continue their efforts to ensure that no pupils suffer any disadvantage in the school system on account of an insufficient command of Italian and recommends that the authorities be guided in this respect by its General Policy Recommendation No. 10.

§168. ECRI recommends that the Italian authorities ensure that substitute classes for optional Catholic education are provided in response to all requests made in accordance with the applicable rules, so as to ensure that no pupils suffer indirect discrimination, particularly with regard to award of credits.

4. Health care

[ECRI report](#)

§107. (...) In health matters, as described above, the conditions in which Roma live on the campsites expose them to considerable health risks. (...)

§178. As regards the groups coming under ECRI's remit, the authorities have pointed out that migrants tend to see their health deteriorate rapidly once they arrive in Italy owing to the stress of migration, problems of access to employment and a steady income, and poor housing conditions. The authorities have also emphasised the importance of removing not only linguistic but also cultural barriers to health care. (...)

§179. ECRI encourages the authorities to continue and step up their efforts to ensure better provision of health care and better access to health care for groups coming under ECRI's remit, not only with regard to reception of patients and access to care but also by providing care appropriate to their specific situations.

5. Housing

[Country report by the Commissioner for HR of the COE](#)

§79. In the memorandum and reports on Italy of 2008, 2009 and 2011, grave concerns had been raised about the declaration of the state of "Nomad emergency" in certain Italian regions, endowing the Prefects of those regions with extraordinary powers facilitating policies and practices, including in the field of housing and evictions, which were often in violation of human rights standards. The extent of the problem was notably recognised by the European Committee of Social Rights in its June 2010 decision on the merits in collective complaint No. 58/2009 (*Centre on Housing Rights and Evictions (COHRE) v. Italy*), in which the Committee unanimously found eight violations in respect of four Articles of the Revised European Social Charter.

§80. The Commissioner notes that the Italian Council of State stroke down the governmental decree behind the "Nomad emergency", as well as all subsequent acts based on this decree, in November 2011, three and a half years after its adoption. The Council of State found, in particular, that the decree had not sufficiently justified the existence of a genuine emergency (only referring instead to a number of isolated criminal acts widely reported in the media). It is also worth noting that the Council of State validated decisions of a lower court whereby regulations adopted on the basis of the "Nomad emergency" decree in Lazio and Lombardy had unlawfully hindered freedom of movement for inhabitants of authorised camps in those regions (including by requiring an identification card to obtain a camp residence permit, mandating registration of guests at camp entrances and permitting organised surveillance of camps).

§81. However, the Commissioner was informed that the Council of State did not declare that the decree had been discriminatory in intent or order the destruction of personal data collected through a census,

limited to Roma and Sinti on strictly ethnic grounds, which was based on this decree. Neither did it require compensation for the Roma and Sinti who had been subjected to unlawful evictions.

§82. Despite welcome repeated declarations that the emergency-based approach to Roma and Sinti would be discontinued and replaced by ordinary measures, the Commissioner notes that on 15 February 2012 the Italian government seized the Court of Cassation against this ruling of the Council of State. The Minister of the Interior informed the Commissioner during his visit that the main reason for the referral was the government's view that the Council of State had exceeded its powers, unduly limiting the government's prerogative to decide what constitutes an emergency. Some interlocutors also suggested that the referral was considered necessary in order to access leftover funds allocated to the "Nomad emergency", which could potentially be now used for the implementation of the National Roma Inclusion Strategy.

§83. As a result of the referral, the Council of State adopted an ordinance on 9 May 2012 to suspend the effects of its ruling as regards activities already engaged under the emergency decree before its November 2011 judgment, pending the review by the Court of Cassation.

§84. The Commissioner was informed that on the basis of this ordinance, the authorities in Rome were able to continue the construction work on a new segregated camp (*La Barbuta*) near Ciampino, Rome, which will include fences and video-surveillance. The Commissioner understands that the building of this so-called "equipped village" (*villaggio attrezzato*) was originally part of a resettlement plan, adopted on the basis of the emergency decree, involving the construction of 13 camps in the outskirts of Rome and the eviction of 6,000 Roma.

§85. During his visit in Rome, the Commissioner visited such an "equipped village", the camp of Via Salone, and observed first-hand the segregation imposed on Roma families forcibly evicted there. The biggest of 8 such camps in Rome, this camp was opened in 2006 and currently houses an estimated 1,100 persons. It is surrounded by a metal fence and video surveillance cameras, and accessible through a single, controlled entrance. It is in a very remote location, public transport, schools, shops, healthcare and other services being located several kilometres away and only accessible via a busy road which has no pavements, crossings or lights for pedestrians. It was reported to the Commissioner that, a nearby regional train station had remained closed until April 2010 due to "public order reasons linked with the nearby nomad camps", and that upon reopening the Trenitalia company requested staff to fill out forms to count and report "possible passengers of Roma ethnicity".

§86. Isolation, lack of interaction with the outside world and of prospects for employment and inclusion in mainstream society were among the main grievances raised by the inhabitants of the camp with whom the Commissioner met. They also informed him that the structural and living conditions in the camp had deteriorated considerably since its inauguration, in particular due to the overcrowding caused by a steep increase in evictions under the "Nomad emergency". The living conditions, in particular of the children and juveniles, was also subject to severe criticism in a research report published by an association that carries out regular work in the camp. The Commissioner was informed that the distance of the camp from schools causes delays and reduces the number of hours children spend at school, to which they are transported in segregated conditions (reportedly in special buses marked with the letter N). It was also reported that, despite the considerable spending by public authorities, school attendance remained low due to these circumstances.

§87. The Commissioner was informed that the local authorities indicated on several occasions that they considered the camp of via di Salone as a model camp, and that the newest “equipped village” of *La Barbuta* follows the same model. However, in the opinion of the Commissioner, the segregated conditions in these camps offer no prospect of gainful employment to the inhabitants, or even the possibility to interact with non-Roma persons and integrate into society. He also personally witnessed the sub-standard living conditions in a former authorised camp (Salviati II), which serve as an illustration as to the speed with which conditions can deteriorate in such segregated settings.

§88. Thus, the Commissioner particularly regrets the information received during his visit that forced evictions to *La Barbuta* had already started, some taking place while he was in Rome. In the Commissioner’s view these actions can hardly be reconciled with the shift in policy required by the National Roma Inclusion Strategy, which is now in force in Italy. Instead, they show a regrettable continuity with previous official policy based on emergency. As noted in the reports of the Commissioner’s predecessor and the aforementioned decision of the European Committee of Social Rights, that policy had fuelled an unprecedented spate of systematic forced evictions, often even chain evictions, with little regard for the personal circumstances of the persons concerned and for procedural safeguards.

§89. The situation of Roma and Sinti in Milan was examined in some detail in the 2011 report mentioned above. The Commissioner was informed by Roma representatives and NGOs that little had changed since the election of a new municipal government in May 2011, and that evictions continued to take place, including from authorised camps, sometimes linked to building projects for EXPO 2015.

§91. As regards the database established as a result of the “Nomad emergency” census mentioned above and examined in detail in the 2009 report mentioned above, the Commissioner was informed that the Italian authorities had declared to the UN Committee on the Elimination of Racial Discrimination (CERD) that this database had been deleted. However, the Commissioner received information that, in the course of litigation initiated by Roma and Sinti concerning personal data contained in the records held by prefectures in Rome and Milan, it became apparent that not all of this data had been erased.

§92. The Commissioner strongly believes that both segregated camps for Roma and Sinti and forced evictions in Italy should be firmly relegated to the past. The Italian authorities should instead give priority to the implementation of the goals expounded in their National Roma Inclusion Strategy, which rightly states that “the liberation from the camp as a place of relational and physical degradation [...] and relocation to decent housing is possible”, and points to existing good practices in Italy.

§93. The genuine involvement of Roma and Sinti communities in the decision-making process is an essential precondition for the success of future policies. The authorities are strongly encouraged to capitalise on existing examples of promising consultation mechanisms at local and regional levels and to ensure that the relevant communities have a real say in the choices that will affect their housing situation.

§94. Segregated camps and forced evictions are diametrically opposed to the text and spirit of the National Roma Inclusion Strategy, which clearly states that the aim for the authorities is “to definitively overcome the emergency phase, which has characterised the past years, especially when intervening in and working on the relevant situation in large urban areas”. The campbased approach and the evictions associated with it were hallmarks of the “Nomad emergency” policy, and should be overcome together with the corresponding Decree. The Commissioner therefore regrets the reports of continuing evictions of Roma and Sinti, despite a circular letter sent by the Minister for International Co-operation and Integration to all prefects, informing them of the adoption of this strategy and its contents.

§95. In this respect, the Commissioner is concerned about the mixed message sent by the Italian government by referring the November 2011 decision of the Council of State to the Court of Cassation. While understanding that this referral does not imply that the government intends to pursue the emergency approach vis-à-vis Roma and Sinti and that there are other procedural and financial considerations at stake, the Commissioner is worried that it may appear, *a priori*, to sanction the continuation of the former approach in the eyes of Roma and Sinti, as well as of local and regional authorities, and provincial representatives of the State.

§96. The Commissioner therefore urges the Italian government to state unambiguously that it will not pursue a return to the emergency approach, as exemplified by segregated camps and forced evictions, regardless of the ruling which will ultimately be delivered by the Court of Cassation. Any on-going work on segregated camps and evictions thereto should be ended as a matter of urgency.

§97. The Commissioner encourages the Italian authorities to give consideration to the fact that the human rights of many Roma and Sinti have been violated as a direct or indirect result of the "Nomad emergency" decree, and that adequate compensation mechanisms should be made available. Finally, he wishes to express his concerns about the retention of personal data of Roma and Sinti individuals which were systematically collected under the emergency regime. The Italian authorities should ensure that this data is erased from all relevant databases, including at local and regional levels.

[CERD Concluding Observations](#)

§15. The Committee deplores the targeted evictions of Roma and Sinti communities which have taken place since 2008 in the context of the NED and notes with concern the lack of remedies provided to them despite the ruling of the Council of State in November 2011 annulling the NED. It is concerned that forced evictions have rendered several Roma and Sinti families homeless and regrets the ways in which security personnel and video-controlled access to some of these camps are used. As indicated in its previous concluding observations, the Committee is concerned that the Roma, Sinti and Camminanti populations, both citizens and non-citizens, are living in a situation of *de facto* segregation from the rest of the population in camps that often lack access to the most basic facilities. The Committee takes note of the statement of the delegation on the intention to apply a new housing policy in favour of Roma and Sinti (art. 3).

The Committee encourages the State party to take the necessary measures to avoid forced evictions and provide adequate alternative housing to these communities. It also urges the State party to refrain from placing Roma in camps outside the populated areas without basic facilities such as health-services and education. Bearing in mind its general recommendations No. 27 (2000) on discrimination against Roma and No. 30 (2004) on discrimination against non-citizens, as well as the National Strategy for the inclusion of Roma, Sinti and Caminanti communities, the Committee encourages the State party to intensify efforts to avoid residential segregation of Roma and Sinti communities, both citizens and non-citizens, and to develop social housing programmes for them.

In view of the ruling of the Council of State, the Committee recommends that the State party take appropriate measures to provide effective remedies to members of Roma and Sinti communities for all the negative effects that followed the implementation of the NED, including by providing appropriate

housing for them, and ensuring that segregated camps are not the only housing solution available to them.

[ECRI report](#)

§84. In this connection, ECRI wishes to voice forthwith its concern about the many so called "emergency" measures taken since its third report, particularly in the context of so-called "security pacts", some of which explicitly target Roma or "nomads", and the declarations of a "state of emergency in relation to nomad settlements" made in a number of regions. The role of special Commissioner conferred by the legislation on the Prefects of the regions concerned admittedly enables them to take positive steps in favour of those living in "nomad" campsites. However, other powers granted to the special Commissioners are worrying or have been utilised in a discriminatory manner. In this context ECRI draws particular attention to the censuses of Roma living in such settlements and their fingerprinting. Although the authorities have stated that these measures were not based on an ethnic criterion and that, in July 2008, they had adopted guidelines providing that the operations entrusted to the Commissioners "*shall not concern specific groups, individuals or ethnic groups, but all people living in illegal and legal campsites, regardless of their nationality and religion. The Commissioners shall avoid any action that might be, directly or indirectly, considered discriminatory*", civil society organisations have noted that all the censuses were performed in campsites that were virtually solely inhabited by Roma. Moreover, there were reports of cases in which persons concerned by these censuses were misinformed as to their purpose, children were fingerprinted or searches of dwellings were conducted without the police officers having shown the residents a court order. During the same period, campsites were demolished and forced evictions took place, strengthening the impression that Roma were being deliberately targeted by the authorities; simultaneously, violent racist attacks were made against other campsites. ECRI has already had occasion to express its grave concern about this situation; it again warns against any form of stigmatisation of part of the population on grounds of ethnic origin.

