

ANNEX I

Country Summaries

This Annex summarises per country the information collected in the framework of the shadow report. The summaries are based on two sources of data. The first source is data from specialized international monitoring bodies, namely, 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. These excerpts, divided by the relevant areas covered under the RED (employment, education, healthcare, housing, access to other goods and services, equality data, positive action, equality bodies) are contained in Annex II.

This information was supplemented, verified and updated, by data generated by independent experts and OSF staff. Experts were asked to verify the background information gathered from the official sources and respond to a short questionnaire. A copy of the questionnaire is contained in Annex III.

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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)

Summary

- **Section 1. General trends and challenges**

The main minority groups that experience discrimination on the grounds of racial or ethnic origin in Bulgaria are the Roma, Turks and Pomak. Primarily Roma encounter obstacles in relation to access to employment, education, housing and health care. The CERD recommends Bulgaria to take positive measures within the framework of the 'Plan of Action for Roma Inclusion' and the 'Decade for Roma Inclusion' (CERD, 2009. Bulgaria, §15).

Section 2. Employment

- The Protection against Discrimination Act prohibits discrimination on the grounds of race, national or ethnic origin, religion and nationality in the recruitment process and at the workplace. Nonetheless, minorities continue facing difficulties accessing employment. Although no statistics broken down according to ethnic origin are collected in the field of employment, according to studies carried out by NGOs Turks have an estimated unemployment rate of 36 per cent, and Pomaks have poorly paid jobs. Roma are of highest concern with an unemployment rate of 70 to 80 per cent (COE Commissioner on HR, 2010. Bulgaria §59; ECRI, 2009. Bulgaria, §59).
- Certain minority groups, and in particular Roma, are little represented in various public administrations, the army and the police, and barely in judicial positions. According to the CERD, this may be due to discrimination during the recruitment process (CERD, 2009. Bulgaria, §11).

Section 3. Education

- Roma, Turks and Pomaks generally have lower levels of education in comparison to the majority of the population (COE Commissioner on HR, 2010. Bulgaria, §54).
 - a. Mainstream education*
 - Small schools where most Roma children are enrolled have closed due to a structural school reform in 2008. Together with other factors, this has resulted in a further increase in the drop-out rate of Roma. The Commissioner for HR of the CoE 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 (COE Commissioner on HR, 2010. Bulgaria, §79).
 - Roma experience financial obstacles and discrimination in accessing kindergartens and preschools.
 - b. Education of Roma children in special institutions*
 - Roma children without specific disabilities continue to be placed in special schools, schools for intellectual disabilities and boarding schools. This has led to a progressive institutionalisation of Roma children. The number of auxiliary and boarding schools for Roma children has been progressively decreasing. The authorities indicated that twelve reform schools which were largely attended by pupils of Roma origin were closed down in 2006- 2007 (COE Commissioner on HR, 2010. Bulgaria, §82-83).
 - Reform establishments continue to have a disproportionately high number of Roma children who are sometimes sent there by their parents because of their own socio-economic problems. 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 (COE Commissioner on HR, 2010. Bulgaria, §83-84).

Section 4. Health care

- The Health Insurance Act provides for State medical cover only for those receiving unemployment benefits. 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 Roma 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 (COE Commissioner on HR, 2010. Bulgaria §61).
- Roma encounter health problems that are a result of poor housing conditions, among other factors. According to an official study, 55 per cent of Roma have indicated having difficulties in consulting a doctor because of their remoteness (ECRI, 2009. Bulgaria, §70). While this data sound credible, the OSF expert is not aware of an ethnic marker in any healthcare database and therefore questions how this information is collected (OSF expert, 2013. Bulgaria).
- Roma are discriminated against in the health sector. For example, there have been accounts of pregnant women being placed in separate maternity wards, which are of lower standards, and where they receive less attention from medical personnel. Additionally, there have been cases in which ambulances refused to go to areas where Roma live (ECRI, 2009. Bulgaria, §72).

Section 5. Housing

- In spite of efforts made at national and local level, Roma live in segregated areas, in sub-standard housing without access to amenities and services such as water, electricity and heating (ECRI, 2009. Bulgaria, §66). 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 safeguards concerning the eviction of Roma families from dwellings unlawfully occupied by them constituted a violation of these articles (ECRI, 2009. Bulgaria, §67).
- Roma experience discrimination by private and public entities when trying to rent or buy housing, and disproportionately face evictions without alternative accommodation being provided (COE Commissioner on HR, 2010. Bulgaria, §70-73).

Section 6. Access to other goods and services

- Roma are disproportionately affected by the amendment to the Social Assistance Act, which has restricted the social assistance period to 18 months. In its decision of 2009, the European Committee of Social Rights stated that the legislative attempts to restrict the right to social assistance 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' (COE Commissioner on HR, 2010. Bulgaria, §63; ECRI, 2009. Bulgaria, §59 and §63).

Section 7. Availability of equality data

- According to Bulgaria's Data Protection Act, ethnic or national origin cannot be recorded. Instead, most of the programs in the area of inequality use the categorization "socially disadvantaged groups", which in many instances means Roma and other ethnic groups found

in marginalized positions. This classification underestimates racial discrimination as a determinant for the lack of social inclusion (OSF expert, 2013. Bulgaria).

- The HR Commissioner of the COE, CERD and ECRI all recommend that Bulgaria compile disaggregated data on the ethnic composition of its population (COE Commissioner on HR, 2010. Bulgaria, §56; CERD, 2009. Bulgaria, §11; ECRI, 2009. Bulgaria, §43-51).

Section 8. Positive action and measures

- 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 seems, 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. (ECRI, 2009. Bulgaria, §60).
- 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 local 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 to help municipalities and NGOs combat the various forms of *de facto* segregation that Roma pupils face (ECRI, 2009. Bulgaria, §44). Some measures have been taken with a view to better integrate children with minority backgrounds into mixed schools, such as bussing programs and additional tutoring assistance offered through local municipalities and some EU structural funds (OSF expert, 2013. Bulgaria). In this regard, the Strategy for the School Integration of Children and Teenagers from Ethnic Minorities is welcomed. Furthermore, the 'Child Welfare reform' programme has resulted in some 12,500 Roma children benefiting from financial aid to prepare them for enrolment in first grade.
- As an integrated part of the National Health Strategy, Bulgaria is implementing the 'Health Strategy concerning people in disadvantaged positions, belonging to ethnic minorities'. Several measures are being taken to tackle the health problems Roma face due to unhealthy housing situations and working conditions. As part of the health strategy, health mediators are being appointed and medical staff are being trained, to treat Roma specifically (COE Commissioner on HR, 2010. Bulgaria, §60).
- In the 'National Programme for Improving the Living Conditions of Roma' development plans were adopted to legalise housing built without a permit, and improve it to meet decent housing standards. Several municipalities also developed cadastral plans and zoning maps for Romani settlements (COE Commissioner on HR, 2010. Bulgaria, §69).
- Civil society groups report that some of the programs developed in the field of health care for Roma have come to a halt, probably due to the lack of resources to cover operational costs and for administrative and contractual reasons (OSF expert, 2013. Bulgaria).

Section 9. Equality bodies

- The Commission for the Protection against Discrimination, which was established in 2005, is generally considered a success. The Protection against Discrimination Act is the legal basis for

the Commission's mandate to receive complaints, examine cases *proprio motu*, issue fines, make recommendations to legal entities and government departments, monitor the implementation of these recommendations, and propose amendments to laws. Nevertheless, ECRI is concerned that the Commission is 'too small to meet the potential demand' (ECRI 2009. Bulgaria, §34).

THE 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)

Summary

Section 1. General trends and challenges

- Roma are the minority group that experiences most discrimination on the grounds of racial or ethnic origin in the Czech Republic.
- While welcoming the enactment of the Anti-Discrimination Act of 2009, the CERD 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 CERD Committee asserts that the Anti-discrimination Act does not yet provide for sufficient means of protection to victims and recommends the enactment of comprehensive anti-discrimination legislation to ensure practical remedies (CERD, 2011. Czech Republic, §7).
- According to the OSF expert, the Czech Helsinki Committee concluded a survey among district courts on discrimination in early 2012 and found that out of 86 courts, 16 had registered appeals in the domain of discrimination, but no judgments had been passed. The OSF expert asserts that most of the cases concern employment, housing, health care and education. According to the OSF expert, the lack of case law can be ascribed to the following facts: antidiscrimination provisions are not well known: they are only applicable to cases occurring after their adoption; certain forms of evidence are not accepted by the courts. (OSF expert, 2013. Czech Republic).
- While the Czech Republic has not developed a national action plan against racism, it has adopted strategies for Roma inclusion, such as the Roma Integration Concept for 2010-2013 and other recent strategies to combat social exclusion. In spite of these apparent encouraging steps, actual implementation of the strategies is still lacking. The COE Commissioner for Human Rights recommends that high level decision makers publicly support and implement the strategies and, that the Czech Republic to apply a more human rights-compliant approach by local authorities dealing with Roma, in particular supporting the work of mediators, providing social housing and services, and refraining from evictions which lead to territorial segregation (COE Commissioner on HR, 2013. Czech Republic, press release).¹

Section 2. Employment

- As ECRI reports, in a number of localities, an estimated 90 per cent or more of the Roma working population is unemployed due to factors related to discrimination in the labour market, low levels of education, low demand for low or unskilled workers, low wages, and indebtedness (ECRI, 2009. Czech Republic, §107).
- ECRI recommends addressing the disadvantages that Roma people encounter on the Czech labour market by improving education levels of young Roma and assisting adult Roma in learning new skills and combating prejudices employers have (ECRI, 2009. Czech Republic, §109).

¹ Press release - CommDH005(2013), 'Czech Republic: Stronger efforts needed to end segregation of Roma'. http://hub.coe.int/en/press/newsroom?p_p_id=pressrelease&p_p_lifecycle=0&p_p_state=maximized&p_p_mode=view&p_p_col_id=column-4&p_p_col_count=7&pressrelease_struts_action=%2Fext%2Fpressrelease%2Fview&pressrelease_pressreleaseUrl=%252FViewDoc.jsp%253Fid%253D2034313%2526Site%253DCM%2526BackColorInternet%253DC3C3C3%2526BackColorIntranet%253DEDB021%2526BackColorLogged%253DF5D383, last visited May 2013.

Section 3. Education

- While the Czech authorities have taken a number of measures to improve the situation (see Section 8), in the mainstream schooling system segregation persists, and this is connected to segregation in the housing sector. In schools, segregated classes also continue to exist (OSF expert, 2013. Czech Republic).
- In *D.H. and Others v Czech Republic*, the ECHR found that the Czech Republic violated Roma children's right to education. This judgment requires the Czech Republic to adopt measures to correct this situation. The OSF expert found that the amendments to Decree 72/2005 and 73/2005 have abolished further enrolment of children without health disabilities or disadvantage in special schools, but did not prohibit enrolment of children with health and social disadvantages. Unfortunately, Roma children continue to be placed in schools for children with mild mental disabilities without justification, which is a result of misdiagnosis or no testing at all.² The special schools have been renamed but little has improved in terms of the curriculum. There are also concerns with respect to the social and cultural neutrality of the diagnostic tools used by education advisory services.

