

Recognising and Combating Racial Discrimination: A Short Guide

What is discrimination?

Discrimination on grounds of race, colour or ethnicity ("racial discrimination") is almost always a violation of human rights. In the words of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the primary international law governing the ban on racial discrimination, the term racial discrimination shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. Fundamental to the principle of non-discrimination are the rights of members of racial, ethnic and national minorities to equality before the law and the equal protection of the law. International law bans racial discrimination in a range of fields including but not limited to education, health, housing, employment, and the provision of and access to public goods and services. States have a positive obligation to prevent, punish and remedy racial discrimination.

Current European law speaks of "direct" and "indirect" discrimination. In the words of the recently adopted European Union Race Equality Directive (Directive 2000/43/EC, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin), direct discrimination has occurred where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin. An example might be an employment office which, as a matter of policy, refuses to accept Romani job applicants, or a housing office which by intention and design assigns Roma to sub-standard housing.

Indirect discrimination occurs where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. Examples might be a department store which states that no persons with long skirts may enter the store, or a government office which prohibits entry by persons with covered heads. These rules, though neutral on their face as to ethnicity, in fact may disproportionately disadvantage members of certain minority groups, who have a tendency to wear long skirts or head scarves.

In some countries in which the ERRC works, many people believe that Roma cannot suffer discrimination, because the Constitution or another law declares discrimination illegal, explicitly recognises Roma as a minority, or similar. This is a misunderstanding of the idea of discrimination as it is presently applied in Europe today. Just because domestic Constitutional or other legal provisions prohibiting discrimination exist in your country does not mean that discrimination does not take place. The existence of a law against discrimination in your country does not mean that it is impossible for you to suffer discrimination -- it only means that you have a tool to fight against discrimination. You may in fact be suffering many discriminatory acts every day.

In a very limited number of situations, discrimination may not be unlawful. In relation to direct discrimination, this arises in what is known as the "genuine occupational qualification" exception. It might not, for example, be unlawful to restrict applicants for a job as a Rabbi to people of the Jewish faith, or applicants for a job as a Romani youth worker to Roma.

Likewise, in specific instances, the law permits indirect discrimination. Where the complainant has established that a practice disproportionately disadvantages a racial or ethnic group, then the responsible person has the legal obligation to prove that the practice pursues a legitimate aim, and is proportionate and reasonable. An example might be a building site that requires all workers to wear hard safety hats. This policy would indirectly discriminate against certain groups who forbid the covering of heads in this way. The employer might however seek to justify this requirement by showing that in this case, the legitimate aim is to ensure the safety of workers, that the requirement is proportional with the risk, and that wearing hard hats is a reasonable requirement under labour safety regulations.

How do I know if I have suffered illegal discrimination? How can I show that I have suffered illegal discrimination?

Most of us know how to recognise blatantly discriminatory acts. These occur with unfortunate frequency in Europe. Have you or someone you know ever been refused service in a pub or restaurant because the waiter or owner said he did not serve "Gypsies"? Do you know someone who was denied a job, flat or medical assistance because he or she is Romani? Have you ever seen a sign banning "Gypsies" or "Roma"? These are all blatantly discriminatory acts. The ERRC proves discrimination in such cases using the document or sign which banned Roma from entry, as well as by taking careful and detailed witness statements from persons who saw or heard the discriminatory act.

Another category of directly discriminatory acts are actions where the word "Roma" or "Gypsy" was not explicitly used, but where it is possible to show that discrimination has taken place. For example, many bars and restaurants now refuse entry to Roma and other dark-skinned persons under the pretext that they require "club membership", or by saying that there is a private party going on. Similarly, it is often reported that Roma applying for jobs are told over the telephone to come in for a job interview, but when they arrive and the persons offering the job see that they are Romani, the applicant is told that there is no job, or that the job has recently been filled.

How can a person prove that there has been discrimination in such cases? Some organisations in Central and Eastern Europe have recently successfully used a technique called "testing". Testing involves sending pairs of Roma and non-Roma -- persons who in respects such as dress, qualifications, etc., are otherwise very similar -- to apply for a job, a flat or to enter a restaurant or discotheque where it is suspected that discrimination against Roma is regularly practised. If the non-Romani pair is treated differently than the Romani pair -- for example if the non-Romani pair is allowed into the discotheque but the Romani pair is asked to show a membership card and then refused entry -- then detailed and careful testimony of all of the so-called "testers" should be written down. This testimony forms the evidence of the

discriminatory act, and in many countries can be used in court. More information on testing is available on the ERRC website at: Testing to prove racial discrimination: methodology and application in Hungary, or by contacting the offices of the ERRC.