§85. ECRI urges the Italian authorities to ensure that all measures they take with regard to Roma strictly uphold the right and the principle of non-discrimination as enshrined in the Council of Europe's standards.

§91. In its third report, ECRI noted that about one third of the Roma and Sinti, whether citizens or non-citizens, lived in camps for "nomads" segregated from the rest of society and often even without access to the most basic facilities. It strongly recommended that the Italian authorities address the housing situation of the Roma population in close co-operation with the communities concerned and reminded them that it was important not to base their policies concerning Roma and Sinti on the assumption that the members of these groups lead a nomadic lifestyle.

§94. (...) In all these cases, Roma are left without suitable housing and with no other choice than to move from one site to another, where the living conditions may well be worse than on the site they come from.

§95. ECRI remains concerned about the ongoing assumption that Roma live nomadic lifestyles, an approach which continues to pervade policies concerning them, particularly in the field of housing. The dominant practice is still to relegate the Roma to campsites located far from urban centres, and this is often the solution proposed when rehousing former inhabitants of illegal settlements. ECRI again expresses its great concern regarding the segregation with which Italy's Roma have to contend – whether

they live in legal or illegal settlements, but all the more so in the latter case – and their deplorable housing conditions. It notes further that the forced evictions directly targeting Roma seem to have been stepped up since 2008, which also worsens the discrimination against them in other areas of life, as can be seen from other sections of this report. ECRI underlines that by virtue of international law, a number of protection measures should be in place in cases of forced eviction. It draws the authorities' attention to the importance of ensuring that there are genuine opportunities for consultation of those affected, that adequate and reasonable notice is given, and that those in need of them have access to legal remedies and legal aid. ECRI also emphasises that evictions should not result in persons being left homeless or victims of other violations of their fundamental rights; the State must therefore ensure that alternative housing is offered, even in cases where the evicted persons may only remain in the country for limited periods.

§96. The situation of Roma with respect to housing – which has shown no improvement in recent years, but has on the contrary worsened – has moreover frequently been denounced not only by ECRI, but also by other international bodies, including the Committee on the Elimination of Racial Discrimination, the Council of Europe Commissioner for Human Rights, the Advisory Committee on the Framework Convention for the Protection of National Minorities and the OSCE High Commissioner on National Minorities. The European Committee of Social Rights for its part recently found a number of violations of the European Social Charter (revised) in these matters, some of them aggravated. ECRI deplors the Italian authorities' failure to act to remedy this situation.

§97. ECRI recommends that the Italian authorities firmly combat the segregation suffered by Roma in the field of housing, notably by ensuring that the housing solutions proposed to them do not cut them off from the rest of society but on the contrary, promote their integration. ECRI again stresses to the Italian authorities the importance of not basing their policies towards Roma and Sintis on the preconceived notion that they live a nomadic lifestyle.

§98. ECRI strongly recommends that the Italian authorities ensure that the right to adequate housing is fully respected in the case of the Roma coming under Italy's jurisdiction and draws attention to the urgent need to remedy the health problems reported in this connection.

§99. ECRI urges the Italian authorities to ensure that all Roma who may be evicted from their homes enjoy the full protection of the guarantees of international law in such matters. It underlines that the persons concerned must be notified of any eviction without the possibility of being rehoused in decent accommodation, even if they may stay in the country only for limited periods of time.

§173. Under the legislative decree incorporating Directive 2000/43/EC into Italian law both the public and private housing markets are covered by the prohibition of discrimination. However, ECRI notes with concern continuing reports of discrimination based on colour, religion or ethnic or national origin, particularly for access to private housing. At the same time, some municipalities are introducing tougher eligibility conditions for public housing by increasing the number of requirements to be met (for example, a lengthy period of previous residence in the municipality) or by introducing points systems (based on place of birth, nationality and/or period of residence in the municipality). These measures, which usually have a greater impact on non-citizens (which is sometimes actually their manifest aim), result in indirect discrimination. (... proposals to provide social housing for Roma in some cities have sometimes met with strong opposition from the local population (...)).

§175. ECRI again recommends that the Italian authorities ensure that legislation against direct and indirect racial discrimination in the housing field is rigorously applied, both in the private and in the public sector.

§176. It strongly encourages the Italian authorities to identify best practices at local level in order to eliminate all discrimination based on colour, religion, ethnic or national origin, language or nationality in the field of housing and to ensure that these best practices are applied on a national scale.

6. Access to other goods and services

[Country report by the Commissioner for HR of the COE](#)

§116. The extremely precarious situation of the estimated 15,000 stateless Roma in Italy has been raised on many occasions in the previous reports mentioned above. As set out in the 2011 report, numerous barriers continue to prevent access by stateless Roma, including many born in Italy, not only to citizenship, but also to a legal recognition of their stateless status. Many factors contribute to this situation, including the Italian legal framework, administrative practice, but also the lack of co-operation of the consular services of some successor states of former Yugoslavia.

§117. In their National Roma Inclusion Strategy, the Italian authorities explicitly recognised the fact that the legislation in force makes the recognition of the *de facto* stateless status of Roma, Sinti and Travellers difficult. As mentioned above, the Strategy foresees the establishment of a working group with representatives of the Ministry of the Interior, the Ministry of Foreign Affairs, the Office of the Minister for International Cooperation and Integration, UNHCR and the Roma and Sinti communities as well as human rights NGOs. Its aim will be to examine issues relating to the legal recognition of Roma from the former Yugoslavia and define possible solutions of an administrative and diplomatic nature to overcome *de facto* statelessness. As a possible outcome of this work, the Strategy explicitly refers to the granting of refugee status or a residence permit for humanitarian reasons to Roma from the former Yugoslavia who entered Italy before 1 January 1996.

§118. The Minister of the Interior, Ms Anna Maria Cancellieri, informed the Commissioner that her Ministry insisted on the inclusion of this aspect in the National Roma Inclusion Strategy, as a sign of the importance it attaches to the resolution of this problem. At the time of the Commissioner's visit, the working group in question had however not yet been convened.

§119. The Commissioner welcomes the will demonstrated by the Italian authorities to address the difficulties faced by Roma who are in a situation of statelessness in Italy. He urges them to ensure that the working group announced in the National Roma Inclusion Strategy starts its work as quickly as possible, and that it fulfils its task in a precise timeframe. He hopes that this process will lead to the identification of adequate solutions, enabling the persons concerned to accede at least to the same rights as stateless persons. He also hopes that these solutions will be implemented without delay.

§120. In this process, the Commissioner reiterates the call on the Italian authorities to pay special attention to children born to stateless parents and the relevant recommendations of the Council of Europe Committee of Ministers, and to remedy, as a priority, the problems relating to the acquisition of Italian nationality by children born on Italian territory who otherwise would be stateless. In this connection, the Commissioner also reiterates the call on the Italian authorities to ratify without reservations the European Convention on Nationality.

[CERD Concluding Observations](#)

§23. The Committee notes the difficulties experienced by non-citizens in accessing some social services provided in particular by local authorities. For example, according to Law 133/2008 they cannot access rent reimbursements offered by the State party without providing a certificate of residence for a minimum of ten years. (...)

In line with its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party remove obstacles that hinder the enjoyment of economic, social and cultural rights by non-citizens, in particular their rights to education, adequate housing, employment and health. The Committee recommends that the State party amend its legislation to allow undocumented migrants to claim rights arising out of previous employment and to file complaints irrespective of immigration status. It also recommends that the State party take all other measures to eliminate discrimination against non-citizens in relation to working requirements and conditions.

The Committee recommends that the State party review some of its administrative policies and organize awareness-raising activities for regional and local authorities on the prohibition of racial discrimination, including non-discriminatory access to social services.

7. Availability of equality data

[CERD Concluding Observations](#)

§11. The Committee takes note of the statistical data provided on foreigners and on UNAR's activities but regrets the absence in the report of data on the ethnic composition of the population. It is also extremely concerned by the census which took place further to the state of emergency imposed in May 2008 and the "Nomad Emergency Decree" (NED) regarding the settlements of nomad communities in Italy. It is concerned by the information that this census, in the course of which fingerprints and photographs of camps' residents Roma and Sinti including children have been collected. The Committee notes the declaration made by the State party that data has since been destroyed.

The Committee invites the State party to compile disaggregated data on the ethnic composition of its population. In view of its general recommendation No. 8 (1990) on identification with a particular racial or ethnic group, the Committee wishes to recall that the ways in which individuals are identified as members of racial or ethnic groups should be established on a voluntary and anonymous basis, and on the basis of self-identification by the individuals concerned. The Committee also recommends that the State party refrain from conducting emergency censuses targeted at minority groups.

The Committee strongly recommends that the State party inform the communities concerned that data from the previous emergency census have been destroyed.

[ECRI report](#)

§184. According to the authorities, specific data protection measures govern the collection of data broken down by ethnic origin or by religion, and only the individuals concerned can declare that they belong to a given ethnic group. Consequently, as already noted in ECRI's third report, to monitor the situation of

groups coming within ECRI's mandate in various fields of life such as education, housing or employment, the Italian authorities collect data essentially broken down by nationality. ECRI has already observed that this approach seems to reflect a situation where most members of groups coming within its mandate are non-citizens. It nonetheless also underlined that the number of such persons who are Italian citizens is bound to increase. This analysis remains valid. ECRI accordingly again points out the need to consider ways of adapting the systems for monitoring the situation of the groups coming within its mandate to these changing circumstances.

§185. In this connection, ECRI refers to its findings, first, that the censuses performed in the so-called "nomad" campsites, particularly in 2008 and 2009, primarily concerned persons of Roma or Sinti origin and, secondly, that the data apparently have not always been gathered in accordance with the principles of confidentiality, informed consent and individuals' voluntary self-identification as members of a particular group.

§186. ECRI reiterates its recommendation that the Italian authorities improve their system for monitoring the situation of minority groups by collecting relevant information in various fields, broken down according to categories such as ethnic or national origin, language, religion and nationality. It stresses the need to ensure that the system put in place is compliant with European standards in matters of data protection and protection of privacy. The Italian authorities should in particular ensure that data collection is always carried out in full accordance with the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. The system for collecting data on racism and racial discrimination should also take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination.

8. Positive action

[Country report by the Commissioner for HR of the COE](#)

§65. The Commissioner therefore warmly welcomes the adoption of a National Strategy for the Inclusion of Roma, Sinti and Caminanti Communities (hereafter: "National Roma Inclusion Strategy") in February 2012, a step undertaken by Italy in the framework of its EU obligations.

The Office against Racial Discrimination (hereafter, "UNAR") which has been designated as the relevant National Focal Point for the Strategy, also ensured the consultation process leading up to the adoption. The Commissioner notes with satisfaction that representatives of Roma and Sinti that he met during his visit were particularly appreciative of this consultation process, which they considered to be a first in Italy. He commends the Italian authorities for these consultations and the commitment expressed in the Strategy to further pursue the involvement of the Roma, Sinti and Caminanti communities, relevant NGOs, as well as regional and local authorities in the implementation process.

§66. As regards policy development, the Minister for International Co-operation and Integration has been entrusted with the task of establishing a "political control room" of the policies for the coming years, which will guide the integration process over time, together with other relevant Ministers and through the involvement of representatives of regional and local authorities, as well as of the Roma, Sinti and Caminanti themselves.

§67. The Commissioner finds that the Strategy includes a wide range of useful measures in the four axes of intervention set out in the EU Framework (education, employment, health, housing). It also appears to reflect an adequate understanding of the shortcomings in the former policies *vis-à-vis* Roma and Sinti, pointing to the need of a profound shift towards inclusion and empowerment.

68. However, many interlocutors and the European Commission observed that the proposed measures are not reinforced by precise quantitative targets, figures and indicators, or by clear timeframes for the implementation of individual measures, a circumstance which will make monitoring of progress difficult. A precise quantification of the corresponding financial resources is also lacking. The Commissioner understands that some of these aspects have been left to various working groups (see below), which should develop them in 2012-2013. This may, however, carry a risk of fragmentation.

§69. The Commissioner is particularly pleased to note that the Strategy places a strong emphasis on the need to address the continued lack of a comprehensive national legal framework affording protection to the languages and culture of Roma and Sinti people, who are currently excluded from the scope of Law 482/1999 concerning the protection of the linguistic and cultural minorities of Italy. The Commissioner is concerned that this lack of recognition currently hampers precisely

the spreading of knowledge about Roma and Sinti culture and history that is sorely needed in Italy to help address the high levels of anti-Gypsyism in the country. This state of affairs has also been criticised both by the Council of Europe Advisory Committee on the Framework Convention and European Commission against Racism and Intolerance (ECRI) as exposing Roma and Sinti to particularly serious forms of abuse.

§73. The Commissioner considers that the adoption of Italy's first national strategy for the inclusion of Roma and Sinti, which represents a break from past policies concerning these groups, was a momentous event, offering great potential for the protection and promotion of the human rights of these persons in Italy.