In 2010, an official Czech report 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 constituted around one third of the children found to have a mental disability (COE Commissioner on HR, 2010. Czech Republic, §19). This has been confirmed by the Czech Ombudsman office and Czech School Inspectorate (OSF expert, 2013. Czech Republic).³

The COE HR Commissioner urged rapid legislative changes in terms of desegregation, a prohibition to educate children without a mental disability in establishments intended for children with such disabilities, and integrating socially disadvantaged children in the mainstream national education system. He also called for the presence of teaching assistants in schools where needed, to secure school attendance (COE Commissioner on HR, 2010. Czech Republic, §69 and 71).

- Recently the Czech Republic introduced preparatory classes for children who have not attended kindergarten, which was hailed as a positive measure. Roma representatives have advanced the criticism that that these preparatory classes actually preserve segregation because in practice they serve as recruitment for practical schools. (OSF expert, 2013. Czech Republic).

Section 4. Health care

- One of the main concerns in the field of health is the sterilization of Roma women without their free and informed consent. There is still a three year statute of limitation which starts from the time at which the sterilisation took place - instead of when the victim became aware of it - which obstructs the right to a remedy for victims. An amended healthcare law was adopted in 2011 (nr. 373/2011) which guarantees informed consent, in combination with other

² As is testified by the Commissioner for Human Rights in its press release CommDH CommDH005(2013) in which he states that 'Segregation of Roma children in education remains a serious human rights concern in the Czech Republic. Many of them are still taught as children with mild disabilities, in contravention of the 2007 *D.H.* judgment of the European Court of Human Rights which condemned the Czech Republic for this practice.'

³ See the study by the ombudsman's office: <http://www.ochrance.cz/tiskove-zpravy/tiskove-zpravy-2012/vyzkum-potvrdil-neprimou-diskriminaci-romskych-zaku/> and the Czech School Inspectorate "The transformation process at former special schools in the 2011/2012 school year" : <http://www.csicr.cz/cz/Dokumenty/Tematicke-zpravy/Tematicka-zprava-Postup-transformace-byvalych-zvla>

measures ensuring the free will of a person, and the right to and scale of compensation in sterilisation cases (CERD, 2011. Czech Republic, §19).

Section 5. Housing

- It is estimated that a third of the Roma population lives in about 330 segregated localities, in substandard housing conditions (ECRI, 2009. Czech Republic, §115). The COE Commissioner for Human Rights states that changing this situation is difficult because of the fact that housing falls completely within the competence of the municipalities. The housing situation of Roma is interlinked with poverty, unemployment, indebtedness and direct or indirect discrimination (COE Commissioner on HR, 2010. Czech Republic, §90).
- The Czech Republic is missing a coherent system of social housing, including a clear definition of the concept of social housing and the social criteria that are to be applied to the allocation of the social housing beneficiaries (ECRI, 2009. Czech Republic, § 118).

Section 6. Access to other goods and services

- ECRI mentions estimates that between 20% and 80% of Roma children are in institutional care and that numbers are growing. Roma children are removed from their families on grounds that they would not have a suitable and stable home, or that the economic and social conditions would not be satisfactory. This clearly indicates a disregard for Roma rights (ECRI, 2009. Czech Republic, §144).

Section 7. Availability of equality data

- The 2011 population census gave respondents the opportunity to answer open-ended, optional questions, including on ethnic origin. Unfortunately, only little more than 5,000 - of an estimated 200,000 Roma in the Czech Republic - did so in 2011. One reason advanced for this is that Roma themselves are unwilling to disclose their Roma origins (OSF expert, 2013. Czech Republic).

Section 8. Positive action and measures

- Some projects to improve the disadvantaged position of Roma on the labour market have been set up through the Ministry of Labour and Social Affairs. The National Strategy on Policing Minorities aims at educating police officers about minorities and improving relationships, and reducing the risk of employing persons with xenophobic attitudes by the Czech police. In 2008 an Agency for Social Inclusion in Roma Localities was set up to create a strategy to eliminating social exclusion and encourage NGOs, schools, employers, municipalities and Labour Offices to work together to improve the situation of socially excluded Roma. According to the OSF expert, the Agency has been slightly more institutionalized under the Office of the Government. It is considered a successful project, but it is considered not to have sufficient powers (ECRI, 2009. Czech Republic, §171).
- In 2010 Czech authorities adopted a National Action Plan of Inclusive Education (NAPIE), which is designed to assist Roma children to attend and remain in mainstream schools. Five regional Minority Integration Centres have been created to this end, with the support of EU Structural Funds. According to the OSF expert, the NAPIE has never been implemented and has now been revised and reduced in scope significantly. Further, the OSF expert is not aware of the Minority Integration Centres (OSF expert, 2013. Czech Republic).
- Another positive measure, which is generally welcomed is the appointment of teaching assistants in schools to help Roma children. As noted by the COE Commissioner for HR, '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.' (COE Commissioner on HR, 2010. Czech Republic, §63). However, the OSF expert notices that this initiative was developed many years ago, and did not benefit Roma on a large scale (OSF expert, 2013. Czech Republic). This is due to lack of funds, and to '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 (COE Commissioner on HR, 2010. Czech Republic, §63).

Section 9. Equality bodies

- The Anti-Discrimination Act has appointed the Ombudsman as the official equality body. According to the different sources, the Ombudsman has limited direct powers. It can receive individual complaints about public authorities and start investigations, publish its findings, make recommendations, and act as a mediator. According to the OSF expert, it can also file *actio popularis* appeals. However, he has no direct enforcement powers (OSF expert, 2013. Czech Republic).
- According to ECRI, the Ombudsman has carried out detailed investigations into issues of particular concern to Roma, and is one of the most trusted authorities in the Czech Republic. The OSF expert reports that the Ombudsman has filed eight discrimination cases on the basis of ethnic origin (in the fields of education, health care, housing, employment, persecution for exercising the right to non-discrimination) (OSF expert, 2013. Czech Republic). ECRI was concerned whether sufficient resources would be allocated to the Ombudsman after being designated as the equality body.

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)
Independent expert: Gwénaële Calvès

Summary

Section 1. General trends and challenges

- The minority groups that experience most discrimination on the grounds of racial or ethnic origin in France are the Travellers,⁴ Roma with a migration background (from Central and Eastern Europe), black persons, and Muslims.
- There is a persisting general “wariness of Muslims” in France. 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”. 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.’ (ECRI, 2010. France, §89).
- Discriminatory conduct by law enforcement officials, including the practice of racial profiling, which predominantly affects persons perceived as black and North African or Arab, contributes to minority groups’ mistrust of the police, and has caused tensions and clashes between the police and these groups. While ECRI recommended the establishment of an independent body to investigate alleged police misconduct (ECRI, 2010. France, §143), it is not clear whether the *Défenseur des Droits* and other administrative bodies may satisfy this appeal.
- The legal texts containing provisions on redress against racial discrimination have been complemented and modified several times in the last few years. The relevant provisions are currently 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, a compilation of the relevant texts with their explanations is highly desirable. This would allow a better understanding of the scope of the legal provisions available at the moment (ECRI, 2010. France, §42).
- In most civil antidiscrimination complaints filed within labour courts, claims were dismissed on the grounds that the plaintiffs did not bring sufficient evidence to shift to the defendant the burden of proving that no consideration of race or ethnic criteria was involved in their employment-related decisions. The situation evolved slowly through the years also thanks to the involvement of trade unions and specialized NGOs in a few major strategic cases against large companies, as the French car manufacturer Renault and the multinational Bosch. These cases helped the development a quasi-statistical method for proving discrimination *prima facie* that was admitted by the judiciary as sufficient to shift the burden of proof to the employer. This method, called *méthode des panels* (comparable panels method), consists of establishing a comparison within sets of employees with similar functions and qualifications but different career paths, and showing that surnames or places of birth suggesting a foreign origin are the only characteristics distinguishing the two sets (OSF expert, 2013. France).
- No judicial statistics are available on the number of civil cases of discrimination adjudicated by French courts. Whereas in 2008 Decree No. 2008-522 of 2 June 2008 created the database JURICA for appeal jurisdictions, this database is only accessible to certain researchers (Independent expert, 2013. France).
- Criminal law, where provisions on racial discrimination were established in 1972, remains the most traditional and, thus, used means of redress for racial discrimination. Confirming this

⁴ ECRI describes travelers as ‘people whose French nationality dates back many generations wishing to preserve their culture of travel and a certain number of whom adopt an itinerant lifestyle that they wish to continue’. ECRI Report, fn 55.

trend, in 2007, antidiscrimination units were established in the offices of the criminal prosecutor, and not within civil courts (Independent expert, 2013. France).

- The limited recourse to judicial redress for discrimination is also due, on the one hand, to certain barriers, such as the cost of judicial proceedings. On the other hand, negotiation, conciliation, and mediation procedures are increasingly promoted by trade unions as well as by the French equality body. In practice the HALDE (now *Défenseur des Droits*) tends to engage in litigation only in a restricted number of cases with highly symbolic value. Litigation remains in general a last resort option (Independent expert, 2013. France).
- Addressing racial discrimination through means of criminal law presents advantages (independent inquiry by the public prosecutor, no need to establish elements of proof before the court, symbolic value of the criminal prosecution), but also disadvantages. In particular, criminal law only punishes direct/'purposeful' discrimination and not indirect discrimination. The limited usage of the notion of indirect discrimination in France remains one of the main implementation problems concerning the RED, a second one being the limited development of any standard for compensation for non-pecuniary/moral damages in civil cases. Last, a third main problem is the reluctance to employ any data on racial or ethnic origin in order to analyse discrimination, or establish elements of proof (OSF expert, 2013. France)

Section 2. Employment

- French authorities have taken measures to combat discrimination on the grounds of origin in the field of employment but significant discrimination in access to employment continues to exist against persons perceived as being immigrants, North-African, Sub-Saharan African and Muslim. ECRI also stresses that only 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 (ECRI, 2010. France, §47).
- ECRI also stresses that many occupations remain inaccessible to non-EU citizens and that France should remove any unwarranted obstacles to access to employment. HALDE has expressed concern over the issue of citizenship requirements in access to employment and has underlined that, for certain jobs, the citizenship criterion is unfounded (ECRI, 2010. France, §52).

Section 3. Education

- ECRI takes account of sources confirming a 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 (ECRI, 2010. France, §56).
- The law of 15 March 2004, which determines that wearing conspicuous signs of religious belief in public schools is prohibited, has led to the exclusion of some pupils from state schools. ECRI recommends that the implications of the law, in terms of its potential to result in indirect discrimination, should be thoroughly examined (ECRI, 2010. France, §60).
- Serious difficulties exist with regard to access to education for Traveller children. Among other factors, the distant positioning of sites for Travellers from schools, and the limits set on the length of stay at such sites for Travellers are said to hinder Traveller children's access to education. There have been occasions when a primary school has refused to register Traveller children, probably on account of their origin. School enrolment rates of Traveller children are not accessible (COE Commissioner on HR, 2008. France, §142).

Section 4. Health care

- In practice, Roma have little access to medical care (COE Commissioner on HR, 2008. France, §151). Unfortunately, elaborate information in this respect is lacking because of the absence of disaggregated data.

Section 5. Housing

- Most Roma groups in France live in squalid, shanty towns, often without access to water or electricity (COE Commissioner on HR, 2008. France, §157).
- Travellers face considerable obstacles in finding short or long-term housing that meets decent housing condition requirements. On the one hand, they find it increasingly difficult to travel as finding a place to halt is extremely difficult. The number of stopping places available is still insufficient to meet demand, and conditions at many halting areas do not meet basic standards of decency. Restrictions regarding the length of stay in dedicated areas (maximum six months in winter and one month in summer), and lack of alternatives, force Travellers to keep relocating. On the other hand, Travellers also encounter considerable difficulties residing long-term in any one place, due to the combined impact of racism and policies and practices relating to urban planning and regulation. These difficulties in the housing sector also cause difficulties in a range of other sectors such as education, employment, health and access to other goods and services (COE Commissioner on HR, 2008. France, §128).
- Because caravans are not legally recognised as housing units, housing related social assistance is not granted. Housing difficulties also contribute to difficulties gaining access to some administrative services. It is reported that services have been refused to people without a permanent fixed address, for example when trying to open a bank account, securing a bank loan or concluding an insurance contract. (COE Commissioner on HR, 2008. France, §140). Immigrants and visible minorities experience direct and indirect racial discrimination in the private and public housing sector. According to a report by HALDE, applicants from North African or Black African origin in the private housing sector were nine times less likely to get housing than comparable applicants (ECRI, 2010. France, §65).
- The social housing sector is lacking transparency, a fact which 'can help create an environment conducive to potential discriminatory practices' (ECRI, 2010. France, §65).

Section 6. Access to other goods and services

- In general, Travellers have difficulties obtaining social assistance (ECRI, 2010. France, §139).
- Persons who are visibly Muslims have been confronted with limitations with regard to access to services and public places. For example, women wearing the headscarf have been asked to remove it both by public services and in the private sector. According to ECRI in some cases this is due to 'erroneous understanding of the scope of the principle of secularity' and legislation that prohibits wearing conspicuous signs of religious belief in public schools. Such incidents reinforce the problem of discrimination of exclusion and Muslim women in daily life' (ECRI, 2010. France, §89). The persistence of alleged cases of discrimination in access to entertainment venues such as discotheques should also be noted (ECRI, 2010. France, §133).
- A decision of the Constitutional Council of 2012 ruled unconstitutional the process whereby Travellers of French nationality without a regular income need their travel permits to be stamped by the administrative authorities every three months, while non-Travellers need this done only every other year (*Conseil Constitutionnel*, CC 2012-279 QPC, 5.10.2012). Similarly the Constitutional Council found unconstitutional the rule that Travellers are not entitled to

vote until they have been registered at a municipality for at least three years, whereas other French citizens only need to be registered for six months (ECRI, 2010. France, §138). Unfortunately, however, the Constitutional Council has not been clear about the constitutionality of 'circulation documents'. Neither did it rule clearly unconstitutional the regulation establishing that the number of travelling persons registered in a municipality may not exceed 3% of the municipality's population. The fact that Travellers may only vote in the municipality where they are registered combined with the 3% ceiling on residence may hinder Travellers from electing a representative to protect their interests. The Constitutional Council's decision compels the French authorities to amend the provisions above but the current state of the process is unclear (OSF expert, 2013. France).

Section 7. Availability of equality data

- In 2007, Decision No. 2007-557 DC of the Constitutional Council stated that it is not (per definition) a breach of the Constitution to use objective data such as surnames, geographical origin or nationality, or more subjective data such as 'the sentiment of belonging'. However, the decision also suggested that information regarding ethnic origin and race cannot be considered "objective" (ECRI, 2010. France, §152). The National Commission for Information Technology and Liberty and the Commissioner for Diversity and Equality of Opportunity have considered how measuring equality can lead to improving the measurement of discrimination (ECRI, 2010. France, §151).
- A 2010 report by a special task force entrusted by the government with a study on how to collect data to fight discrimination (*Comité pour la mesure et l'évaluation de la diversité et des discriminations*, COMMED) recommended that the French census form be amended to include data on the nationality and place of birth of parents, and that special surveys and research be conducted every five years also relying on self-identification with reference to ethno-racial proxy categories. A known group of demographers and lawyers has long advocated such a change. Among NGOs, the *Conseil Représentatif des Associations Noires de France* has also called for the collection of disaggregated data (especially on police stops) (OSF expert, 2013. France).

Section 8. Positive action and measures

- Several legislative and institutional developments are welcomed, e.g. the Enforceable Right to Housing Act 2007; the Equal Opportunities Act 2006 which allows for the use of anonymised CV's; the constitutional amendment of 23 July 2008 which gives the right to challenge the constitutionality of a law before the Constitutional court and State mechanisms to prevent and combat racial discrimination (CERD, 2010. France, §5).

In the field of education, several initiatives that could have positive effects are mentioned. These projects should be closely monitored as these initiatives in effect might lead to segregation in lower quality educational institutions. While the COE Commissioner for Human Rights welcomed the establishment of 'school lorries' and field schools to provide education at or near sites of Travellers, serious concerns can be raised whether this should be considered as a positive development (OSF expert, 2013. France). The European Roma Rights Centre in *Always Somewhere Else*, (pp. 245 – 251) explains that the resources and quality of the mobile schools are very limited and that the very existence of these truck schools bears witness to the degree of exclusion of many Gypsy and Traveller children from ordinary schools. These schools are a 'band-aid' solution in order to partially remedy the profound inability and unwillingness of mainstream schools to respond to the needs of children who travel. They are

also a response to the profound instability created by the actions of local officials and the police who continuously evict families (OSF expert, 2013. France).

- Several bodies have been established to address problems with regard to discrimination in access to housing. Further, the Supreme Council for Integration has drawn attention to issues in this sector by issuing an opinion with recommendations to prevent discrimination against persons with an immigrant background (ECRI, 2010. France, §66).

Section 9. Equality bodies

- The High Authority against Discrimination and for Equality (HALDE) was integrated into the *Défenseur des Droits*. The law that came into force in May 2011 gave the *Défenseur des Droits* the mandate to conduct research, propose legislation, and investigate individual and collective complaints. It has the powers to mediate, make recommendations to the state and civil parties, impose fines, penalties and bring cases to court (ECRI, 2010. France, §13).
- The HALDE has authority to handle claims of discrimination lodged by victims or associations fighting discrimination; it can also deal *ex officio* with cases of discrimination. The HALDE also has various investigative powers to follow up on complaints (ECRI, 2010. France, §15).
- The French equality body gained powers to perform plea bargaining (*transaction pénale*) and to act independently in civil and criminal suits in 2006. The equality body's data show that in 80% of the cases, its court briefings were followed up by the relevant jurisdictions. This type of intervention (covering all discrimination grounds) numbered between 48 and 212 cases a year (2006 to 2010), of which about a third can be reasonably expected to pertain to race discrimination cases (OSF expert, 2013. France).

GERMANY

Sources

1. [UN Special Rapporteur on Racism country report](#) (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)

Summary

Section 1. General trends and challenges

- The main minority groups at risk of discrimination on the grounds of racial or ethnic origin in Germany are Muslims, Black people, Turks, Roma and Sinti, and, more generally, migrants.
- While there are various reports of discrimination against black people, research on the black community in Germany is lacking and there is no clear view on the situation of this community which numbers between 200,000 and 300,000 people (ECRI, 2008. Germany, §109).
- Although a comprehensive Equal Treatment Act was adopted in 2006, reports raise concern about exceptions contemplated in its scope of application, especially with reference to public education, housing and the effectiveness of the federal equality body (Special Rapporteur on Racism, 2010. Germany, §45).
- Up until August 2010, the number of court decision on cases alleging racial discrimination on the ground of racial and ethnic origin under the Equal Treatment Act, were extremely rare (only 14 up to mid-2010). Most cases related to employment and concerned requirements in terms of language proficiency, denounced as a form of indirect ethnic origin discrimination. All the cited complaints were presented as individual complaints, with no formal intervention by antidiscrimination NGOs, trade unions, or equality bodies (OSF expert, 2013. Germany).
- In the only known German case where situation testing was used to shift to the burden of proof to the defendant, the judge found discrimination but halved the damages and made the plaintiff pay for a certain percentage of her costs. This appeared to be due to the fact that situation testing was considered as a dishonest means of obtaining evidence (*AG (Civil Court) Oldenburg, 23.07.2008, E2C2126/07*) (OSF expert, 2013. Germany).
- In two cases, the Labour Appeal Court of Hamburg and that of Schleswig-Holstein established that being part of intersectional groups at risk of discrimination — an elderly non-German woman, in the first case, and a disabled black men, in the second — was not sufficient to shift the burden of proof to the employers, to show that their job selection processes were not discriminatory (*LArbG (Regional Employment Appeal Court) Hamburg, 9.11.07, H3 Sa 102/07 and LArbG Schleswig-Holstein, 26.06.2008, 1Sa129/08*) (OSF expert, 2013. Germany).
- As regards remedies and compensation, moral damages ordered for denial of access to a service were halved in the case of the Oldenburg nightclub where situation testing was used as proof (500 Euros). In a case of discrimination in access to housing 2500 Euros were awarded (*OLG Köln, 19.01.2010, 24U51/09*). In the two cases in which courts found discrimination in access to employment and in the case of discriminatory dismissal, all based on language proficiency, the compensation ordered ranged between 3900 and 5400 Euros plus interest (*LArbG (Regional Employment Appeal Court) Bremen, 29.06.2010, 1 SA 29/10 and ArbG (Employment Court) Berlin, 11.02.2009, 55 Ca 16952/08*) (OSF expert, 2013. Germany).

Section 2. Employment

- Research shows that people with a migration background have a comparatively significantly higher unemployment rate than native-born Germans, in particular young people and well qualified workers. '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' (ECRI, 2008. Germany, §56).
- One of the main causes for this is discrimination in the recruitment process: persons with a migration background are rejected on the basis of their name, photos on their CV, or skin colour. There have been reports of black persons being sent away as soon as they were seen

by the potential employer. Advertisements requiring “mother-tongue German” have also been reported (ECRI, 2008. Germany, §57).