§74. It is clear, however, that the initial stages of its implementation will be critical, in particular for the identification of the financial framework within which the strategy will be put into practice which, for the time being, remains largely undefined. The Commissioner recommends that, following this initial phase, precise quantitative targets and indicators be attached, and adequate financial resources be allocated to the measures envisaged under each one of the axes of intervention. While doing so, the Italian authorities should bear in mind that the integration of Roma and Sinti, especially following years of very counterproductive policies and practices, will require not only considerable resources, but also a sustained effort in terms of training and awareness-raising. It will also require constructive public debate to ensure genuine ownership of the Roma and Sinti inclusion agenda among the general population.

§75. The evolution of national, regional and local consultation mechanisms, as well as of an efficient monitoring framework, are also issues that will have to be followed very closely. For this purpose, the Commissioner calls on the Italian authorities to build on the successful consultation practice during the period leading up to the adoption of the national strategy.

§76. While implementing the strategy, the Commissioner considers that the Italian authorities could pay more attention to relations between the police and Roma, Sinti and Traveller communities. He also recommends that the authorities capitalise on the work of the Council of Europe Training Programme for Roma Mediators (ROMED).

§77. The Commissioner strongly supports the Italian authorities in their efforts to finally provide the Roma and Sinti communities of Italy with an adequate national legal framework for the protection and promotion of their languages and culture.

§78. The Commissioner would like to express his deep concerns about the announced cuts to UNAR, which jeopardise the capacity of this Office not only to act as the national focal point of the national strategy, but also to continue to fulfil its crucial role in the fight against discrimination, which it has been carrying out with increasing efficiency and independence, despite statutory limitations. The Commissioner stresses the importance of national human rights structures in times of austerity budgets, and strongly urges the Italian authorities to reinforce UNAR, both in terms of resources and independence, as opposed to radically reducing its resources as announced.

§90. (...) the Commissioner also notes that the establishment by the Roma and Sinti communities of Milan of a consultation mechanism ("*Consulta Rom*") in June 2011 constitutes a very promising development. He considers that by bringing together Roma and Sinti groups and representatives of both authorised and unauthorised camps for the first time, the Consulta constitutes a clear opportunity for local authorities to finally ensure genuine involvement of these communities in the decisions concerning their future.

[CERD report](#)

§7. The Committee welcomes the creation of a working group tasked to prepare by September 2012 a new National Plan of Action against all forms of racial discrimination and to implement the Durban Declaration and Programme of Action at the national level.

§8. The Committee welcomes the adoption on 24 February 2012 of the National Strategy for the Inclusion of Roma, Sinti and Camminanti communities within the European Union Framework covering relevant key sectors such as education, employment, health and housing.

§9. The Committee notes with particular interest the information provided by the State party on the creation of a new Ministry for Cooperation and Integration, to be responsible, inter alia, for interethnic relations.

§10. The Committee welcomes the information that the State party is considering withdrawing its declaration with regard to Article 4 of the Convention.

[ECRI report](#)

Some municipalities are implementing programmes with the aim of promoting the social inclusion of Roma, for example by facilitating access to school for Roma children, supporting the inclusion of Roma in the labour market or distributing information to them on access to health care in Romanian and the Romany language. A number of initiatives are also implemented in the regions to improve the social inclusion of migrants in the field of housing and to better protect their health.

The Ministry of Education has held training seminars for teaching and auxiliary staff in schools, touching on the inclusion of Roma children in schools and how to promote integration at school; for pupils, respect for human rights and non-discrimination is covered in the new "Citizenship and Civilisation" subject.

§101. (...) ECRI notes with interest that many municipalities are implementing programmes aimed at facilitating access to school for Roma children, including the provision of school buses, and that the authorities have set up a system of local agreements to reduce underperformance at school. According to the information in its possession, the approach adopted by teachers and schools towards Roma children coming into contact with the school system seems to be welcoming.

§106. The authorities have referred to a variety of efforts to foster the social inclusion of Roma. A number of initiatives were funded by central government between 2007 and 2008 in an amount of € 5 million, including through agreements reached with local and regional authorities, to support the inclusion of Roma in the labour market, integrating Roma pupils into the school system (see above) and providing housing for the Roma population; the Ministry of Health also ran a scheme aimed at distributing information on access to health care to the Roma and Sinti in Romanian and the Romany language. A national technical "task force" for the social inclusion of Roma and Sinti, notably in the employment field, has also been set up and seeks to facilitate dialogue and the exchange of information between the various parties involved in implementing initiatives in favour of the Roma financed by the EU Structural Funds; in parallel, the Ministry of Labour and Social Policy is participating in research aimed at gathering specific data on the implementation of projects in favour of the Roma financed by the EU Structural Funds. The Council of Europe's awareness raising campaign on Roma - "Dosta!" - has also been launched in Italy.

§107 (...) ECRI points out that to deal simultaneously with all the disadvantages suffered by Roma and Sinti in different areas of daily life, and to address discrimination against them on a lasting basis, it is vital to adopt a comprehensive approach to these issues under a clear policy established at national level. ECRI notes with interest that one of the four pillars of the Third National Plan of Action and Intervention for the protection of rights and development of subjects in developmental age, adopted by presidential decree on 21 January 2011, is dedicated to promotion of interculturality. In this context, a variety of actions are provided for, notably to promote inclusion at school, protect the health of Roma children and adolescents and promote diversity training for teaching and non-teaching staff in schools. ECRI hopes that this Plan will have a positive impact for Roma children and adolescents and invites the authorities to evaluate carefully the impact that it has in practice.

§163. According to figures supplied to ECRI by the authorities, the number of noncitizen pupils has risen over the past few years; such pupils now constitute about 7% of the Italian school population. Temporary remedial classes are provided to encourage the learning of Italian by pupils who lack sufficient knowledge of it. ECRI notes this measure with interest whilst recalling its General Policy Recommendation No. 10 which states that education policies must avoid placing children from minority groups in separate classes; it is important that such classes be for a limited period of time, justified by objective and reasonable criteria and provided only if in the best interests of the child. ECRI also stresses the need to ensure that primary and secondary teachers are trained in sufficient numbers to meet pupils' needs for language support.

§174. The authorities have pointed to a number of initiatives in the regions financed by the fund for social inclusion of migrants in the field of housing. ECRI notes with interest that these initiatives have included construction of new buildings for temporary accommodation of migrants with financial or health problems, public or private action to renovate buildings able to provide accommodation, and assistance to improve access to housing and combat discrimination in this field.

§178. (...) ECRI notes with interest that over the past few years the authorities have been running a number of projects aimed at protecting the health of the most vulnerable, including migrants. These projects cover prevention and treatment of infectious diseases, reception of migrants by health staff, and development of indicators in order to improve overall reporting of migrants' state of health and adapt available resources in this field accordingly. Other specific projects have endeavoured to improve access to health care for Roma and Sinti by producing a leaflet in Romanian and Romany and, in some regions, by setting up mobile health services able to dispense medical care and vaccines directly in Roma settlements.

9. Equality bodies

[Country report by the Commissioner for HR of the COE](#)

§72. The Commissioner considers that constant monitoring and evaluation, as well as effective coordination of the strategy will be key for its success. He welcomes the critical role that UNAR will be called to play for this purpose. However, he was also surprised to learn that the staff of this agency, which is already significantly under the level initially foreseen, is at risk of being drastically reduced as a result of the ongoing spending review. The Commissioner understands that as a result notably of the non-renewal of secondments from various ministries UNAR will lose 9 out of the 14 staff currently working for the institution.

[CERD report](#)

§14. The Committee notes concerns raised regarding the need to increase the independence of UNAR as the single equality body established in compliance with European Union Directives (art. 2).

Noting the commitment by the State party to improve UNAR's functional, administrative and management independence, the Committee recommends that the State party take necessary measures to guarantee the independence of UNAR so that it may implement its activities more efficiently.

[ECRI report](#)

§38. In its third report, ECRI welcomed the establishment of the National Office against Racial Discrimination (*Ufficio Nazionale Antidiscriminazioni Razziali* or UNAR). This body is responsible for a number of important aspects of the fight against discrimination based on race or ethnic origin. ECRI invited the authorities to keep the status, powers and duties of UNAR under review, in order to ensure that this Office provided victims of racial discrimination with the most effective protection possible. In particular, ECRI drew the attention of the Italian authorities to the need for such a body to be independent and to the range of powers that should be conferred on a specialised body of this kind.

§39. In recent years, UNAR has significantly expanded its activities, becoming more active and more visible. Thanks to UNAR's work and joint initiatives with the relevant prefectures, a number of discriminatory municipal orders have been annulled. As regards its work with victims of discrimination, the funding and staffing of UNAR's contact centre (formerly a call centre) have doubled. UNAR has also held several hearings at regional level in an effort to increase the number of NGOs entitled to bring court

cases. As a result, over 450 NGOs have now been granted this right. When it comes to raising awareness about discrimination and promoting equal opportunities, UNAR's efforts have been directed mainly at reinforcing the annual week of action against racism, organising the Italian version of the *Dosta!* campaign to combat discrimination against the Roma, introducing an annual week against violence and implementing the *Diversità come valore* project (diversity as an asset), which is co-financed by the European Union and in which several NGOs active in the fight against racism are directly involved. In addition, the organisation of joint initiatives designed to raise awareness about discrimination, particularly in sectors such as youth, sport and schools, is included by UNAR in its agreements with regional players involved in the fight against racism. Finally, in the framework of projects financed under the European Social Fund, UNAR is participating in actions that aim to establish a standardised system to monitor the number and types of complaints of discrimination and to set up a database covering all forms of discrimination at local level.

§40. ECRI welcomes this positive development. It also notes with interest that according to information provided by UNAR, the latter is beginning to include in its work grounds for discrimination other than race and ethnic origin, which are the only two formally recognised by law; in 2010, for example, 10% of the cases dealt with by UNAR related to other grounds for discrimination. While this wider role is acknowledged in fact by the Department for Equal Opportunities, ECRI believes it would be better if it were placed on a clear statutory footing, not least in order to make it more effective and more visible to victims of discrimination and the associations and lawyers who work with them. Furthermore, and although the extension of the list of NGOs entitled to represent victims of discrimination before the courts is encouraging, ECRI notes with regret that UNAR itself is still not entitled to bring legal proceedings; this function is part of the range of powers and responsibilities that, in ECRI's view, ought to be assigned to independent specialised bodies to combat racism and racial discrimination at national level. ECRI also emphasises, given that the applicable legislation in the field of combating racism and racial discrimination seems still to be relatively little known, the importance of further strengthening awareness-raising activities in this field.

§41. In terms of structure, it should be noted that UNAR still comes under the Department for Equal Opportunities of the Presidency of the Council of Ministers. For many involved in the fight against racial discrimination, this direct institutional link is a source of concern as it runs counter to the kind of independence that is necessary for the effective operation of such a body. ECRI notes that representatives of UNAR have highlighted the autonomy and impartiality that should typify the organisation, and that, in practice, UNAR has been able to criticise discriminatory measures adopted at national level and to have them annulled. As underlined, however, in ECRI's General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, the principle of the independence of such bodies must be observed: this is the best way of ensuring both the effectiveness of such bodies and public confidence in them. ECRI likewise wishes to emphasise in this context the need to provide specialised bodies with sufficient funds to enable them to carry out their functions and responsibilities effectively.

§42. ECRI recommends that the Italian authorities take steps to enhance the role of UNAR, in particular by formally extending its powers so that the relevant legislation clearly covers discrimination based not only on ethnic origin and race but also on colour, language, religion, nationality and national origin; by granting it the right to bring legal proceedings; and by ensuring that its full independence is secured both

in law and in fact. ECRI wishes to stress in this regard that UNAR must also be provided with all the necessary human and financial resources, in the light of its workload.

§43. ECRI also encourages the Italian authorities to increase the human and financial resources placed at the disposal of UNAR for carrying out its activities to raise awareness against discrimination and to promote equal opportunities.

§44. In its third report, ECRI urged the Italian authorities to ensure that the regional centres for monitoring racial discrimination provided for by law were set up in all regions without further delay. It further recommended that the Italian authorities ensure thorough co-ordination between the work of these centres and that of UNAR.

§45. Since then, UNAR has concluded several agreements aimed at setting up regional centres, or developing contacts with existing centres, and ensuring close co-ordination between the various levels of responsibility. UNAR intends to continue developing these agreements in the coming years. It has also concluded an agreement with the Observatory for Protection against Acts of Discrimination (set up by the state police in 2009), to highlight any instances of discrimination and to encourage people to file complaints and also to encourage co-ordination and co-operation with all the relevant players. Thanks mainly to these initiatives, the number of discrimination cases dealt with by UNAR doubled between 2009 and 2010, from 380 to approximately 750 according to estimates at the end of October 2010.

§46. ECRI encourages all the relevant authorities to continue extending the network of regional centres for monitoring racial discrimination and emphasises that they must be provided with all the necessary human and financial resources to enable them to function effectively.