- Another cause for the high unemployment rate among qualified immigrant workers is the fact that there are considerable obstacles in obtaining equivalencies for diplomas obtained outside of the EU (Special Rapporteur on Racism, 2010. Germany, §48).
- In several *Länder*, school teachers are prohibited from wearing a headscarf. In Hesse civil servants are not allowed to wear headscarves. Muslim women have reported that these laws have made it increasingly difficult to find a job. The UN Special Rapporteur on Racism 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 certain exemptions 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 (ECRI, 2008. Germany, §99).

Section 3. Education

- Unlike private schools, public schools are not subject to the General Equal Treatment Act. According to Section 2(1) AGG, the material scope of the AGG embraces access to all types and levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Section 2(3)) as well as all aspects of education (Section 2(7)). However, the antidiscrimination provisions of the AGG apply only to private education, not to public education. Thus, section 19(2) AGG provides as follows: “Any discrimination on the grounds of racial or ethnic origin is further prohibited at the initiation, execution and termination of contractual obligations according to civil law (*zivilrechtliches Schuldverhältnis*) within the meaning of section 2(1) 5 to 8.” Public education is governed by public law, *inter alia* by the School Acts of the *Länder*. As a consequence, claimants in public schools cannot benefit from provisions sharing the burden of proof between claimants and defendants, establishing access to legal proceedings for civil society organisations wishing to support or act on behalf of a claimant, or establishing effective remedies and sanctions (OSF expert, 2013. Germany).
- Discrimination in the educational sector is generally of greatest concern in the assessed reports. Pupils with a migration background, and especially those whose mother tongue is not German, have lower chances of success in the German school system. This has to do with the three-tiered educational system, in which children are selected for separate school careers from an exceptionally early age. According to the Special Rapporteur on Racism this ‘created a bias against students whose mother tongue is not German’. According to the CERD the lack of adequate German language skills has caused children to be overrepresented in special schools for ‘underachievers’ and underrepresented in secondary and tertiary education. ‘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’ (Special Rapporteur on Racism, 2010. Germany, §40).
- Only few teachers are trained in teaching German as a second language. Some teachers are reported to display discriminatory attitudes in schools, in particular towards Turkish and Muslim children (ECRI, 2008. Germany, §49). While religious education is allowed for all religious confessions in German schools, religious education for Muslim pupils is still very rare,

also because of the lack of qualified Muslim teachers with sufficient knowledge of German to teach the Muslim faith in schools (ECRI, 2008. Germany, §98).

Section 4. Health care

- No information could be found in the reports under review, nor obtained from the national expert.

Section 5. Housing

- The General Equal Treatment Act states that difference of treatment is not discriminatory when it serves to 'create and maintain stable social structures regarding inhabitants and balanced settlement structures, as well as balanced economic, social and cultural conditions' (General Equal Treatment Act, Article § 19(3)). This has clearly a specific impact on racial and ethnic minorities. In addition to that, landlords are generally reluctant to rent housing units to persons with a migration background, a fact that has greatly contributed to the process of segregation and ghettoization in many cities of Germany. The Special Rapporteur on Racism and the CERD recommended amending Article § 19(3) because in effect it allows for direct discrimination (Special Rapporteur on Racism, 2010. Germany, §80).
- The Special Rapporteur on Racism suggests that in order to collect proof of discrimination in the housing sector, techniques such as situational testing should be employed.
- 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" (ECRI, 2008. Germany, §62).

Section 6. Access to other goods and services

- Some *Länder* have added questions to citizenship questionnaires that risks engendering indirect racial discrimination. For example, in Baden-Württemberg, the questionnaire only needed to be answered by citizens of countries belonging to the Organisation of the Islamic Conference (CERD, 2008. Germany, §19).
- Unlike persons affiliated to religions that are registered as corporate bodies under public law, Muslims are prohibited from registering their faith. ECRI is concerned that this may be a violation of the principle of equal treatment (ECRI, 2008. Germany, §97).

Section 7. Availability of equality data

- Data is collected on the basis of religion, citizenship, gender and age, country of origin and citizenship. Beyond this, Germany does not break down information on ethnic origin. 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 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 (ECRI, 2008. Germany, §164). The CERD recommends that 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, with a view

to evaluating the composition of its population and its situation in economic, social and cultural fields (CERD, 2008. Germany, §14).

Section 8. Positive action and measures

- The new National Integration Plan is welcomed for its support for integration courses for adults with a migration background, focusing especially on teaching German (ECRI, 2008. Germany, Summary).
- The Special Rapporteur notes with satisfaction that the Federal Government together with the *Länder* agreed to invest in language education for children with an immigration background and increase public spending on education and research to 10% of GDP by 2015 (Special Rapporteur on Racism, 2010. Germany, §37).
- The Special Rapporteur notes with satisfaction that Germany has established a 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 (Special Rapporteur on Racism, 2010. Germany, §61).

Section 9. Equality bodies

- Within the framework of the AGG, the Federal Government Commissioner for Migration, Refugees and Integration, and the Federal Anti-Discrimination Agency (the Agency) have competences to deal with racial discrimination. The Special Rapporteur on Racism recommends that *Länder* and municipal administrations be involved in implementing antidiscrimination provisions (Special Rapporteur on Racism, 2010. Germany, §68).
- Most of the complaints on racial discrimination at the Agency concern harassment at the workplace, discrimination in admission to night clubs and discrimination in housing rental (Special Rapporteur on Racism, 2010. Germany, §22).
- The Agency has a mandate limited to mediating between victims and perpetrators. ECRI recommends extending the competences of the Agency to include the 'power to investigate individual complaints, as well as the right to initiate, and participate in, court proceedings' (ECRI, 2008. Germany, §43). According to ECRI, the Agency appears to have 'relatively few resources to carry out its statutory tasks'. Victims are not aware of the Agency, and there is a time-limit of two months to file a complaint.

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)

Summary

Section 1. General trends and challenges

- The minority groups that experience discrimination on the grounds of racial or ethnic origin in Greece are the Roma, Macedonians, and the Muslim minority in Western Thrace (mainly Turks), and migrants. Muslims in Western Thrace are the only officially recognized minority group.
- According to the OSF expert, and numerous reports, the police deliberately target persons who appear to be of Asian or African origin for documentation checks. This approach tends to cause persons of these ethnic origins to be disproportionately represented among persons administratively detained. Administrative detention is consistently reported to be in conditions which amount to inhuman and degrading treatment and systematically fall short of fundamental rights standards (as ruled by the ECtHR in *MSS v. Belgium and Greece in 2011, paras 162-166* and reported by the Committee Against Torture in its *Concluding Observations of 2012, paras 20 and 22* and also Parliamentary Assembly of the Council of Europe '*Migration and asylum, Mounting tensions in the Eastern Mediterranean*', 2013, paras 28-31) (OSF expert, 2013. Greece).
- In 2005, 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 was adopted. This law is considered wide in scope and reflects international and European standards on protection against racial discrimination. There are, however, a number of gaps: it does not cover discrimination based on colour and language and the section that prohibits discrimination on the basis of religion does not cover social protection, education and access to goods and services. Furthermore, NGOs can only bring a case before the court if they represent an identified victim. Very few complaints have been filed so far; at the time of writing only 26 complaints about various forms of discrimination had been recorded since the entry into force of the law. The Ombudsman, the Equal Treatment Committee and the Labour Inspectorate monitor the implementation of this law (ECRI, 2009. Greece, §26).
- There have been cases of violence against Roma by the police. Furthermore, it has been reported that complaints by Roma of discrimination and racially motivated crimes are not effectively investigated or take much longer to solve than others (ECRI, 2009. Greece, §101).
- According to ECRI, the 'Integrated Action Program for the social integration of Greek Roma' adopted in 2002 should be systematically monitored and evaluated in consultation with Roma communities. The Inter-Ministerial Committee within the Ministry of Interior that is responsible for coordinating the activities of all relevant ministries in the implementation of this program should play an important role in this (ECRI, 2009. Greece, §55).

Section 2. Employment

- Due to discrimination, and low levels of education, only few Roma living in settlements are employed in the mainstream labour market (ECRI, 2009. Greece, §47).
- The Muslim minority in Western Thrace is mainly employed in the agricultural sector and is under-represented in the public sector. While law 3647/08 imposed a quota for this minority in the civil service, no effective measures seem to have been taken to implement this quota (ECRI, 2009. Greece, §48).

Section 3. Education

- In general, there is a need for more 'minority secondary schools' (ECRI, 2009. Greece, §59-61). There is also a lack of properly trained Muslim/Turkish teachers in Western Thrace, due to the fact that the Thessaloniki Pedagogical Academy offers a shorter training period for Turkish language teachers than for other pedagogical training. The representatives of Muslim minorities approve of the quota established for Muslim students in universities (0.5 per cent), but they consider the improvement of the quality of education to be even more important (ECRI, 2009. Greece, §60).
- There have been incidents in which schools refused to enrol Roma children. In other cases, Roma children were placed in a separate class from other children within the same school. Furthermore, the drop-out rate among Roma children remains very high. There is a need for preparatory classes for Roma pupils and adequately trained teachers (ECRI, 2009. Greece, §54).

Section 4. Health care

- Some Roma settlements still do not have adequate access to healthcare (ECRI, 2009. Greece, §76).

Section 5. Housing

- A significant rise has been reported in homeless Asian and African migrants. According to various reports, this is due to the long-standing and continuing failure of the Greek government to comply with its obligations under EU law to both ensure that migrants who wish to, can claim asylum and also arrange accommodation and support for asylum-seekers who lack the means to do so (see Amnesty International "*Greece: The end of the road for refugees, asylum-seekers and migrants*", 2012, Parliamentary Assembly of the Council of Europe '*Migration and asylum, Mounting tensions in the Eastern Mediterranean*', 2013, paras 35-39, 43-45). As the UN Committee Against Torture notes in its concluding observations, asylum seekers face serious obstacles in accessing the asylum procedure due to structural deficiencies, particularly the requirement of a fixed address which often cannot be met by the applicant. It recommends that Greece implement recent asylum legislation in practice and support it with appropriate infrastructure (para 18) (OSF expert, 2013. Greece).
- The CAT signalled in its concluding observations that asylum seekers face serious obstacles in accessing the asylum procedure due to structural deficiencies, including the requirement of a fixed address (OSF expert, 2013. Greece).
- In some Roma settlements in Aspropyrgos and Spata, the living conditions are 'unacceptably below international standards', without running water or electricity, a sewage system and access to public transport (ECRI, 2009. Greece, §70).

Section 6. Access to other goods and services

- It is prohibited to constitute groups or associations whose denomination includes the word 'Turk' or 'Macedonian'. This is a restriction of the right to freedom of association and self-identification of Macedonians and Turks (COE Commissioner on HR, 2008. Greece, §13).

Section 7. Availability of equality data

- Greece does not systematically collect ethnic data broken down by race, colour, national and ethnic origin. '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' (ECRI, 2009. Greece, §182).

Section 8. Positive action and measures

- The adoption of Law 3304/2005 is generally seen as a positive development. However, a number of shortcomings still need to be addressed (ECRI, 2009. Greece, §21).
- Greece has taken several steps to improve access to education for minority groups. In 2007-2008 in Western Thrace there were 198 primary schools where both Greek and Turkish were taught. This positive development should be expanded to more schools and kindergartens. Greece has taken additional positive measures to improve the situation of the Muslim minority in Thrace in the field of education. For example it finalised the implementation of the project 'Education of Muslim Children', which led to the production of special books and the introduction of Turkish as a second language in high schools. Together with Roma, Muslims from Western Thrace also benefit from vocational training through the EU Social Fund programmes.

The Integrated Action Plan, the EU 'Progress', and other vocational and employment programmes aim to assist Roma in finding employment. Greece has also established special programmes to prevent Roma pupils from dropping out of schools. The EU and Greece co-fund special classes for Roma children and in-service teacher training (ECRI, 2009. Greece, §44).

- A special housing loan scheme for Roma was established in 2002 and gives priority to large families with young children, single parent families, persons with health problems and persons with lower incomes (ECRI, 2009. Greece, §69). As stated in Section 5, this scheme does not always seem to benefit the intended groups.
- In the field of health, several initiatives have been developed. For example, Greece and the European Union Social Fund co-finance 32 Socio-Medical Centres which provide basic health care services in Roma settlements, such as preventative medicine, primary health and social care and vaccinations. Another project called the 'Safeguard, Promotion and Socio-Psychological Support of Greek Gypsies' created mobile units to monitor the living conditions in the camps and provide clinical tests and vaccinations. The established Network of Social Services is to 'combat poverty and social exclusion by providing basic social services'. In 2009, a pilot programme for a health care e-card for Roma in Trikala commenced. Information on how many human and financial resources are allocated to the projects has not been made public (ECRI, 2009. Greece, §75).

Section 9. Equality bodies

- Greece has three official institutions dealing with racism and racial discrimination in the public and private sectors, the Ombudsman, the Committee for Equal Treatment and the Labour Inspectorate (ECRI, 2009. Greece, §30-42).
- The Ombudsman monitors the public sector, local and regional authorities and other public or private bodies controlled by the state. The ombudsman has the power to examine acts of

individuals as well as legal entities in employment cases. A complaint needs to be filed within six months after learning of the action. This period is considered too short for victims to file a complaint (ECRI, 2009. Greece, §31).

- The Labour Inspectorate is to ensure equal treatment in employment. It can award fines of up to €30,000 (ECRI, 2009. Greece, §39).
- The Committee for Equal Treatment monitors all areas that fall outside the competence of the Ombudsman and the Labour Inspectorate. It can monitor mediation, draft reports when these efforts fail and send the reports to the Prosecutor for action. It may also give opinions following a complaint or ex officio and carry out investigations into acts of private and public entities. The main concern is that the Committee is not independent since it is chaired by the Secretary General of the Minister of Justice (ECRI, 2009. Greece, §35).
- A fourth body, the National Commission for Human Rights, also monitors racial discrimination in Greece, and publishes reports (ECRI, 2009. Greece, §41).

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)

Summary

Section 1. General trends and challenges

- Roma are the main minority group who experience discrimination on the grounds of racial or ethnic origin in Hungary. The other twelve official national minority groups generally do not report discrimination in their daily lives.
- In April 2011, Hungary adopted a new Constitution. The Constitution refers to ethnic and national minorities as 'nationalities' and stipulates several rights for these groups. However, the fact that the Constitution no longer mentions explicitly whether rights of minorities will be guaranteed and supported by the State raises concerns (Independent expert, 2013. Hungary).
- Hungary's antidiscrimination provisions in the Labour Code and Equal Treatment Act 'at least theoretically constitute a deterrent, and do provide a basis in practice for seeking redress in individual cases' (ECRI, 2009. Hungary, §115). Since the beginning of the 2000s, there have been relatively few judicial decisions on racial discrimination (a maximum of five or six cases per year). Following 2004, this number may have somewhat increased due to the entry into force of the Act on Equal Treatment. However, the number of the decisions published still does not exceed ten to fifteen cases per year. It has to be noted that these numbers cannot be ascertained because only a small proportion of the judgments have been published to date. In the last few years, the number of disclosed decisions improved slightly, but a specific effort to examine this case law is missing. Most cases emerged in the field of labour law, especially access to employment, and access to goods and services and the field of education (Independent expert, 2013. Hungary).
- The paucity of cases may be explained, at least partly, by the small number of, and lack of capacity among, civil society organizations (community supporter and professional legal defence) dealing with such cases, or the fact that victims groups, mainly Roma people, have limited opportunity to exercise their rights. Launching and pursuing civil proceedings requires a great deal of organization and financial sacrifice. Whenever the victim is assisted by a civil society organisation, the latter generally bears the costs of the lawsuit. The limited demand and willingness of Roma people to further their interests also significantly contributes to the low number of cases. This unwillingness might be partly explained by the fact that Hungarian society is generally distrustful of state authorities and courts, with the Roma minority possibly being even more so. The organisations most active in these proceedings are the Legal Defence Bureau for National and Ethnic Minorities (NEKI) and the Chance for Children Foundation (CFCF) (Independent expert, 2013. Hungary).
- The Act on Equal Treatment included an important innovation in Hungarian law, allowing 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. However, as a result of an amendment to this legislation in 2012, the right to representation for civil organisations became more difficult. Currently, it is possible to do so only if an NGO's founding statute mentions the protection of the interests and rights of the given group. As a result, this has excluded many organisations from representing potential victims.
- Concerning remedies, the Constitutional Court established that discrimination constitutes a serious violation of human dignity, which in itself should give rise to the award of compensation. In general practice, this sum for serious violations of human dignity is 600,000 HUF (1,990 EUR). The usual amount of compensation for antidiscrimination cases, however, is usually between 100,000 and 150,000 HUF (330 to 495 EUR), which is inconsistent with the finding by the Constitutional Court (Independent expert, 2013. Hungary).

- Besides awarding punitive damages, the civil court usually restrains the perpetrator from further infringement, and, in most cases, it also entertains demands for restitution. This generally takes the form of a statement which must be publicly disclosed in the circle of people wherein the tort occurred. For example, where a person has been denied entry to an entertainment venue, the prescribing part of the judgment is to be disclosed for fifteen to thirty days at the venue in a clearly visible manner (Independent expert, 2013. Hungary).
- Courts are becoming increasingly aware of the Act on Equal Treatment. Nevertheless, they continue to apply the rules under civil law that require the claimant to bear the burden of proof alone.
- Although legal representation is not obligatory in proceedings on equal treatment, attorney representation is still expedient because of the special rules of procedure in court. On the part of the injured party, this results in a great cost that victims of racial discrimination are often not in a position to afford.
- Proceedings initiated because of a violation of equal treatment often last three to four years. This is a serious problem for the injured party, because it implies high financial and psychological costs.
- Two main problems affect proceedings before the Equal Treatment Authority (ETA). The first is the slowness of decision-making. Because the Authority operates with a very small apparatus, the law imposes tight deadlines that the Authority is generally incapable to meet. Although it is possible to initiate a judicial review against the decision of the Authority, up to one year may elapse in between the ETA's decision and judicial review. Second, it is extremely difficult to recover fines imposed by the Authority on perpetrators; whenever fines are recovered, the final destination of the funds is not made public.

Section 2. Employment

- Despite several well-received initiatives by the authorities to improve the position of Roma in the labour market, their unemployment rate is still estimated at 70%, i.e. ten times higher than the national average. This is the result of direct and indirect discrimination. The few jobs that are available to Roma are short-term, low-skilled and poorly paid. It can be concluded that discrimination in access to employment is currently not effectively addressed (Special Rapporteur on Racism, 2012. Hungary, §37).
- Hungary should adopt measures to increase the number of Roma working in the health care system (ECRI, 2009. Hungary, §135).

Section 3. Education

- Segregation of Roma children in the education system is one of the greatest concerns in Hungary. Schools which are only attended by Roma are increasing. These schools are reported to be of lower quality. On the basis of the Equal Treatment Act, the Debrecen Appeal Court concluded in 2006 that the authorities had violated the prohibition on ethnic segregation. An independent monitoring system should be established to ensure that the prohibition on segregation is respected in practice (ECRI, 2009. Hungary, §90).
- The establishments that assess whether children should attend special schools are the same bodies that run these schools. Thus, such schools have a vested interest in diagnosing the children as mentally disabled. Further, most of the children that are classified as 'mildly' disabled are misdiagnosed due to a failure to take into account cultural differences or socio-economic disadvantages. This was confirmed in a recent case in which the European Court of Human Rights (ECHR) found once

more that the placement of two Roma children in schools for the mentally disabled was discriminatory. The Court decided that the tests used to determine their mental disability – which did not comply with the World Health Organizations’ standards- ‘cannot be considered to serve as sufficient justification for the impugned treatment’. Furthermore, the Court found that ‘the Expert Panel had failed to individualize the applicants’ diagnoses or to specify the cause and nature of their special education needs and therefore violated the applicants’ right to equal opportunity’ (*Horvath and Kiss v. Hungary*, Application No. 11146/11, 29 January 2013, paras. 118-123). Children such as these could be relatively easily integrated in mainstream schools. The independent expert recommends that the category of children with mild disabilities be deleted from the Education Act, and that these children be integrating in the mainstream school system.

- There is a strong need for teachers to be trained on social awareness and integration promotion. The Special Rapporteur on Racism recommends that Hungary develops unbiased schoolbooks which should reflect the history of minorities (Special Rapporteur on Racism, 2012. Hungary, §57).

Section 4. Health care

- In terms of access to health care Roma face obstacles and discrimination when trying to receive medical care in hospitals and care from general practitioners in rural areas, and when requesting emergency assistance. Roma women in maternity wards have reportedly been segregated (ECRI, 2009. Hungary, §132).
- In 2006, the Committee on the Elimination of Discrimination against Women, in the case of *Ms A.S. v. Hungary*, found a violation of the Convention in the sterilization of a Roma woman without her informed consent. The law has since been amended (see section 8).

Section 5. Housing

- The main challenges that Roma face in the housing sector are forced evictions, segregation and lack of access to basic amenities. Since 2000, local government notaries can order evictions without official papers. Evictions are not temporarily suspended pending the outcome of an appeal (ECRI, 2009. Hungary, §122).
- In the last decade, Roma have increasingly been living in slum-like housing conditions. Roma families have been hindered from moving to another neighbourhood. Furthermore, Roma are discriminated against in the field of social housing. The local regulations which determine that persons caught squatting are barred from access to social housing results in indirect discrimination against Roma, since they ‘are proportionally far more often unable to afford nominal housing costs, which forces them to occupy homes without legal authorisation’ (ECRI, 2009. Hungary, §125). The refusal of social housing can even lead to separation of children from their families. In this view, the Hungarian Housing Act was amended to explicitly include the social objectives of social housing. The regulations in place regarding access to social housing indirectly have an impact on Roma.