NETHERLANDS

Sources

1. [CERD Concluding Observations](#) (March 2010, CERD/C/NLD/CO/17-18)
2. [ECRI report](#) (February 2008, CRI(2008)3)
3. [Report by the Commissioner for HR of the COE](#) (September 2008, CommDH(2009)2)
4. OSF experts: Eva Foldes and Eefje de Kroon (February 2013)

1. General trends and challenges

[CERD Concluding Observations](#)

§4. While acknowledging that the Government's letter to Parliament on integration (November 2009) contains information on policies and measures to combat discrimination, the Committee notes that the letter does not constitute an adequate replacement for the comprehensive plan of action to combat discrimination that had been in place until 2007. The Committee is also concerned that the current policy on integration has effectively shifted the primary responsibility for integration from the State to immigrant communities. (art. 2)

The Committee recommends that the State party proceed with the expeditious preparation and implementation of a plan of action to address discrimination in all areas covered by the Convention. It also recommends that the State party ensure that its integration policies reflect an appropriate balance between the responsibilities of the State under the Convention and the responsibilities of immigrant communities.

§6. The Committee takes note of the information provided by the State party that its anti-discrimination policies are not aimed at specific groups. It is concerned, however, that this may result in indirect discrimination and insufficient attention being paid to the needs and concerns of groups which may, at different periods of time, be particularly susceptible to direct or indirect discrimination. (art. 2)

The Committee encourages the State party to maintain a flexible approach to addressing discrimination, whether direct or indirect, including through appropriate special measures in line with general recommendation No. 32

[ECRI report](#)

§82. The Dutch authorities have reported that many Antilleans who live in the Netherlands experience various inter-connected problems, including low levels of education, high levels of unemployment, broken families, teenage pregnancy and involvement in criminal activities. (...)

§139. (...) in practice, the discussions around the proposed ban have opened new opportunities for further discrimination or exclusion of Muslim women generally in everyday life.

§88. (...) ECRI shares the view consistently expressed by civil society groups that the levels of disadvantage and discrimination faced by the members of the Roma and Sinti communities are such that they can hardly be tackled effectively without a corresponding commitment and co-ordination role at central government level.

§142. (...) the members of the Muslim population in the Netherlands experience discrimination in different areas of life, including employment or access to public places. For many Muslims, discrimination often happens at the intersection between religion, nationality and ethnic origin. Official figures indicate that Moroccans are in a particularly vulnerable situation.

[Report by the Commissioner for HR of the COE](#)

§151. The Framework Convention for the Protection of National Minorities applies to the Frisians but not to the Roma and Sinti since the latter are not recognized as a national minority in the Netherlands. NGOs disagree with this restrictive point of view, which will be discussed in the context of the first report submitted by the Netherlands under the Convention. He urges the Dutch authorities to give recognition to the Roma and Sinti as a minority under the Convention.

§152. The Commissioner received worrying though fragmented reports about the situation of Roma and Sinti in the Netherlands, including information about problems with housing, high unemployment rates, health, school drop-out, discrimination on the labour market, problems with delivery of goods and services and a negative image among the police and justice system. However, he notes a low number of complaints submitted by Roma and Sinti to the Antidiscrimination Agencies.(...)

2. Employment

[CERD Concluding Observations](#)

§12. Despite the measures taken by the State party, including the Social Cohesion Initiative and the establishment of the National Diversity Management Network, the Committee takes note of information that rates of unemployment in ethnic minority groups, particularly women, are significantly higher than average. The Committee is also concerned at the under-representation of ethnic minorities in senior positions in the public and private sectors. (art. 5)

The Committee recommends that the State party take more effective measures to eliminate discrimination in access to employment, through, *inter alia*, awareness raising campaigns in the private and public sectors. The Committee urges the State party also to implement measures to achieve the equitable representation of ethnic minorities in elected bodies and other public sector services. The Committee encourages the State party to consider the use of special measures to address the above disparities, as envisaged in article 1 of the Convention, taking into account general recommendation No. 32 (2009).

[ECRI report](#)

§63. Civil society organisations have underlined that these developments reflect a more general trend since ECRI's second report in the Netherlands to relinquish labour market policies specifically targeted at ethnic minority groups. The Dutch authorities confirm that since ECRI's second report, preference has been given to general labour market policies targeted at persons in need of support irrespective of ethnic origin. However, they also stress that the priority areas covered by these policies (e.g. reduction of long-term and youth unemployment) are problem areas which particularly affect ethnic minority groups. In addition, the Dutch authorities stress that they have commissioned a study on obstacles faced by ethnic minorities in the labour market. This study identifies stereotyping and discrimination among such obstacles and proposes a range of measures to tackle these, ranging from awareness-raising campaigns and diversity policies in the workplace to the deployment of positive role models and the establishment of codes of conduct and complaints procedures. The Dutch authorities report that they have taken a number of measures on the basis of this study. These include, once again, general measures but also some

initiatives targeted specifically at ethnic minority groups, such as women of foreign origin, refugees, and youth of Moroccan and other non-Dutch origin.

§64. Since ECRI's second report, the majority of registered complaints of discrimination continue to concern employment. ECRI notes that there has been a considerable increase in the number of complaints of discrimination on grounds covered by its mandate that are filed with the local antidiscrimination bureaus, a phenomenon that is reported to reflect at least in part a better awareness among the general population of the institutional antidiscrimination framework in place. ECRI notes that religion has increasingly been cited as a ground of discrimination in employment and that most complaints relate to discrimination in the workplace, a circumstance that may tend to indicate that the provisions in force against racial harassment still need to be more fully applied. ECRI notes that at the same time as the number of complaints filed with the antidiscrimination bureaus increases, the number of decisions rendered by the CGB on employment discrimination cases related to race and religion has decreased in the last few years.

§65. More generally, ECRI notes that since its second report, unemployment has increased noticeably for ethnic minorities, especially Moroccans, Turks and Antilleans. Although a middle-class is reported to be slowly emerging from among ethnic minority groups, the members of these groups are still seriously overrepresented among unemployed youth and the long-term unemployed.

§66. ECRI strongly recommends that the Dutch authorities strengthen their efforts to improve the position of ethnic minority groups in the labour market. It encourages the Dutch authorities in their efforts to combat discrimination. However, it considers that positive measures in the field of employment aimed specifically at the ethnic minority population should be used more widely than is the case at present. In so doing, it recommends that the Dutch authorities target these measures to those groups that appear to be most disadvantaged, particularly Moroccans, Turks and Antilleans.

§67. ECRI recommends that the Dutch authorities monitor the implementation of the legal provisions in force against racial discrimination in employment. In particular, it recommends that they monitor the effectiveness of the provisions prohibiting racial harassment in the workplace and take any necessary corrective action.

§101. The Dutch authorities have reported that the representation of ethnic minority officers in the police is gradually improving. They report that when all police forces are considered, ethnic minorities constitute around 10% of the total number of officers, with some police districts showing higher percentages (14% in Amsterdam, for instance). ECRI also notes however, that there are police forces where the representation of ethnic minority police officers is extremely low. The Dutch authorities have stressed that, as reflected in the 2006-2010 Multi-Year Framework for Police Diversity Policy, attention is increasingly shifting, in matters of recruitment, from an approach aimed at reflecting the composition of society to an approach centred around the achievement of strategic and operational goals, where diversity is viewed as a business issue.

§104. ECRI recommends that the Dutch authorities strengthen their efforts to ensure a sustainable representation of ethnic minorities within the police forces. To this end, it encourages them in their efforts to identify and address the causes of ethnic minority officers leaving the police service and investigate possible patterns of discrimination in these officers' career paths. ECRI also recommends that the Dutch authorities ensure that police officers receive specialised training to help them become aware of prejudice and stereotypes.

§105. ECRI recommends in particular that the Dutch authorities ensure that efforts in these fields are made within police forces throughout the country.

Report by the Commissioner for HR of the COE

§134. (...) the activity rate of migrant women is lower than that of indigenous women. Research shows that discrimination is one of the reasons why the participation of migrant women is lagging behind. Several reports have expressed the presumption that employers select trainees and job applicants on ethnic origin and that in particular Muslim women wearing a headscarf suffer from this type of discrimination. The Commissioner discussed this with the Minister of Social Affairs and Employment and welcomes the antidiscrimination campaign currently being set up. The Commissioner encourages the Dutch authorities to continue combating structural and persistent inequality of women on the labour market, including the pay gap and the lack of participation of migrant women.

§146. Racial discrimination on the labour market, in particular relating to the recruitment process is one of the most pressing problems, especially for young people from certain ethnic minority communities. Only one third of Dutch-Moroccans and half of Dutch-Turks have paid employment. The Minister of Social Affairs and Employment proposed a Plan of Action particularly focusing on combating discrimination on the work floor, including a campaign to combat negative perceptions and discrimination in relation to ethnic minority job-seekers.

3. Education

[CERD Concluding Observations](#)

§7. The Committee is concerned that the de facto segregation of educational establishments, particularly primary and secondary schools, remains a problem in the State party and that measures such as the establishment of the Mixed Schools Knowledge Centre and the role assigned to the Education Inspectorate in promoting integration have proved inadequate. (art.3)

The Committee urges the State party to increase its efforts to prevent and abolish segregation in education, including through the review of admissions policies which may have the effect of creating or exacerbating this phenomenon and other disincentives to such segregation.

[ECRI report](#)

§68. In its second report, ECRI expressed concern at *de facto* racial segregation in Dutch schools. This resulted from a range of factors, including spatial (socioeconomic) segregation and the practice of indigenous Dutch parents living in neighbourhoods with a large ethnic minority population of sending their children to schools in other areas (the so-called "white flight"). ECRI recommended that the Dutch authorities counter this phenomenon by improving support to weaker schools, in order to attract enrolment in these schools by a wider mix of children, and by encouraging parents to send their children to a school within the neighbourhood where they live.

§69. ECRI notes that since its second report, the issue of the desegregation of Dutch schools has been widely discussed. The governing principle remains the right of parents to send their children to the school of their choice. However, the Dutch authorities stress that, following a report by the Education Council, which examined and made recommendations on issues of desegregation, individual schools have been required since August 2006 to consult with their municipalities about the best ways to combat school segregation. The concrete commitments depend on the local situation, but the Dutch authorities have stressed that options include group enrolment of underrepresented pupils, providing parents with better information about school selection, pupil exchanges and the development of joint activities between schools, for instance in the fields of sport or culture. The Dutch authorities have also reported that they continue to channel extra funds to schools whose pupils experience socio-economic disadvantage.

§70. Although the Dutch authorities recognise that imbalances in the levels of educational attainment between the majority and minority populations are still very significant, they underline that such imbalances are getting smaller. Since ECRI's second report, the average educational level has increased more for ethnic minority groups than it has among the majority Dutch population.

§71. ECRI recommends that the Dutch authorities continue to address *de facto* segregation in Dutch schools, in line with its General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education. In so doing, the Dutch authorities should continue to combine measures aimed at improving the quality of schools with a significant ethnic minority population with initiatives aimed at providing incentives for parents to send their children to schools in their own neighbourhoods.

[Report by the Commissioner for HR of the COE](#)

§159. Another effect of segregation in the housing market is the *de facto* racial segregation in schools. Almost 10% of all primary and secondary schools belong to the category of so-called 'black schools' (70% of all pupils are from a non-western immigrant background). In the four big cities 50% of the schools belong to that category. As the Constitution guarantees the freedom of choice of parents to select the school, many parents choose a school which is known as a

'white school'. This is known as the *white flight* and it creates *de facto* segregated schools. The National Ethnic Minorities Consultative Committee expressed concerns that segregation in education continues rapidly and that children from minority groups are attending the worse performing schools. Nevertheless, the Commissioner notes the improvement of the education level of ethnic minorities and that the number of students attaining secondary and higher education qualifications is slowly but surely increasing. This was also the impression he was given during a visit to a secondary school in Rotterdam. While the government decided not to make structural changes to combat the *white flight*, it urges municipalities to work in close cooperation with schools and focus their policy on eliminating educational disadvantage.

4. Health care

(...)

5. Housing

[ECRI report](#)

§72. Since ECRI's last report, increasing attention has been given in the Netherlands to policies aimed at countering the disproportionate concentration of members of ethnic minority groups in certain neighbourhoods. In this context, the decision of the Municipality of Rotterdam to ban persons who do not meet certain income requirements from residing in certain neighbourhoods has attracted considerable national and international attention and criticism. The Urban Areas (Special Measures) Act provides that in order to stop the deterioration of certain neighbourhoods, municipal authorities may obtain permission from the Minister of Housing, Spatial Planning and Environment to set requirements for potential residents of these neighbourhoods, provided that these measures are essential to alleviating the problems addressed and that they are justified by the seriousness of the problem. In application of this Act (which has since then been referred to as the "Rotterdam Act") in 2006 the Municipality of Rotterdam obtained an authorisation from the then Minister to ban persons who do not have an income from employment from residing in a number of local districts. ECRI notes that this measure, which it understands was originally targeted to ethnic minorities and only subsequently to persons defined by the income requirement, was found by the CGB to discriminate indirectly on the basis of race and ethnic origin. The Dutch authorities have maintained, however, that the measure in question is in conformity with the principle of non-discrimination, notably as it is a temporary measure taken as a last resort and in consideration of the fact that those affected are able to find accommodation in the same municipality or elsewhere in the area. They have also stressed that this measure has been adopted to complement other social policies aimed at improving the conditions in these neighbourhoods and that it will be evaluated in 2007.

§73. ECRI notes that the Dutch authorities have recently selected forty districts throughout the country, including all the districts covered by the Rotterdam Act, to which they will target priority interventions in the field of housing, but also in other areas, including employment, education and security.

§74. ECRI encourages the Dutch authorities to continue their efforts to counter the disproportionate concentration of ethnic minority groups in disadvantaged neighbourhoods. While recognising the challenges posed by this task, ECRI strongly recommends that the Dutch authorities monitor the impact of measures taken in these fields and ensure that these comply with the prohibition to discriminate directly or indirectly on the basis of grounds covered by ECRI's mandate. It recommends that policies that are found to be in breach of such prohibition should be discontinued.

§75. ECRI recommends that in their efforts to combat *de facto* segregation the Dutch authorities give priority to measures aimed at improving the socio-economic conditions prevailing in disadvantaged areas.

[Report by the Commissioner for HR of the COE](#)

§158. A second aspect of the Integration policy is combating segregation in housing and neighbourhoods. Ethnic segregation in the housing market is a reality in the four largest Dutch cities. For this reason the government identified 40 neighbourhoods with a high concentration of immigrants, lower income families, high unemployment rates, high rate of school drop-out and high crime rates. Several instruments, including extra financial support, stimulation of a mix of

residents, improving living standards, and promotion of employment and education, are applied to combat segregation. The introduction of the *Special Measures Act 'Urban Areas'* serves as the legal basis for municipalities to enable them to put extra conditions to 'newcomers' on the housing market. The authorities informed the Commissioner that Rotterdam is the only municipality using the Act. The initial condition imposed by Rotterdam to demand 120% of the minimum wage as a criterion to allocate housing in some parts of the city has been replaced by 'income from labour' (as opposed to income from social security) after an Equal Treatment Committee ruling in July 2005. Nonetheless, NGOs criticised that this implies that people without employment are excluded from living in certain areas. The Commissioner is concerned that poor and/or unemployed people may be discriminated against by this legislation. He recommends to evaluate and review the Special Measures Act 'Urban Areas' as well as the Housing Act to ensure that segregation on the housing market is efficiently combated.

6. Access to other goods and services

[CERD Concluding Observations](#)

§13. The Committee notes with concern the prevalence of discrimination in the admissions policies and practices of fitness centres, catering establishments and places of entertainment. (art. 5)

The Committee recommends that the State party continue and strengthen its efforts to address such practices.

[ECRI report](#)

§77. ECRI encourages the Dutch authorities in their efforts to counter racial discrimination in access to places of entertainment. It recommends that the Dutch authorities monitor the effectiveness of measures taken to this end, including the impact of door policy panels.

§78. Since ECRI's second report, racial discrimination in access to certain banking services has been increasingly reported and discussed in the Netherlands. Problems examined have concerned essentially indirect racial discrimination in the granting of mortgages. ECRI notes, for instance, that the CGB found that the practice followed by the vast majority of banks of refusing mortgages to those in possession of a temporary residence permit amounted to indirect discrimination on grounds of race and nationality. ECRI also notes that the CGB is currently carrying out an investigation into redlining practices (i.e. practices consisting of refusing mortgages to applicants living in certain areas) in order to assess their conformity with equal treatment legislation. ECRI is pleased to note that in 2006 the Ministry of Finance played an important role in encouraging the adoption of a code of conduct by the banking sector. In force since January 2007, the code provides that surname or postal code should not be taken into account in banks' decisions on whether or not to grant a mortgage. ECRI understands that the Ministry of Finance is notified of complaints for violations of the provisions of the code that may point to structural problems.

§79. ECRI encourages the Dutch authorities in their efforts to counter racial discrimination in banking services. It recommends that they monitor the effectiveness of initiatives in place to counter this phenomenon.

7. Availability of equality data

[CERD Concluding Observations](#)

§14. The Committee notes the absence, in the report of the State party, of detailed information on the socio-economic situation of minority groups resident in the State party, including Muslims, Roma and persons of Surinamese and African descent. It is, nevertheless, aware of information that a significant number of persons belonging to ethnic minorities experience social marginalization and discrimination, particularly in the areas of education, health and housing. (art. 5)

The Committee recommends that the State party provide, in its next periodic report, more detailed information, including statistical data disaggregated by age, gender and ethnic origin, on the socio-economic situation of all minority groups, particularly in relation to their access to education, health, employment and housing.

[ECRI report](#)

More generally, however, ECRI notes that the lack of ethnic monitoring of relevant police and security activities

and the absence of in-depth research on racial profiling practices negatively affect the Dutch authorities' ability to recognise and address any such practices.

§114. As highlighted in its General Policy Recommendation No.1, ECRI attaches importance to the collection of data broken down by categories such as "race", colour, language, religion, nationality and national and ethnic origin, in order to monitor possible patterns of discrimination in different areas of life and redress, as necessary, situations of disadvantage facing certain minority groups. The Dutch authorities do not collect information broken down according to all these grounds. However, a considerable amount of information is available in the Netherlands broken down by "allochthony" – "allochthonous" persons (in Dutch *allochtonen*) being persons who, irrespective of their nationality, were born outside the Netherlands (first-generation *allochtonen*) or have one parent born outside the Netherlands (second-generation *allochtonen*). However, the extent to which this information is used to inform policy aimed at improving the situation of those persons who are found to be at particular disadvantage is not clear to ECRI, especially as social policies in recent years have been targeted less and less at specific ethnic minority groups. Instead, it has been stressed that such information is rather used to target security measures at particular minority groups. Furthermore, ECRI notes that, as the number of citizens who are third-generation descendants of persons born outside the Netherlands increases, the classification on the basis of "allochthony" appears less and less apt to monitoring patterns of racial discrimination.

§115. ECRI recommends that the Dutch authorities improve their systems for monitoring the situation of minority groups in different areas of life by collecting relevant information broken down according to categories such as national or ethnic origin, religion, language and nationality. It recommends that they ensure that this is done in all cases with due respect to the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. These systems should be elaborated in close co-operation with all the relevant actors, including civil society organisations and take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination.

§116. ECRI stresses the need for such data to be used to monitor patterns of discrimination or situations of disadvantage facing minority groups. It should not be used for purposes that contribute to further stigmatising the members of such groups.

[Report by the Commissioner for HR of the COE](#)

The Commissioner is concerned about the fragmented data collection systems in place and recommends that better coordination and cooperation between the anti discrimination bodies is established and data collection procedures be streamlined.

8. Positive action

[ECRI report](#)

§62. (...) the Dutch authorities established an expertise centre on diversity and employment (DIV), which since 2004 has promoted diversity management among employers. ECRI understands that DIV will be discontinued at the end of 2007.

§76. In its second report, ECRI recommended that the Dutch authorities strengthen their efforts to counter racial discrimination in access to places of entertainment, through both awareness-raising measures targeted at those running these establishments and a more vigorous implementation of the existing legal provisions against discrimination. ECRI is pleased to note that since then the Dutch authorities have devoted attention to this problem and funded a number of projects aimed at countering it. The approach adopted by the Dutch authorities combines a smoother, more preventative, approach with the possibility of taking legal action when appropriate. As part of this approach, they have supported the establishment of door policy panels, an initiative piloted in Rotterdam which has since then been extended to other municipalities. Composed of representatives of the entertainment industry, the local authorities, the police, the Public Prosecutor Service and the local antidiscrimination bureaus, the panel examines customer complaints relating to entrance policies and takes the necessary action.

§82. (...)in order to improve opportunities for young first- and second-generation Antilleans, arrangements have been made with cities with a high concentration of Antillean population. As part of these arrangements, projects and policies are developed in collaboration with the communities concerned for reducing early school-leaving, unemployment and criminal activities among Antilleans between 12 and 24 years of age. The Dutch authorities report that such arrangements, which have been in place since 2005 and will continue until 2008, will be evaluated.

§88. At central government level, funds were earmarked in 1998 for the rehabilitation of victims of World War II, part of which are being used to design and implement a number of projects for the benefit of the Roma and Sinti communities in different areas. One of these projects consists of the establishment of a multifunctional centre for Roma and Sinti. The centre will be established on a small scale before the end of 2007 and include an office where complaints of unfair treatment by a government may be filed.

§89. Education, employment, relations with the criminal justice system and access to public places are some of the areas where research shows that Roma and Sinti experience serious disadvantage and discrimination. ECRI also notes that in specific areas (such as housing) the ethnic Dutch Traveller

community also experience problems similar to those affecting certain Roma and Sinti communities. Cutting across these areas of disadvantage and discrimination, there is a serious lack of Roma and Sinti representation in public life and institutions, which points to a continuing need for empowerment measures. But there is also a vicious circle of prejudice and mistrust, reflected in the low number of complaints submitted by the members of these communities to official and semi-official institutions, which only a demonstrable long-term commitment on the part of the central government has, in ECRI's opinion, the potential to break.

§90. ECRI recommends that the Dutch authorities take responsibility also at central government level for issues relating to the situation of the Roma, Sinti and Traveller communities throughout the Netherlands. To this end, ECRI recommends that the Dutch authorities draw up, at the central government level and in close co-operation with the Roma, Sinti and Traveller communities, a comprehensive strategy aimed at reducing the disadvantage and discrimination these face and make available adequate resources to implement it. ECRI recommends that the areas highlighted above be given priority consideration in the elaboration of such a strategy. The strategy should also set clear targets and provide methods for evaluating progress achieved.

§110. In conformity with ECRI General Policy Recommendation No. 4, in its second report ECRI recommended that the Dutch authorities include research of minority groups' experience and perception of racism and racial discrimination in their methods for monitoring these phenomena in the Netherlands. It thus welcomes the fact that since then, the Dutch authorities have commissioned independent research on the overall situation of racism and racial discrimination in the Netherlands that combines perception-based social-scientific research with legal research (Racial Discrimination Monitor 2005). ECRI is also pleased to note that the Dutch authorities have stated their intention to carry out such research at regular (two- or three-year) intervals. While welcoming this initiative, civil society organisations have stressed that the openness of the Dutch authorities to reviewing ongoing policies in the light of the research findings has been limited.

9. Equality bodies

[ECRI report](#)

- Equal Treatment Commission

§27. In its capacity as a semi-judicial independent body with the task of investigating, mediating and adjudicating alleged violations of Dutch anti-discrimination legislation (including on grounds covered by ECRI's mandate), the Equal Treatment Commission (*Commissie Gelijke Behandeling, CGB*) has in recent years continued to be the main mechanism through which respect of equal treatment legislation is ensured in the Netherlands. In its second report, ECRI noted that although the decisions of the CGB were not legally binding, they were usually complied with. ECRI notes that an evaluation carried out by the CGB in 2005 shows that the decisions of the CGB are followed by the party found to be in breach of equal treatment legislation in 70% of the cases. When the case is brought before the courts, the latter refer to the CGB's decision in 81% of the cases and follow such decisions in 61% of the cases. ECRI also notes that the CGB has recently strengthened its activities aimed at monitoring the follow-up given to its decisions.

§28. ECRI is pleased to note that, since its last report, the CGB's powers to initiate *ex officio* investigations have been strengthened and that one such investigation is currently ongoing concerning discrimination

on grounds of racial or ethnic origin in access to work traineeships. ECRI also welcomes the fact that, since its second report, the CGB has been increasingly involved in preventative policy assessment, whereby organisations and authorities have submitted their envisaged policies to the CGB for an assessment of their conformity with equal treatment legislation. ECRI notes that such advice has been sought in 26 cases in 2006, 7 of which concerned the grounds of race and religion.

29. ECRI notes that since its second report, the CGB has rendered an increasing number of decisions and that some of these decisions, notably concerning grounds covered by ECRI's mandate, have received considerable national attention. ECRI notes with regret, however, that the CGB and its decisions have not always enjoyed public support by the Dutch authorities. Thus, for instance, ECRI notes that in March 2006, following a CGB decision which found that a school was wrong to dismiss a Muslim female teacher from its classes for refusing to shake hands with men, the then Minister for Immigration and Integration called the very existence of the CGB into question.

§30. ECRI recommends that the Dutch authorities provide all the necessary political support to the Equal Treatment Commission and contribute to backing the authority of its decisions and their enforcement.