Section 6. Access to other goods and services

- Based on information from the Equal Treatment Authority, Roma experience denial of services in commercial and catering establishments industries (such as shops, bars and restaurants) (ECRI, 2009. Hungary, §137).
- Roma children are substantially over-represented in the child protection system (ECRI, 2009. Hungary, §143).

Section 7. Availability of equality data

- While there are numbers on national minorities as a result of the census, there is a lack of data disaggregated by ethnic origin due to the high level of protection of personal data granted by the Hungarian privacy legislation (ECRI). ECRI points out that measuring the situation of minority groups in different fields of life 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'. Disaggregated data could assist the Hungarian authorities in clearly identifying problems that need to be addressed and in monitoring the effectiveness of measures already taken (ECRI, 2009. Hungary, §191).
- Roma are free to decide whether or not to identify themselves as Roma in order to benefit from specific minority rights, for example in the education and housing sectors (ECRI, 2009. Hungary, §142).

Section 8. Positive action and measures

- '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' (Special Rapporteur on Racism, 2012. Hungary, §16).
- Several programmes have been developed to reduce unemployment among Roma, by training unskilled Roma, and providing incentives to employers to hire Roma. Even though these initiatives are positive steps, their effectiveness and sustainability are questioned, also because they affect only a limited number of Roma.
- A programme was launched to reassess socially disadvantaged children classified as having mental disabilities. Within the New Hungary Development Plan, a new cognitive assessment instrument (the WISC-IV) was developed which takes into account socio-cultural differences when testing these children (ECRI, 2009. Hungary, §79).
In the field of education, measures have been introduced to integrate children with multiple disadvantages by limiting the schools' freedom to select children, and by prohibiting schools from refusing any multiply disadvantaged child, and by making kindergartens more accessible (ECRI, 2009. Hungary, §94).
- In the framework of the Strategic Plan for the Decade of Roma Inclusion several steps have been taken to reduce inequalities in the healthcare system. The National Roma Integration Strategy, which was adopted by the Hungarian Government in December 2011, contains health-related components.
- Subsequently to the *A.S. v. Hungary case* (see section 4), in 2008 the Hungarian Government amended the Public Health Act to ensure that appropriate information is provided to patients in the context of sterilization procedures so that informed consent is ensured.
From 2007 to 2010 a Health Insurance Supervisory Authority was created with the 'primary goals of reducing territorial inequalities in health care'. It was mandated to deal with complaints about the health care system and could impose fines on health service providers. In 2012 this Authority was replaced by the National Center for Patient Rights, Children's Rights and Documentation (*Országos Betegjogi, Ellátottjogi, Gyermekjogi és Dokumentációs Központ*, OBDK), which is supposed to take over some of the responsibilities of the former Health Insurance Supervisory Authority including the complaint procedure (ECRI, 2009. Hungary, §130).

In addition, since the Parliamentary Act CLIV of 1997 on Health, Hungary has an institution of patients' rights representatives. Such representatives assist patients with, among others things, enforcement of the right to equal treatment in health care: they can help patients submit complaints at the healthcare facility, suggest remedies and represent patients in procedures with the authorities concerned. Healthcare providers are obliged to operate an internal system that addresses patient complaints. According to the 2002 report of the Hungarian Ombudsman, the number of complaints submitted to its office by individuals concerning the violation of the constitutional right to health has decreased significantly as a result of the work of patients' rights representatives. Individuals can also turn to the Commissioner for Fundamental Rights with complaints concerning the violation of their right to health set forth in the Hungarian Constitution (OSF expert, 2013. Hungary).

Section 9. Equality bodies

- The Equal Treatment Authority (the Authority), established in 2005 as the national equality body, has the mandate to receive and investigate individual complaints, and to investigate on its own initiative or in response to an *actio popularis* submitted by NGOs and other stakeholders (Special Rapporteur on Racism, 2012. Hungary, §21). The legal status of the Authority has changed: it is no longer subject to ministerial supervision, but to ministerial direction. According to ECRI, this appears 'to signal a diminishing of the Authority's independence' (ECRI, 2009. Hungary, §41). The Equal Treatment Authority's case-load has been increasing significantly, which according to the Special Rapporteur would demonstrate its effectiveness (ECRI, 2009. Hungary, §38).
A high proportion of cases is, however, dismissed. This seems to indicate '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... The lack of adequate resources was also reported.' (Special Rapporteur on Racism, 2012. Hungary, §23). The authority does not have regional or local branches (ECRI, 2009. Hungary, §39).
- In the years 2005, 2006 and 2007, the Equal Treatment Authority reported, respectively, 2, 4 and 7 cases of discrimination cases on the ground of race or ethnicity. There is no further available data on the decisions of the Equal Treatment Authority. It must be noted that the Equal Treatment Authority is popular with victims since its procedures are simpler and faster than those of courts (OSF expert, 2013. Hungary).
- The new Constitution of 2011 merged the Parliamentary Commissioners for Civil Rights, Future Generations, and the Rights of National and Ethnic Minorities into a single institution, being the Parliamentary Commissioner for Fundamental Rights. The Parliamentary Commissioner acts in parallel to the Authority. Individuals can choose between the Authority or the Parliamentary Commissioner. The Parliamentary Commissioner has competence to investigate cases of discrimination and propose general or special measures as a remedy. However, he cannot impose fines (Special Rapporteur on Racism, 2012. Hungary, §24).
- The Equal Treatment Authority has the power to impose sanctions, but it is not authorized to impose charges for punitive damages. It can, however, charge a fine, the sum of which may be between 50,000 HUF and 6,000,000 HUF (165 to 20,000 EUR). The gravity and the number of preceding violations of the law are also considered when the actual sum is determined. In cases of racial discrimination, the court imposes fines of around 1,000,000 HUF (3,300 EUR) if there is more than one injured party. This fine is not paid to the injured party. In fact, the law prescribes that sums recovered by the equality bodies have to be used for the promotion of equal treatment and equality of opportunity. It remains, however, unclear where the sums are placed in the national budget. Another problem is that the sums can only be recovered with

difficulty, and that the enforcement procedure is cumbersome. Considering these factors, this type of sanction may well be inefficient and have little dissuasive effect. Furthermore, it was recently noted the Authority does not impose any fines in cases where the perpetrator was a state office or local government office. The Authority also has the power to order the publication of its decision by the defendant (OSF expert, 2013. 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)

Summary

Section 1. General trends and challenges

- Italy is urged to ensure that its legislation (in particular article 3 of the Constitution) and policies do not discriminate against any person, in purpose or in effect, on grounds of race, colour, religion, ethnic and national origin and language.
- The minority groups that experience most discrimination on the grounds of racial or ethnic origin in Italy are the Roma, Sinti and Camminanti community (generally referred to as 'Roma', 'nomads' or 'travellers') and migrants (also referred to as 'third country nationals', *extracomunitari*). The current situation of Roma and Sinti 'poses some of the most pressing human rights challenges Italy has to face' (COE Commissioner on HR, 2012. Italy, §62).
- ECRI reports that the situation of Roma has, in some respects, worsened in comparison to previous years (ECRI, 2012. Italy)
- The OSF expert notes that the Race Equality Directive was transposed without amending existing domestic law, creating legal uncertainty between the two (RED transposition decree and 1998 Immigration Act), especially in view of the possibility of standing in court for civil society organizations.
- Most litigation has concerned local statutes or regulations explicitly excluding third country nationals or short term residents from accessing public services or employment, which was found to constitute a form of indirect racial discrimination. Most litigation sought the repeal of explicit, directly discriminatory legislation or administrative acts. As a consequence, there has not yet been any jurisprudence showing whether the shift of the burden of proof is correctly implemented, or that statistical evidence and situation testing are allowed in proceedings. Nonetheless, Italy is the only country in which antidiscrimination NGOs have consistently sought acknowledgement from the judiciary for the formal support brought to plaintiffs. In addition, Italy is also the sole case where collective cases of discrimination have been filed by NGOs. However, legal standing of antidiscrimination NGOs was generally granted without major opposition in cases discrimination on grounds of nationality, whereas it was denied in some cases of race discrimination.
- From another point of view, the remedies and damages that can be obtained from an antidiscrimination lawsuit, for instance in the domain of employment, were also little explored in the Italian context. When courts acknowledge state discrimination, the remedy ordered by the judge is frequently the simple repeal of the ordinance and/or the payment of the social benefit that had been denied. In a small number of cases judges have also ordered the publication of their courts' ruling in local media, so as to make the remedy more effective. However, there have been no damages awarded as a result of a complaint of discrimination against a state body, and only very symbolic damages (100 to 2,000 Euros per complainant) have been awarded in the few cases of race discrimination in access to private services.
- Whereas an increasing amount of jurisprudence concerns indirect racial discrimination caused by provisions or rules excluding third country nationals from the provisions of services (mainly public), domestic jurisprudence has only very rarely found racial discrimination against Roma. The most blatant example of this is the 16 November 2011 decision by Italy's Highest Administrative Tribunal (*Consiglio di Stato*) affirming that "even though these elements are perhaps apt to reveal a discriminatory intent by some of the institutional subjects involved... they do not allow to conclude that the entire administrative action has been uniquely and principally finalized at establishing a racial discrimination of the Roma community ...This is not sufficient to declare that the acts are illegitimate under this profile." (OSF Expert, 2013. Italy).

Section 2. Employment

- Roma and Sinti, and third country nationals face obstacles in relation to accessing the labour market, particularly due to persisting prejudices with employers and exclusion of third country nationals from competitions for jobs advertised by public companies, like hospitals and transport companies. Roma and Sinti also face difficulties because they sometimes lack identity documents (many are stateless) or permits of stay (ECRI, 2012. Italy, §107).

Section 3. Education

- Concerns are expressed that Roma and Sinti children do not effectively have access to education. Forced evictions and inadequate housing have a negative impact on school attendance, and play a role in high drop-out rates. Low numbers of Roma and Sinti attend secondary schools and very few undertake a course of further or higher education (CERD, 2012. Italy, §20).
- The administrative measure which limits the number of children with non-Italian nationality in a public school classes to 30% may have a negative impact on Roma and Sinti, and other vulnerable groups, in relation to their access to education, insofar as it frequently forces them to move to schools further removed from their places of residence (CERD, 2012. Italy, §20).

Section 4. Health care

- Roma and Sinti experience health problems due to inadequate housing conditions in campsites, whether these are “authorised nomad camps” and unauthorised settlements. Migrants face linguistic and cultural barriers to access health care (ECRI, 2012. Italy, §178).

Section 5. Housing

- Italian legislation prohibits discrimination in both the public and the private housing market. Nevertheless, third country nationals, in particular, experience discrimination in the public housing sector because of the tougher eligibility conditions for social housing that have been introduced by some municipalities (e.g. requirements in terms of length of residence in a specific municipality or exclusion of authorised nomad camps inhabitants from the eligible categories) (ECRI, 2012. Italy, §173).
- There are serious concerns about the segregated housing situation of Roma and Sinti and the fact that the camps they reside in often lack basic facilities. As the COE Commissioner for Human Rights states, ‘segregated camps and forced evictions are diametrically opposed to the text and spirit of the National Roma Inclusion Strategy’ (COE Commissioner on HR, 2012. Italy, §107). Several Roma and Sinti have become homeless due to forced evictions performed in and outside the context of the Nomad Emergency Decree (NED), without prior notice, written notification, and provision of alternative housing or shelter.
- In November 2011, the Italian Council of State declared the ‘Nomad emergency’ decree illegitimate because ‘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)’ (COE Commissioner on HR, 2012. Italy, §80). Since then, the authorities in Rome have resumed creating a segregated camp, called an ‘equipped village’ (*villaggio attrezzato*). This village, located in a very remote location, several kilometres away from

schools, healthcare and other services, is fenced off and under surveillance by cameras. This has resulted, inter alia, in low school attendance of children. It has been reported that the children are transported in special busses, marked with the letter N. The local authorities have indicated that this equipped village is a model for future camps (COE Commissioner on HR, 2012. Italy, §85).

Section 6. Access to other goods and services

- The Italian legal framework and administrative practice raises obstacles for Roma, Sinti, Travellers and third country nationals to access Italian citizenship (COE Commissioner on HR, 2012. Italy, §116).
- Third country nationals experience difficulties in accessing social services, especially those provided by local authorities, which tend to request criteria for access that are difficult to match for third country nationals, stateless person or persons without stable residence (CERD, 2012. Italy, §23).

Section 7. Availability of equality data

- In fields such as education, housing and employment, Italy collects data broken down by nationality but does not yet have a confidential, voluntary self-identification system for collecting data in terms of the ethnic composition of the population (CERD, 2012. Italy, §11).
- In the course of implementing the Nomad Emergency Decree, fingerprints and photographs of Roma and Sinti living in campsites have been collected. Despite the declarations of the Italian authorities, it has been reported that not all data has been deleted (CERD, 2012. Italy, §11).

Section 8. Positive action and measures

- Italy has adopted its first National Strategy for the inclusion of Roma, Sinti and Camminanti. The successful implementation of this Strategy relies on the development of effective mechanisms of collaboration with Roma communities at the national, regional and local levels.
- In Milan a consultation mechanism (*Consulta Rom*) is established which brings together Roma and Sinti representatives with local authorities. According to the Commissioner for Human Rights, 'the genuine involvement of Roma and Sinti communities in the decision-making process is an essential precondition for the success of future policies' (COE Commissioner on HR, 2012. Italy, §90).

Section 9. Equality bodies

- The UNAR (*Ufficio Nazionale Antidiscriminazioni Razziali*) is the equality body established in compliance with the Racial Equality Directive. Among other functions, UNAR is supposed to provide protection to victims of racial discrimination and coordinate the National Roma Inclusion Strategy. UNAR does not have the power to bring legal proceedings. Even though UNAR has, in practice, been able to criticize some discriminatory measures, the CERD has recommended that Italy take the necessary measures to guarantee UNAR's independence. '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, 2012. Italy, §41). UNAR's powers should be extended to cover not only ethnic origin and race, but also colour, language, religion, nationality and national origin. The

Commissioner for Human Rights is worried that UNAR will lose 9 out of 14 staff members due to the 2012 spending review (COE Commissioner on HR, 2012. Italy, §72).

THE 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)

Summary

Section 1. General trends and challenges

- The groups that are reported to experience discrimination on the grounds of racial or ethnic origin in the Netherlands are Muslims, and more specifically, those of Moroccan and Turkish descent. Black people and persons originating from Surinam and the Dutch Antilles, Roma and Sinti are also flagged among victims of discrimination.
- Since 2007 the Netherlands lacks an up-to-date, comprehensive plan of action to combat discrimination. Remarkably, the primary responsibility for integration has shifted from the State to immigrant communities themselves (CERD, 2010. Netherlands, §4, art.2). The Netherlands does not have special anti-discrimination or positive measures in place that aim at specific minority groups. The CERD recommends that the Netherlands adopt a flexible approach to address discrimination, including special measures aimed at specific groups (CERD, 2010. Netherlands, §6).
- ECRI notes a considerable increase in complaints about racial discrimination on the Dutch labour market. Religion and racial harassment in the workplace are the most cited grounds of discrimination. Non-native Dutch women, and in particular Muslim women wearing a headscarf, suffer from discrimination on the basis of ethnicity (COE Commissioner on HR, 2008. Netherlands, §134). According to ECRI, the rise in complaints is partially due to the fact that victims are more aware of redress mechanism for anti-discrimination.
- In 2011 the Dutch Equal Treatment Commission (in Dutch the *Commissie Gelijke Behandeling* or CGB) received a total of 719 requests for an opinion, of which 94 concerned race, 28 nationality, and 50 religion. ECRI has commended the CGB for continuing to be the main mechanism through which respect of equal treatment legislation is ensured in the Netherlands. 'When the case is brought before the courts, the latter refer to the CGB's decision in 81 per cent of the cases and follow such decisions in 61 per cent of the cases' (ECRI, 2008. Netherlands, §27). Furthermore, 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, 2008. Netherlands, §28).

Section 2. Employment

- The CERD signals that unemployment among ethnic minority groups, especially Moroccans, Turks and Antilleans, is significantly higher than average because of racial discrimination on the labour market. ECRI reports that an official Dutch study showed that stereotyping and discrimination are some of the obstacles ethnic minorities have to face in the Dutch labour market, and proposed 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. In response, the Netherlands claimed that it had taken general measures, as well as some measures targeting specific ethnic groups. This would mark a change in practice because the Netherlands targets its labour market policies not at improving the labour situation for persons of a specific ethnic origin but in general for all persons in need of support. Unfortunately the government did not give specific examples of the measures to which it referred. (ECRI, 2008. Netherlands, §63).
- As testified by several sources, discrimination is particularly recorded in the recruitment process. This is regrettably demonstrated by a study in 2011 that shows that 76% of Dutch employment agencies honour a request from an employer not to introduce possible

candidates with a specific ethnic background. In December 2012, the Netherlands Institute for Social Research published the results of a study conforming that the labour market position of non-western migrants, particularly Turkish, Surinamese and Antillean employment seekers has deteriorated (OSF expert, 2013. Netherlands).

Section 3. Education

- The Dutch authorities have not effectively challenged *de facto* segregation in schools. Likewise, while the average educational level has increased more for ethnic minorities than for the Dutch population, children from ethnic minority groups are attending the worst performing schools (ECRI, 2008. Netherlands, §70).
- CERD expresses concern about this *de facto* segregation in educational establishments and recommends an increase in efforts to prevent and abolish segregation, and establish measures such as the Mixed Schools Knowledge Centre. According to ECRI, segregation in education is a result of spatial (socio-economic) segregation and 'white flight'. White flight is the practice of indigenous Dutch parents sending their children to (white) schools outside of the ethnically mixed area where they live (ECRI, 2008. Netherlands, §68).
- In 2011, the Ministry of Education abolished policies combating segregation in primary education. While field experiments have demonstrated effective ways of reducing school segregation, the Minister argues that the emphasis on education policies should be on the quality of the schools and education. The hypothesis underlying this policy is that improvement of quality will eventually be helpful for all students, and therefore no specific measures against segregation or for students with migrant backgrounds are needed. It is questionable whether improving the quality of education for all, without measures specifically targeting segregation, will have the desired effect. (OSF expert, 2013. Netherlands).

Section 4. Health care

- Health insurance is obligatory for everyone residing in the Netherlands. However, uninsured individuals are also entitled to basic health care. As noted by the CERD in its Concluding Observations, in the Netherlands statistical data on the socio-economic situation of minority groups, including Muslims, and persons of Surinamese and African descent is lacking, particularly in the field of health. Information on Roma is missing. According to the latest document issued by the Dutch government on policy measures implemented in the Netherlands for the social inclusion of Roma, there are no health policy measures that target Roma specifically (*see* Ministry of the Interior and Kingdom Relations, the Netherlands, *'Policy measures in the Netherlands for the social inclusion of Roma'*, the Netherlands, 16 December 2011). The European Commission concluded in May 2012 that measuring the impact of the equal treatment approach on the situation of Roma people was necessary in the Dutch context (Netherlands Factsheet, 21 December 2012) (OSF expert, 2013. Netherlands).
- As of 1 January 2012, the Dutch Ministry of Health abolished all subsidies for translation and interpretation, stating that non-Dutch speaking patients could bring family members to act as interpreters. Patients will need to pay for the costs of professional interpretation themselves. This may restrict access to health care for ethnic minorities and migrants (OSF expert, 2013. Netherlands).

Section 5. Housing

- The four largest Dutch cities are characterized by segregated neighbourhoods and discrimination in the housing market. Disadvantaged neighbourhoods are predominantly

populated by ethnic minority groups. In order to tackle segregation, the Special Measures Act 'Urban Areas' (*Wet Bijzondere Maatregelen Grootstedelijke Problematiek*) was introduced in 2005 to raise extra conditions to 'newcomers' on the housing market. Rotterdam is said to be the only municipality making use of the Act. The COE Commissioner for Human Rights notes that '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 that the authorities 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' (COE Commissioner on HR, 2008. Netherlands, §158).

- As a consequence of the abolishment of the Caravan Act (*Woonwagenwet*), the number of stopping sites has been seriously reduced, and does not meet the current demand. This may prevent certain Dutch Roma and Sinti from preserving their culture and identity (OSF expert, 2013. Netherlands).

Section 6. Access to other goods and services

- Reports point at racial discrimination in admissions policies and access to fitness centres, catering establishments and places of entertainment. Cases of racial discrimination in access to certain banking services have also been highlighted. For example, ECRI notes: '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, 2008. Netherlands, §78).

Section 7. Availability of equality data

- Dutch authorities do not collect information broken down by categories such as race, colour or language. An official distinction is made between *allochtony* and *autochtony* persons (*allochtony* persons having at least one parent born outside the Netherlands). ECRI questions whether this information is used to improve the situation of the concerned minorities. Instead, it says, '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' (ECRI, 2008. Netherlands, §114).

Section 8. Positive action and measures

- An expertise centre on diversity and employment (DIV) has been created since 2004 to promote diversity management among employers (ECRI, 2008. Netherlands, §62).
- While still extremely low in some forces, the representation of ethnic minority officers in the police is gradually improving. ECRI reports 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). 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' (ECRI, 2008. Netherlands, §101).