- Art. 1

§32. In operation since January 2007, Art. 1 is the result of a merger between the National Bureau against Racism (*Landelijk bureau ter bestrijding van rassendiscriminatie, LBR*), which until the merger only dealt with grounds of discrimination covered by ECRI's mandate, and the Federation of local antidiscrimination bureaus. As a result of the merger, Art. 1 covers discrimination on all grounds recognised in Dutch equal treatment legislation. In its second report, ECRI recommended that the Dutch authorities ensure that adequate funding be available to the LBR to enable this organisation to carry out its tasks effectively. The Dutch authorities report that funding for Art. 1 has been maintained for 2006 and 2007 and that extra funding has been provided to make up for the cost of the merger. However, doubts have been expressed on the extent to which these resources match the extension of the mandate of the new association to deal with all grounds of discrimination.

- Local antidiscrimination bureaus

§33. In its second report, ECRI noted that the many local authority-funded antidiscrimination bureaus carried out good and often innovative work against racism and racial discrimination. It therefore recommended that the Dutch authorities make available the necessary resources to enable these bureaus to work effectively. Since then, the establishment of a network of functioning local anti-discrimination bureaus dealing with discrimination on all grounds (including those covered by ECRI's mandate), has been central to the Dutch authorities' strategy to combat racism and racial discrimination. The main tasks of these bureaus are to provide protection against discrimination by handling individual complaints and to provide a coherent picture of discrimination in the Netherlands by registering such complaints in a professional and uniform manner. Although it may in part reflect the fact that such funding is not yet fully earmarked for this purpose – a formal obligation for municipalities to spend this money to handle and register complaints will only be in force from 2008 - research seems to indicate that local authorities are still widely unaware of their responsibilities to carry out anti-discrimination work. Thus, for instance, the majority of local communities do not yet fund an antidiscrimination bureau and less than half of the antidiscrimination bureaus that should exist are reported to be actually in place. More generally, civil society organisations have welcomed the emphasis currently put on the local dimension of

antidiscrimination work. However, they have also stressed that more leadership and guidance from the central authorities is necessary to ensure that such work is actually carried out in practice.

§34. ECRI recommends that the Dutch authorities ensure that the attention paid by the National Bureau against Racism to combating racism and racial discrimination and the expertise gained by this organisation in this field are continued within Art.1. To this end, ECRI encourages the Dutch authorities to ensure that funding arrangements of the new organisation reflect its extended mandate, which covers discrimination on all grounds covered by Dutch equal treatment legislation.

§35. ECRI encourages the Dutch authorities in their efforts to establish a functioning network of local anti-discrimination bureaus which provide protection against and register complaints of, racism and racial discrimination. It recommends that the Dutch authorities provide the necessary leadership and guidance to raise local authorities' awareness of their responsibilities to carry out antidiscrimination work and ensure that such bureaus are actually established throughout the country.

SPAIN

Sources

1. [CERD Concluding Observations](#) (April 2011, CERD/C/ESP/CO/18-20)
2. [ECRI report](#) (February 2011, CRI(2011)4)
3. OSF expert: Cristina de la Serna Sandoval (February 2013)

1. General trends and challenges

CERD Concluding Observations

§10. The Committee is concerned about the information received on identity checks and police raids carried out on the basis of ethnic and racial profiling in public places and neighbourhoods with high concentrations of foreigners, with the aim of arresting anyone in an irregular situation in the State party (arts. 2, 5 and 7).

Recalling its general recommendation No. 31 (2005), the Committee urges the State party to take effective measures to eradicate the practice of identity checks based on ethnic or racial profiling. Furthermore, the Committee recommends that the State party consider amending those provisions of Circular No. 1/2010 of the General Commissariat for Immigration and Borders and the relevant national legislation which allow interpretations that, in practice, can lead to indiscriminate detention and the restriction of the rights of foreign citizens in Spain. The Committee also reminds the State party that, in light of its general recommendation No. 13 (1993), law enforcement officials should receive intensive training in human rights in order to guarantee that in the course of their duties they respect and protect the fundamental rights of all persons without discrimination on the basis of race, colour or ethnic or national origin.

§11. The Committee is concerned that there are no official figures on incidents of racism or xenophobia, or on the number of complaints, prosecutions, convictions or sentences for racially motivated crimes, as defined in article 22, paragraph 4, of the State party's Criminal Code, or on the reparation granted to victims (arts. 2 and 6).

In light of its general recommendation No. 31 (2005), the Committee reminds the State party that the absence or small number of complaints, prosecutions and convictions relating to acts of racial discrimination should not be viewed as necessarily positive, since it could also be an indicator of, inter alia, the victims' fear of social censure or reprisals, the lack of trust in the police and judicial authorities, or even that the authorities are insufficiently alert to or aware of complaints of acts of discrimination.

The Committee recommends that the State party:

- (a) Embark on regular and public collection of information on acts of racial discrimination from police, judicial and prison authorities and immigration services, while respecting standards of confidentiality, anonymity and protection of personal data;
- (b) Include, in its next periodic report, comprehensive details on the number of complaints, prosecutions, convictions and sentences and on the reparation granted to victims.

§16. The Committee notes with satisfaction that the State party is continuing to adopt measures to improve the general situation of Gypsies. However, it is concerned by the difficulties still facing many of them, and especially Gypsy women and children, with regard to employment, housing and education. It is also concerned by the persistent discrimination against the Gypsy community in daily life (arts. 5 and 7).

The Committee recommends that the State party continue its efforts to improve the situation of Gypsies and to integrate them into Spanish society and, in particular, that it adopt measures to improve the situation of Gypsy women and girls. The Committee also recommends that, in light of its general recommendation No. 27, the State party take the necessary measures to promote tolerance and

overcome prejudice and negative stereotypes, in order to avoid any form of discrimination against members of the Gypsy community.

[ECRI report](#)

The Government should collect and publish data on acts of racism and racial discrimination and on the application of the legal provisions in force to combat these. Initial and in-service training for police, private security personnel, prosecutors, forensic doctors, lawyers and judges should include compulsory courses on human rights, equal treatment, non discrimination and the provisions in force to combat racism and racial discrimination.

§7. ECRI is aware of the difficulties involved in amending the Constitution. Nevertheless, it believes that the principle of equal treatment, the commitment of the State to promote equality as well as the right of individuals to be free from discrimination on grounds such as race, colour, language, religion, nationality or national or ethnic origin should be enshrined in the Constitution and not in laws which can be regularly amended.

§8. ECRI recommends again that the right to equality before the law is formally granted by the Constitution to all individuals and not just Spanish citizens.

20. ECRI notes that the law transposing the European Council Directives 43/2000 and 78/2000 has not been fine-tuned and that the legislation remains deficient. The transposition was effected in a law known as an Accompanying Law (Ley de acompañamiento) in which over fifty existing laws were amended. As a result of this profusion of different measures, as well as a general lack of awareness of the legislation, non-governmental organisations have reported that practically no cases have been brought to court under the provisions.

§21. However, ECRI has been informed that the group of specialists on legislation of the Ministry of Equality is currently preparing a comprehensive equal treatment and non-discrimination bill with the objective of improving transposition of the European Council Directives. This is one of the objectives of the Government's Human Rights Plan.

§22. ECRI recommends that the Spanish authorities adopt new legislation on equal treatment and non-discrimination as soon as possible, taking account of its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

§43. ECRI recommends that not only initial but also in-service training for police, private security personnel, prosecutors, forensic doctors, lawyers and judges includes compulsory courses on human rights, equal treatment, non discrimination and the Criminal Code provisions in force to combat racism and racial discrimination.

§45. ECRI notes that in December 2008 the Government of Spain adopted the first Human Rights Plan ("*Plan de Derechos Humanos*"), which will be in effect from 2009-2012 under the authority of the Secretary of State for Constitutional Affairs. The Plan sets out 172 concrete measures to be taken relating to equality, non-discrimination, integration and human rights guarantees. It covers both foreign and domestic action, including a series of objectives on equal treatment, integration and combating racism and xenophobia.

§46. ECRI is pleased to note that the approval and implementation of a national and comprehensive strategy to combat racism and xenophobia is one of the objectives of the Human Rights Plan, under "Measure 47". Different initiatives are currently being developed, including the creation of support resources for victims of discrimination or racist or xenophobic aggression, analysis of citizens' attitudes towards immigration, public-awareness campaigns at regional and local levels, and training and awareness-raising for the police.

§47. ECRI encourages the Spanish authorities to take the necessary steps to draw up and implement a comprehensive national strategy to combat racism and xenophobia. This will necessarily involve a new approach to the collection and publication of data on acts of racism and racial discrimination, since complete and accurate statistics are essential for establishing an effective strategy which responds to reality.

§126. (...) the Roma continue to suffer from discrimination, poverty and social exclusion. This particularly affects the recently arrived Roma from Eastern Europe who suffer double discrimination on account of being both immigrants and Roma. According to most accounts, including the Roma, responsibility for this is shared by the Roma themselves and by the authorities. As already observed, many Roma remain sceptical about the benefits of education. As a result, there continue to be few Roma in leading positions and a lack of Roma role models with strong educational and professional backgrounds. As for the authorities, while it is clear that they have done much for the Roma, they appear reluctant to allow much to be done by the Roma. There has been criticism, for example, that Roma participation in the National Roma Council is only of an advisory nature, without official decision-making power or control over budgets.

§202. Furthermore, in July 2009 Spain was found to be in violation of Article 26 (right to equality before the law) of the International Covenant on Civil and Political Rights in the case of Ms Rosalind Williams Lecraft, who had been singled out for an identity check at a railway station solely on the grounds of her skin colour. ECRI has been informed by the Spanish authorities that an apology has been delivered in person and in writing to Ms Lecraft and that the decision of the United Nations Human Rights Committee has been sent to all bodies with jurisdictional functions or related to the courts of law in Spain. The Note Verbale of the Permanent Representation of Spain to the Human Rights Committee stated that the current legislation governing the State Police Forces and Corps and the draft bills on staff of the National Police Corps and the Civil Guard ensure the prohibition of using racial profiling in police work.

§203. ECRI notes the contradictory legal positions relating to racial profiling. As stated in its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, such practices by the police reinforce prejudice and stereotypes against certain ethnic groups and legitimise racism and racial discrimination against them in the general population.

§204. ECRI urges the Spanish authorities to ensure an effective prohibition of all racial profiling practices by the police throughout the country, taking into account ECRI's General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, which provides guidance on defining and prohibiting racial profiling.

§205. In its third report, ECRI reiterated its call on the Spanish authorities to improve the response of the internal and external control mechanisms to complaints of racist or racially-discriminatory behaviour on the part of the police. To this end, it recommended in particular that the Spanish authorities establish an independent commission to investigate all allegations of human rights violations by the police.

§206. As regards control mechanisms, ECRI notes that there is still no independent commission to investigate allegations of human rights violations by the police. Complaints of police misconduct continue to be dealt with internally through the Ministry of Interior. This is true also for complaints against private security personnel. If necessary, action can be pursued through the courts. Despite the authorities' assurances, ECRI is not convinced that this system can work effectively. It refers in this connection to its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing.

§207. ECRI strongly recommends the setting up of an independent mechanism for the examination of complaints against law enforcement officials, drawing inspiration from ECRI's General Policy Recommendation No. 11 on combating racism and racial discrimination in policing.

2. Employment

[ECRI report](#)

§74. The European Union Agency for Fundamental Rights, in its Annual Report 2010, notes that the area of employment continues to be identified as the area of social life where discrimination is reported the most in Spain. However, as discussed above, the anti-discrimination legislation in force is not well-known by the public nor by legal professionals. As a result it is rarely applied. ECRI hopes that the future law on equal treatment and non-discrimination (discussed above) will address employment questions and result in progress in the area of racial discrimination in employment.

§75. The labour situation in Spain has been affected by the economic crisis. Unemployment is currently close to 20% of the population and 30% of the immigrant population. The higher rate of unemployment of immigrants has not been attributed to racial discrimination, but rather to the collapse of industries, in particular construction, where predominantly immigrants worked. Furthermore, despite the recession, immigrants continue to arrive in Spain and add to the unemployment figures.

§76. ECRI has been informed that the group most affected by discrimination in the labour market is North African Muslims. One reason cited is the respect of the month of Ramadan which reduces working capacity.

§77. Wage discrimination and other forms of labour exploitation appear to be wide-spread for immigrants in general. However, NGOs have told ECRI that trade unions play an important role in protecting immigrants and the situation is improving.

§78. ECRI recommends that the authorities conduct research into wage discrimination in Spain in order to respond appropriately to this type of labour exploitation.

§81. As for Roma, this community has traditionally been self-employed. ECRI notes that the nation-wide ACCEDER programme, initiated in 2000 and currently in its second programming period from 2008-2013, has been very successful in encouraging Roma youth to access salaried employment as an alternative to self-employment or family business. It is a partnership between public administrations, the business sector and civil society. ECRI commends this important initiative which derives from the Roma community itself and demonstrates a will for self-improvement. It is also a good example of multi-sector partnership with Roma.