- Between 2005 and 2008 specific policies were developed in collaboration with the relevant communities to reduce early-school leaving, unemployment and criminal activities among Antilleans between 12 and 24 years of age. According to ECRI, these policies would be evaluated afterwards. It is not clear what the outcome of this assessment is, and if there are current projects (ECRI, 2008. Netherlands, §82).
- One of the positive projects to counter discrimination in access to places of entertainment, are door-policy panels that discuss customer complaints, which have been set up in different municipalities. These panels are 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 policies for entering a place of entertainment and takes the necessary -legal- action. 'ECRI recommends the Netherlands to monitor the effectiveness of these panels' (ECRI, 2008. Netherlands, §76, 77).

Section 9. Equality bodies

- In October 2012, the new Netherlands Institute for Human Rights (in Dutch *College voor de Rechten van de Mens*) was established. The Institute was created with the aim to protect and promote human rights with a particular focus on the right to equal treatment. Responsibilities of the Board include issuing advice and recommendations (upon request and also at its own initiative), providing information, rendering opinions on the basis of equal treatment legislation. This new national human rights institute has subsumed the Equal Treatment Commission (CGB), which was the body previously responsible for equal treatment.
- In addition to the national equality body, in 2009, the Municipal Anti-Discrimination Services Act (*ADV Wet*) entered into force and created a mechanism to enforce the non-discrimination rule on the local level. These Local Anti-Discrimination bureaux are responsible for providing help and advice to individuals upon request and for providing the municipalities with annual figures on reports of discrimination at local level. Municipalities can formulate local anti-discrimination policy in cooperation with the Public Prosecution Service, the ADVs and the police (OSF expert, 2013. Netherlands).
- According to the CGB's 2012 report, in 2011 the CGB received a total of 719 requests for an opinion, of which 94 concerned race, 28 nationality, and 50 religion. As the report states: 'this is 313 more requests than in 2010. The reason for this increase could be the improved facilities for submitting a request through the CGB website. A side effect is this seems to be that more requests are submitted without an equal treatment ground (no equal treatment ground: 108 in 2011, 35 in 2010).'⁵ While the opinions of the CGB are not legally enforceable, on average 70 per cent of the cases in which discrimination was found have been followed up with the implementation of positive measures (OSF expert, 2012. Netherlands). '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 has commended the CGB for continuing to be the main mechanism through which respect of equal treatment legislation is ensured in the Netherlands. Furthermore, 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, 2008. Netherlands, §28).

⁵ Dutch Equal Treatment Commission (CGB), 2012. Annual Report 2011, p. 14.

- ECRI observes that while it is a known fact that Roma face problems and discrimination in all sectors, very few complaints are submitted at the anti-discrimination institutions. ECRI asserts that the problems related to discrimination experienced by Roma and Sinti can only be tackled by a committed and coordinating central government (ECRI, 2008. Netherlands, §88).

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)

Summary

Section 1. General trends and challenges

- The minority groups experiencing most discrimination on the grounds of racial or ethnic origin in Spain are the Roma, North African Muslims and Sub-Saharan and Latin-American migrants.
- The Spanish Constitution ensures the principle of equal treatment on grounds such as race, colour, language, religion, nationality or national or ethnic origin, but only for Spanish citizens. Self-evidently, this provision should apply to all individuals (ECRI, 2011. Spain, §7-8).
- Identity checks and police raids that are carried out on the basis of ethnic and racial profiling in public places with high concentrations of foreigners, are concerning. Following a decision of the United Nations Human Rights Committee which found that Spain violated the right to equality before the law by practicing ethnic profiling, the Permanent Representation of Spain to the Human Rights Committee stated that Spanish legislation that governs the State Police Forces and Corps ensures the prohibition of discrimination (CERD, 2011. Spain, §10).
In May 2012 a new directive (Circular 2/2012) was adopted by the General Directorate of the Police in order to respond to the recommendations of international human rights bodies and the Spanish Ombudsman on the issue of ethnic profiling. This new Circular provides that police officers should avoid indiscriminate actions based solely on ethnic criteria. However, ethnic profiling persists after the entry into force of this new Circular, as regularly documented by *Brigadas Vecinales de Observación de Derechos Humanos*.
- Also Circular No. 1/2010 of the General Commissariat for Immigration and Borders might allow interpretations that can lead to racial profiling. Additionally, an independent commission is to be set up to investigate allegations of police misconduct discrimination (CERD, 2011. Spain, §10).
- While Spain has increased its efforts to combat discrimination against Roma, this group continues to face discrimination, poverty and social exclusion. This is particularly the case for Eastern European Roma who have been arriving more recently.

Section 2. Employment

- Antidiscrimination laws in the field of employment are not well known, and rarely applied (ECRI, 2011. Spain, §74).
- Unemployment affects immigrant communities disproportionately. According to ECRI, this has to do with the collapse of industries where predominantly immigrants worked, and with the arrival of new immigrants (ECRI, 2011. Spain, §75).
- North African Muslims belong to the group most affected by discrimination in the labour market. According to ECRI, a reason for this is that these persons follow a month of Ramadan, which would reduce working capacity (ECRI, 2011. Spain, §76).
- Immigrants generally experience wage discrimination and other forms of labour exploitation (ECRI, 2011. Spain, §77).
- Ethnic minorities are not equally represented in the police force. ECRI states that this is due to the fact that it is necessary to have the Spanish nationality and the 'general mindset of both fear and disrespect towards the police which prevents members of ethnic minorities even considering a career in this service' exploitation (ECRI, 2011. Spain, §210).

Section 3. Education

- Despite legislation calling for an appropriate distribution of students, there is a pattern of educational segregation of migrant and Gypsy children. The proximity criterion contributes to this problem as immigrants and Roma tend to live together in communities and therefore do not have access to ethnically mixed classes with Spanish nationals (CERD, 2011. Spain, §15).
- Discrimination in the admissions procedure enabled publicly-funded private schools to 'pick and choose pupils' (ECRI, 2011. Spain, §63).
- Roma pupils have very high drop-out rates (according to ECRI, 85% of Roma pupils do not complete secondary education, which is compulsory) (ECRI, 2011. Spain, §66).
- The right for Muslims to receive religious instruction in public schools is currently not fully enjoyed by Spanish pupils. While there are enough teachers of Islam in Spain, religious education for Muslim pupils is lacking. Religious instruction by teachers of Islam depends on the region in Spain and whether religious education is under the authority of the state (ECRI, 2011. Spain, §135-139).

Section 4. Health care

- Whereas the entitlement to health care was previously connected to registration at a municipality, since the adoption of Royal Decree Law 12/2012, undocumented migrants (except for minors and pregnant women) are excluded from preventative and curative health care services, excepting emergency care. Subsequent Royal Decree 1192/2012, enables undocumented migrants to conclude care packages, much like private insurance schemes. However, this has not been regulated, and some autonomous regional authorities keep including undocumented migrants in the mainstream health care system. Evidently, the Royal Decree Law hampers undocumented migrants' access to health care, which mainly affects persons from North African and South American origin.

Section 5. Housing

- Spain has implemented various laws and policies to improve the housing situation of Roma and immigrants (see Section 8). Nevertheless, shanty towns and slum dwellings still exist, and therefore the living conditions of vulnerable groups, such as the Roma, are still not equal and optimal (ECRI, 2011. Spain, §83).
- A law of 2009 might allow limitations on access to housing aid for foreign residents who have not been legally residing in Spain for longer than five years. This is a step backwards from the previous law that granted access to all legal residents. (ECRI, 2011. Spain, §87).
- Amnesty International's submission to the UN Committee on Economic, Social and Cultural Rights⁶ demonstrates that procedural safeguards against forced evictions are lacking. Particularly, the authorities fail to consult affected people prior to the eviction to find alternatives to the eviction and alternative adequate housing is often not provided to those who need it.

Section 6. Access to other goods and services

- Immigrants, particularly North Africans and Roma experience discrimination in the entertainment industry, and with regard to other goods and services in the private sector. The Spanish authorities are strengthening their efforts to combat these forms of discrimination (see Section 8) (ECRI, 2011. Spain, §89).

⁶ <https://doc.es.amnesty.org/cgi-bin/ai/BRSCGI/eur410052012en?CMD=VEROBJ&MLKOB=30559692552>, pp. 14-20

Section 7. Availability of equality data

- According to the authorities, statistical data cannot be collected due to special protection under Spanish legislation (article 7 of Organization Act No. 15/1999 (Art.1)). Civil Society actors however argue that this collection would be permissible if the anonymity of the persons involved is guaranteed (CERD, 2011. Spain, §8).

Section 8. Positive action and measures

- Spain has welcomed many of the recommendations made by the CERD and ECRI, and taken serious steps to improve the situation of groups experiencing racial discrimination. For example, various institutions have been set up to combat racial discrimination, including the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin. Furthermore, Spain is one of the few countries to have adopted a Human Rights plan for the years 2008-2012. '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' (ECRI, 2011. Spain, §45). ECRI concluded that 'by all accounts Spain has addressed the social exclusion of its Roma population in a largely successful manner' (ECRI, 2011. Spain, §123). Spain has had a Plan for Roma Development in place since 1985, which has been allocated an increasing budget. Furthermore, it has set up a strong National Roma Council. With respect to Jews, a Government institution was established in 2007 to raise awareness for Jewish culture (ECRI, 2011. Spain, §145).
- In the field of education, Spain has introduced 'education for citizenship and human rights' as part of the compulsory curriculum at primary and secondary school levels (ECRI, 2011. Spain, §218). While this initiative was much welcomed, the new Government has proposed new legislation to remove this course, which, according to the OSF expert, will most likely be approved. Evidently this would nullify the progress made.

In order to accommodate Roma and immigrant children with a Spanish language deficit, measures have been implemented to teach Spanish as a second language, and a 2006 Law on Education provides for official language schools where everyone above 16 can learn 22 foreign languages, and all the official languages of Spain free of charge (ECRI, 2011. Spain, §60). To address school drop-out rates, the Spanish Ministry of Education has agreed on 126 measures against early school leaving, which involve employers and autonomous communities (ECRI, 2011. Spain, §66). Also, teaching about the Holocaust has become compulsory in Spanish schools (ECRI, 2011. Spain, §146).

- Spain has implemented various laws and policies to improve the housing situation of Roma and immigrants. For example, by relocating families from slums to standard houses and subsidizing rent, Barcelona no longer has any slums.

Furthermore, home-ownership by Roma is – financially – supported, and legislation has been adopted to encourage landlords to rent to low-income tenants (ECRI, 2011. Spain, §86). Unfortunately, as testified by the OSF expert, in practice these policies have sometimes had the effect to disperse members of a community after a forced eviction (OSF expert, 2012. Spain).

Section 9. Equality bodies

- The Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin was established in 2009 and has a mandate to assist victims and collect data on complaints (ECRI, 2011. Spain). Unfortunately, the Council is lacking autonomy and independence, it does not have investigation powers, nor the right to initiate and participate in court proceedings. It is not well known with the public (ECRI, 2011. Spain, §30). The OSF expert notes that the financial resources for the Council have been cut recently, which raises concerns about the Council's capacity to carry out its activities.