§208. In its third report, ECRI encouraged the Spanish authorities to consider measures to stimulate a better representation of members of ethnic minority groups in the police. These measures should include the identification of any barriers which may prevent members of these groups from entering the police forces and the adoption of targeted measures to overcome such barriers.

§209. ECRI has been informed about efforts in the Catalanian police to implement social diversification programmes for the recruitment of members of ethnic minorities, but these have had little success. According to public officials, there are two main barriers to ethnic minorities joining the police. First, as noted in ECRI's third report and mentioned in the section above on non-citizens, it is necessary to have Spanish nationality. Since ethnic minorities are still predominantly non-citizens and obtaining Spanish citizenship can be a lengthy process, this situation is not likely to change quickly.

§210. Second, there is a general mindset of both fear and disrespect towards the police which prevents members of ethnic minorities even considering a career in this service. In order to make progress in this field, the authorities need to promote a culture of respect for the police and by the police. Public officials interviewed by the ECRI delegation on this matter stated that more members of ethnic minorities in the police would be very beneficial. ECRI, therefore, invites the Spanish authorities to consider all ways to make this possible.

§211. ECRI recommends again that the Spanish authorities intensify their efforts to recruit members of ethnic minority groups in the police.

3. Education

[CERD Concluding Observations](#)

§15. The Committee is concerned by reports that, in some regions of Spain, there are "ghetto" schools for migrant and Gypsy children, in spite of the fact that Organization Act No. 2/2006 on education provides for mechanisms to facilitate an appropriate and even distribution of students (arts. 4 and 5).

The Committee recommends that the State party review the admission criteria and methodology used in public and private schools and that it take measures to effectively ensure an even distribution of pupils between schools. The Committee requests the State party to provide disaggregated statistical data in its next periodic report on the number of migrant, Gypsy and Spanish children enrolled in school.

[ECRI report](#)

In education, the authorities should review the admission procedures to ensure an even distribution of Spanish, immigrant and Roma pupils, and take steps to reduce significantly the drop-out rates of Roma pupils. The restriction on access to university education to legally resident foreigners should be removed. The curriculum for training journalists should include a study of the codes of conduct and issues related to racism and xenophobia.

§63. (...) ECRI has received consistent reports of "ghetto" schools of immigrant or Roma children in certain parts of the country, and discriminatory practices in the admissions procedure, enabling publicly-funded private schools to pick and choose pupils.

§64. In addition, the proximity criterion, which ECRI has been told is the most frequently applied in allocating pupils to schools, is contributing to the problem. As immigrants and Roma tend to live in communities, large numbers of pupils from these groups attend one particular school closest to their residence, while other schools in the same area receive fewer pupils and mostly Spanish nationals. Apart from the ethnic composition in the classrooms, with the accompanying needs for special educational support, class sizes can vary greatly from one school to another. All this has consequences on the quality of education received as well as the integration possibilities of the children concerned.

§65. ECRI strongly recommends that the Spanish authorities review the way in which pupils are admitted to public and publicly-funded private schools and take other necessary measures to ensure an even distribution of Spanish, immigrant and Roma pupils in the various schools.

§66. As regards Roma pupils, ECRI has been told that around 85% do not complete compulsory secondary education. This is part of a more general phenomenon of early school drop-out which affects around 30% of all pupils. Many are attracted by working opportunities in unskilled sectors. To counter this, the Ministry of Education has agreed on 126 measures against early school leaving, in cooperation with the autonomous communities having competence in education matters. One programme involves an agreement with employers: wherever they employ a school drop-out aged 16, the Ministry will finance four hours per day from the eight hour working day to be spent in completing school studies in order to obtain the school-leaving certificate as well as half of the employee's salary. ECRI commends this initiative which responds to the needs of young people while maximising their chances of future employment.

§67. ECRI is concerned about illiteracy among Roma children, which particularly affects girls. Roma representatives have said that there is pressure from both parents and peers not to attend school. ECRI considers that more efforts are needed to enhance belief in the benefits of education.

§68. Roma organisations have indicated that concrete assistance and material support to families, such as free school meals, materials and transport, could be used as incentives. ECRI believes that vocational training possibilities in school could also attract and benefit Roma pupils. For those who inevitably drop out, alternative ways of obtaining qualifications for employment should be provided.

§69. ECRI strongly recommends that the authorities take steps to reduce significantly the secondary school drop-out rates of Roma pupils. This could be achieved, for example, through material incentives and a greater use of vocational options in school. ECRI also recommends that the authorities provide access to vocational training programmes for early school leavers and young people, with particular attention paid to training Roma girls and women.

§70. Furthermore, the fact that the compulsory school curriculum does not address Roma history, culture, traditions, language or the contribution of the Roma people to the history of Spain does not help Roma children to feel valued in the education environment.

§71. ECRI notes in this respect that the Institute for Roma Culture, sponsored by the Ministry of Education and the Ministry of Culture, provides training for teachers in Roma culture and rewards those who demonstrate the positive influence of the Roma in their work. It is regrettable that this positive initiative is not reflected in the compulsory curriculum of pupils.

§72. ECRI strongly recommends that the positive contribution of the Roma people to Spanish history and culture should be a compulsory part of the curriculum for all pupils in Spain. The teacher training syllabus should also include this component.

§135. Concerning religious instruction, ECRI notes a situation that amounts to discrimination. Every public school in the country is required to teach Roman Catholicism, although attendance by pupils is optional. Regarding non-Catholics, where there is a demand of at least ten pupils, a class in their creed or an alternative in ethics must also be offered. ECRI has been informed that there remains an unmet demand for around 400 teachers of Islam. Currently only 46 teachers of this religion are employed in Spain.

§136. The Islamic Commission has stated that there is no lack of teachers of Islam and that it regularly presents lists of candidates to the Ministry of Education. The Ministry has informed ECRI that it is obliged to reject the majority of these because they do not have university degrees, which are required by all teachers in Spain. ECRI understands the dilemma, but regrets that religious education in schools quite often remains a theoretical possibility for a large number of Muslim pupils. ECRI encourages the authorities to engage Muslim communities in contributing to a solution.

§137. ECRI recommends again that the Spanish authorities take steps to ensure that the right granted by Spanish law to Muslim pupils to receive religious instruction based on Islam in public schools is enjoyed in practice.

§138. It appears that the situation differs from one autonomous community to another. Where the State retains competence for education, more teachers of Islam are recruited, while in the autonomous communities having responsibility for education there are usually none at all. Thus, for example, in Andalusia, where education is under the authority of the State, there are 16 teachers of Islam. In Catalonia, which has the highest concentration of Muslim pupils in Spain, there is not a single teacher of Islam. ECRI believes that this situation could be avoided if competence for all matters concerning religious instruction in schools remained at State level.

§139. ECRI recommends that measures be taken to ensure uniformity in all matters concerning religious instruction in schools.

4. Health care

(...)

5. Housing

[ECRI report](#)

Regarding housing, the authorities are encouraged to pursue their objective of definitively eradicating slums, thus significantly improving the living conditions of vulnerable groups. Housing aid for all legal residents should be re-introduced.

§83. ECRI has received reports of discrimination targeting both the Roma community and immigrants in the field of housing. This, in combination with the high cost of private housing and the scarcity of social housing, has resulted in the continued existence of slums in certain parts of Spain. ECRI is pleased to note

that the Spanish Plan for Housing and Rehabilitation includes the eradication of shanty towns and slum dwellings, inhabited mainly by Roma. According to data reported by the European Union Fundamental Rights Agency in its Case Study "Improving Roma housing and eliminating slums, Spain" (October 2009), 3.9% of Roma live in slums and caves. Several programmes to relocate families from slums into standard housing where rent is subsidised and significantly below market value are on-going around the country. Thanks to these programmes, certain cities such as Barcelona no longer have any slums. Roma generally now live alongside other citizens in standard housing.

§84. ECRI encourages the Spanish authorities to pursue their objective of eradicating shanty towns and slum dwellings, to end completely and definitively such housing in Spain and to relocate the inhabitants to standard housing, thereby significantly improving the living conditions of vulnerable groups, especially Roma.

§87. ECRI is concerned that the new Law of 2009 on the Rights and Freedoms of Foreigners in Spain and their Social Integration has opened a possibility for the responsible autonomous communities to introduce discriminatory limitations on access to housing aid. The law states that "long-term" foreign residents, meaning those who have been legally resident for five years, are entitled to this aid under the same conditions as Spaniards. This is a step backwards from the previous law which granted access to all legal residents.

§88. ECRI recommends that access to housing aid is guaranteed for all legal residents who otherwise qualify for it.

6. Access to other goods and service

[ECRI report](#)

§89. In its third report, ECRI recommended that the Spanish authorities strengthen their efforts to raise awareness among those working in the entertainment industry of the legislation in force against racial discrimination and of the need to respect it in their work.

§90. It has been reported to ECRI that sometimes immigrants, particularly North Africans, and Roma experience discrimination when trying to gain access to goods and services offered in the private sector. However, NGOs have stated that progress has been achieved in this field with the increase in purchasing power of this group of the population. ECRI encourages the authorities to raise awareness of the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin, which can provide assistance and legal advice to victims of discrimination (see also the recommendation in § 35).

§131. Certain difficulties for Muslims have been brought to ECRI's attention, however, notably concerning the building of mosques and burial sites. There has reportedly been some improvement in recent years, but the persisting problem indicates that there is prejudice and discrimination against Muslims. There are currently only 12 Muslim cemeteries and approximately 700 mosques in Spain, for a Muslim population estimated at 1.4 million. ECRI has received consistent reports of obstacles in obtaining permission to build new mosques, particularly in urban areas where they are most needed. This has led to the phenomenon of "garage" mosques, whereby large numbers of Muslims, having no place of worship to attend, gather to

pray in a private garage. Local residents are reportedly uncomfortable about the disturbance and there have been claims that illegal activities may be taking place in the garages.

§132. ECRI stresses the importance of respecting the right to manifest one's religion, as guaranteed under Article 9 of the European Convention on Human Rights. In view of Spain's large and growing Muslim population and relatively small number of mosques, it is unreasonable that requests to build new mosques are frequently refused. ECRI considers that the authorities should find ways to overcome this problem in cooperation with Muslim representatives.

§133. ECRI recommends that the Spanish authorities ensure that the right to worship together with others, in accordance with Article 9 of the European Convention on Human Rights, is respected in practice by granting Muslim communities' requests to build an adequate number of mosques.

7. Availability of equality data

CERD Concluding Observations

§8. The Committee takes note of the statistical data provided by the delegation on the total and foreign populations in Spain. However, the Committee regrets that the State party has not provided statistical data on the ethnic and racial composition of its population, that it continues to maintain that the collection of this type of statistical data contributes to discrimination, and that it considers these data to be subject to special protection under article 7 of Organization Act No. 15/1999 (art. 1).

The Committee reiterates its recommendation to the State party regarding the collection of statistical information on the ethnic and racial composition of its population and urges the State party to carry out a census of its population in light of the Committee's general recommendation No. 24 (1999) concerning article 1 of the Convention and general recommendation No. 30 (2004) on discrimination against non-citizens, and in accordance with the guidelines on the treaty-specific document to be submitted by States parties under article 9, paragraph 1, of the Convention (CERD/C/2007/1). The Committee reminds the State party that having this type of information is vital in order to identify and learn more about the ethnic and racial groups present in its territory, monitor forms of discrimination and possible trends in discrimination against those groups, and subsequently take measures to address such discrimination.

ECRI report

§212. In its third report, ECRI recommended that the Spanish authorities improve their monitoring systems by collecting relevant information broken down according to categories such as ethnic origin, language, religion and nationality in different areas of policy and to ensure that this is done in all cases with due respect for the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. These systems should also take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination.

§213. ECRI has already noted in various sections of this report that no changes have been made since its third report concerning the collection of data. ECRI considers that the authorities should review their position and provide for the systematic collection of disaggregated data. ECRI has repeatedly stressed

that the collection of such data need not present a threat for human rights if the principles of anonymity, informed consent and voluntary self-identification are respected.

§214. ECRI recommends again that the authorities collect disaggregated ethnic data in accordance with the principles of anonymity, informed consent and voluntary self-identification.

8. Positive action

[CERD Concluding Observations](#)

§4. The Committee welcomes the implementation of the Human Rights Plan 2008–2012, which sets out numerous specific commitments, including the implementation and evaluation of the Strategic Plan for Citizenship and Integration and the adoption of a comprehensive national strategy to combat racism and xenophobia.

§5. The Committee welcomes the information supplied by the delegation regarding the adoption on first reading by the Council of Ministers on 7 January 2011 of a draft comprehensive bill on equal treatment and non-discrimination, which includes the concepts of direct and indirect discrimination, discrimination by association or erroneous discrimination, and multiple discrimination.

§6. The Committee welcomes the legislative measures introduced by the State party into its legal framework for combating racial discrimination, including:

- (a) Act No. 27/2005 on the promotion of education and a culture of peace;
- (b) Organization Act No. 2/2006 on education, which establishes respect for diversity as a guiding principle for all basic education;
- (c) Organization Act No. 3/2007 on genuine gender equality;
- (d) Act No. 19/2007 on violence, racism, xenophobia and intolerance in sport.

§7. The Committee welcomes the implementation of various measures that have contributed to improving the social, economic and cultural situation of the Gypsy community, including the adoption of the Plan of Action for the Development of the Gypsy Population (2010–2012), the creation of the Gypsy Consultative Council in 2006, the implementation in 2006 of the Acceder programme on access to the labour market, and the establishment of the Gypsy Cultural Institute.

[ECRI report](#)

Spain has invested human and financial resources into fighting racism and racial discrimination. (...) The Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin, Spain's specialised body, was set up in 2009 to assist victims and collect data on complaints. (...) In education, the school curriculum now includes the subject "education for citizenship and human rights" and the Holocaust has become a compulsory part of history teaching. (...) Another Plan for Roma Development will run from 2010 to 2012. The National Roma Council was set up in 2005 to

advise the Government on policies that affect this community. The Foundation Institute for Roma Culture, created in 2007, promotes Roma identity. Programmes to eradicate slums and relocate the inhabitants to standard housing are on-going around the country and some cities no longer have any slums. Measures have been taken to facilitate access of immigrants and Roma to the housing and employment markets.

§45. ECRI notes that in December 2008 the Government of Spain adopted the first Human Rights Plan ("*Plan de Derechos Humanos*"), which will be in effect from 2009-2012 under the authority of the Secretary of State for Constitutional Affairs. The Plan sets out 172 concrete measures to be taken relating to equality, non-discrimination, integration and human rights guarantees. It covers both foreign and domestic action, including a series of objectives on equal treatment, integration and combating racism and xenophobia.

§46. ECRI is pleased to note that the approval and implementation of a national and comprehensive strategy to combat racism and xenophobia is one of the objectives of the Human Rights Plan, under "Measure 47". Different initiatives are currently being developed, including the creation of support resources for victims of discrimination or racist or xenophobic aggression, analysis of citizens' attitudes towards immigration, public-awareness campaigns at regional and local levels, and training and awareness-raising for the police.

§58. Regarding teaching Spanish as a second language, ECRI has been informed that due to the massive increase in foreign pupils in the last years, this continues to be a major challenge. Nevertheless, ECRI is pleased to note that much effort has been made. Special reception or welcome classrooms have been established to promote an effective transition into regular schooling. Students remain in these classrooms temporarily and psychological, social, language and educational support is provided. This is followed by full linguistic immersion in the normal classroom. This appears to work well and children reportedly learn Spanish quickly.

§60. ECRI also takes note of the creation of "official language schools" throughout the country where any person over the age of 16 can learn any one of 22 foreign languages as well as the six official languages of Spain free of charge. This initiative, which is established in the new Law on Education of 3 May 2006, appears to be unique in Europe and a note-worthy example of best practice.

§62. ECRI is pleased to note that the Law on Education takes up almost word for word this recommendation: "There will be an adequate, balanced distribution between the different schools of students who need specific educational support". According to the law, the education administrations will regulate student admission to public and publicly-funded private schools in order to guarantee the right to education, equal conditions of access and freedom of choice for parents. When there are not sufficient places, the admission procedure will be governed by priority criteria, one of which is proximity to the home. In allocating pupils to schools in such cases, the law specifically states that there will be no discrimination for reasons of birth, race, gender, religion, opinions or any other personal or social condition or circumstance.

§63. Despite these positive developments, it is clear that the law is not always effective in practice and leaves scope for manipulation. (...)\

§66. As regards Roma pupils, ECRI has been told that around 85% do not complete compulsory secondary education. This is part of a more general phenomenon of early school drop-out which affects around 30% of all pupils. Many are attracted by working opportunities in unskilled sectors. To counter this,

the Ministry of Education has agreed on 126 measures against early school leaving, in cooperation with the autonomous communities having competence in education matters. One programme involves an agreement with employers: wherever they employ a school drop-out aged 16, the Ministry will finance four hours per day from the eight hour working day to be spent in completing school studies in order to obtain the school-leaving certificate as well as half of the employee's salary. ECRI commends this initiative which responds to the needs of young people while maximising their chances of future employment.

§70. Furthermore, the fact that the compulsory school curriculum does not address Roma history, culture, traditions, language or the contribution of the Roma people to the history of Spain does not help Roma children to feel valued in the education environment.

§71. ECRI notes in this respect that the Institute for Roma Culture, sponsored by the Ministry of Education and the Ministry of Culture, provides training for teachers in Roma culture and rewards those who demonstrate the positive influence of the Roma in their work. It is regrettable that this positive initiative is not reflected in the compulsory curriculum of pupils.

§83. ECRI has received reports of discrimination targeting both the Roma community and immigrants in the field of housing. This, in combination with the high cost of private housing and the scarcity of social housing, has resulted in the continued existence of slums in certain parts of Spain. ECRI is pleased to note that the Spanish Plan for Housing and Rehabilitation includes the eradication of shanty towns and slum dwellings, inhabited mainly by Roma. According to data reported by the European Union Fundamental Rights Agency in its Case Study "Improving Roma housing and eliminating slums, Spain" (October 2009), 3.9% of Roma live in slums and caves. Several programmes to relocate families from slums into standard housing where rent is subsidised and significantly below market value are on-going around the country. Thanks to these programmes, certain cities such as Barcelona no longer have any slums. Roma generally now live alongside other citizens in standard housing.

§85. The European Union Agency for Fundamental Rights, in its Comparative Report on Housing Conditions of Roma and Travellers in the European Union (October 2009), states that a positive example of improving home ownership among Roma is to be found in Spain, which implements a housing policy promoting home-ownership through state subsidies in preference to the provision of rented social housing. It is estimated that around half of the Roma homeowners acquired their house through this policy.

§86. A further development which ECRI notes with satisfaction is that recent legislation has been designed to encourage landlords to rent their properties to low-income tenants, particularly Roma and immigrants. An agreement is signed between the landlord, the local authorities and the tenant. The rent is lower than market value but payment is guaranteed by the local authorities. ECRI has been told by the Spanish authorities that this initiative is working well and has resulted in more housing being put on the market. Landlords feel safe, tenants rarely default as the rent is low and the local authorities seldom need to intervene to cover arrears.

§123. ECRI is pleased to note that by all accounts Spain has addressed the social exclusion of its Roma population in a largely successful manner. Roma organisations have reported to ECRI that the situation of the Roma is infinitely better than it was even ten years ago. There is a general recognition among the Roma that they are a protected group. They are aware that the authorities have made important efforts to take their needs into account and invested significant sums in various forms of assistance.

§124. ECRI recalls that the Plan for Roma Development has been operational since 1985. Another Plan will function from 2010 to 2012 targeting social inclusion, non-discrimination and equal treatment. The Spanish authorities have informed ECRI that the annual budget for the Plan for Roma Development is now around 6,5 million Euros, which is double the budget funds reported in ECRI's third report.

§125. Among other positive developments, ECRI notes with satisfaction the establishment in July 2005 of the National Roma Council. The Council, which operates under the Ministry of Health and Social Policy, is made up of 40 members: half are Government representatives from different ministries, and the other half represent Roma NGOs. Its aim is to consult and advise the Government on general policies that affect Roma and on specific policies aimed at promoting effective equality and non-discrimination of Roma. The Council has set up five working groups: employment and social action, education, culture, health and housing. It will also participate in the development of the new Plan for Roma Development, mentioned above. The Roma have reported that the Council is politically important for them as it represents an opportunity for communication between Roma, Roma organisations and the public authorities and it guarantees the involvement of Roma in the preparation and implementation of policies that will affect them.

§128. Regarding the call to consider the establishment of a comprehensive legal and policy framework for the promotion of the culture, traditions and language of the Roma population, ECRI notes that the Foundation Institute of Roma Culture, attached to the Ministry of Culture, was created in 2007 with the aim of promoting Roma culture and identity through research and publications.

§145. ECRI notes a number of positive developments regarding Jews since its third report. Firstly, Casa Sefarad-Israel, a Government institution of the Foreign Ministry and the community of Madrid, was established in February 2007 to help further knowledge and appreciation of Jewish culture in Spain. It has also become the central organisation for promoting education on the Holocaust and its commemoration in Spain and for developing teaching materials.

§146. Secondly, ECRI notes with satisfaction that the Holocaust is now part of the compulsory curriculum in schools. Some representatives of the Jewish community felt that extending teaching of the Holocaust to cover also the history, culture and positive contribution of Jews in Spain could play an important role in eliminating antisemitism. ECRI draws the attention of the authorities to this aspect which is highlighted in its General Policy Recommendation No. 9 on the fight against antisemitism.

§147. ECRI recommends an extension of the compulsory teaching of the Holocaust to cover also the history, culture and positive contribution of Jews in Spain.

§218. ECRI notes with satisfaction that the subject "education for citizenship and human rights" has been introduced into the compulsory curriculum at primary and secondary school levels. It is designed to ensure that all students are exposed to the values of citizenship in a democratic society, the purpose of which is the full development of one's personality in a climate of respect for the democratic principles of co-existence and human rights. It includes a long list of topics, among which: social, cultural and religious diversity; respect for different customs and ways of life; discrimination and social injustice.

9. Equality bodies

[CERD Concluding Observations](#)

§9. The Committee takes note of the establishment in 2009 of the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin to combat discrimination in the State party. The Committee also notes the creation, within the framework of the Council, of a regional network of support centres for victims of discrimination. However, the Committee is concerned about reports that the Council lacks the necessary autonomy and independence to carry out its work efficiently, that it does not have an adequate budget and that it is barely known to the general population (art. 2).

The Committee recommends that the State party take the necessary measures to ensure that the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin has the required independence as set out in the European Commission against Racism and Intolerance (ECRI) general policy recommendations Nos. 2 and 7 for this type of body. It also recommends that the State party undertake campaigns to increase public awareness of the existence of the Council.

[ECRI report](#)

§29. ECRI notes with satisfaction that the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin, established by law in 2003, was finally set up in October 2009. It is attached to the Ministry of Equality and its work plan was approved in January 2010. Its main focus will be assistance to victims through a network of offices throughout Spain. Assistance will include providing information about lodging a complaint, procedures to follow, legal advice, mediation, as well as practical assistance in various fields including housing, health and education. ECRI is pleased to note that the offices will also collect data on complaints of discrimination on grounds of racial or ethnic origin and produce a guide on best practices in combating it.

§30. Since the Council is currently at pilot stage, ECRI considers it essential to point out its shortcomings which can still be easily rectified. Firstly, the Council lacks some of the elements necessary for a specialised body, according to ECRI's General Policy Recommendation No. 7, in particular, investigation powers and the right to initiate and participate in court proceedings. Secondly, the Council is not independent according to ECRI's General Policy Recommendation No. 2: it does not have adequate safeguards against interference from the State (the Chair is appointed by the Minister of Equality and half of its members must be representatives of central, regional or local Government; the other half are from employers' organisations, trade unions and organisations and associations active in the field of non-discrimination against people because of their racial or ethnic origin); moreover, it does not have the freedom to appoint its own staff.

§31. ECRI recommends that the Spanish authorities take urgent steps to ensure that Spain's specialised anti-discrimination body, the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin, functions according to ECRI's General Policy Recommendations No. 2 and No. 7, in particular as concerns its independence.

§32. In its third report, ECRI urged the Spanish authorities to ensure that adequate resources are made available to the future Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin for it to carry out an effective and extensive awareness raising campaign on racial discrimination and the existing legal remedies to counter it. ECRI strongly recommended that the Spanish authorities closely involve civil society partners in the elaboration, implementation and evaluation of these awareness raising activities.

§33. According to the authorities, the current budgetary allocation to the Council is sufficient for it to carry out its activities. One of its functions is to undertake awareness-raising campaigns, although none are underway yet.

§34. ECRI has been informed that the new anti-discrimination body is not known to the public and there is very little public information currently available on Internet.

§35. ECRI recommends that steps are taken to raise awareness of the new Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin and to ensure that full information is publicly available about it.

Annex III

Expert Questionnaire

QUESTIONS

1. Have there been many judgments in the area of civil law concerning racial discrimination in (*country*) since 2003? Could you give an approximate figure?
 - 1.A. If yes, what domain(s) (employment, education, housing, etc) and which racial or ethnic minority did they concern?
 - 1.B. If not, can you explain why, in your view, there have been only few cases?

2. Has the national equality body reported on many cases of racial discrimination over the past years?
 - 2.A. If yes, what domain (employment, education, housing, etc) and which racial or ethnic minority did they concern?
 - 2.B. If not, can you explain why, in your view, there have been only few cases?

3. What is the most common remedy or sanction awarded in cases of racial discrimination in a judgment by a civil court? And by the equality body?

4. What do you see as the main impediments to the use of civil courts or alternative dispute resolution mechanism through the equality body, to enforce anti-discrimination law?