Statistics can be useful in showing both direct and indirect discrimination. In several countries in Central and Eastern Europe for example, Romani children are regularly placed in remedial schools for the mentally handicapped. ERRC research in the eastern Czech city of Ostrava in 1999 revealed, that over half of the Romani population of school age attended such schools, over half the total population of such schools was Romani, and that a Romani child was 27 times more likely than a non-Romani child to be placed in such a school. Many of the Romani children who did not attend schools for the mentally handicapped were concentrated in a handful of primary schools in certain neighbourhoods of Ostrava; over 30 of Ostrava's 70 normal primary schools were "all white" i.e. there was not a single Romani child attending those school.

In Ostrava, the ERRC used careful research to show disparate impact: we counted the number of Romani children and non-Romani children in all primary schools in the Ostrava school district. The resulting map -- showing what many say is true, but few have documented well -- revealed a city dramatically segregated along ethnic lines, with the majority of Romani children attending schools from which they will graduate without the necessary skills to compete on the job market, earn competitive wages, and lead dignified lives. Other organisations have undertaken important studies using methods such as "sampling" and "pair sampling", in which researchers examine not whole populations, but rather only carefully selected representative individuals or groups, to show discriminatory treatment. Competent statistical research is extremely valuable, and similar studies need to be conducted in all countries, and in many areas of life -- education, housing, employment, health care and social services, to name only a few. They can be useful in proving discrimination in court, in arguing for better government policies and more money to be spent on Roma, as well as in highlighting Romani issues before powerful international committees, such as the various United Nations and Council of Europe bodies. Local organisations are probably best-placed to conduct such studies. If you are interested in undertaking such studies, it is worth noting the following:

- It is not true, as many activists claim, that "everybody knows the problem, now we need only action"; in most countries, good statistical data on issues of deep importance to Roma, is unavailable, for instance in relation to (to name only a few examples):
 - the percentage of Romani children who attend schools or classes for the mentally handicapped or other poor quality schools;
 - the number of Roma (and non-Roma) who live in houses which are not legally registered by local authorities or do not have adequate infrastructure;
 - the number of Roma (and non-Roma) evicted from their housing every year;
 - the number of Romani children (and non-Romani children) who are removed from their families and placed in state institutions every year.
- In some countries, state authorities block efforts to find out such information. For example, while conducting research in the Czech Republic, the ERRC frequently was told by school officials that keeping data on ethnicity was not done, or even

that it is illegal. People who say that they cannot give out information about numbers of Roma may simply be trying to block you from finding out whether Roma are suffering systematic discrimination. Even countries which classify data on an individual's ethnicity as "sensitive" and therefore subject to restrictions on use for the most part do not maintain such bans on generalised data about groups. In some countries, however, it may in fact be unlawful to collect and provide race statistics. A local lawyer can tell you if legal restrictions exist in your country.

- In order for such data to be useful, research must be conducted well. It is worth several visits to the library, getting advice from a sociologist or demographer, or contacting the ERRC to ask about research methods before undertaking such a study.

But I'm still not sure if it is discrimination...

In the field of discrimination, there seems to be an expert in every crowd. Many people will tell you that just because you feel like you have suffered discrimination, doesn't necessarily mean that you have been the victim of a discriminatory act. And this is no doubt true -- not all hurtful acts are discriminatory. However, it is important to remember several things:

- In the first place, very few non-experts actually know a lot about what is and is not considered racial discrimination under law. If you think you have suffered a discriminatory act, it is worth checking it against the descriptions of direct and indirect discrimination presented above. Does it sound like it falls into one of those categories? Then it might be discrimination. It may be worth contacting the ERRC or a local organisation specialising in anti-discrimination work to see if action can be taken.
- International law in the field of anti-discrimination is in fact very strong. Under international law, most experts agree that the ban on racial discrimination has the force of customary international law -- that is, racial discrimination is banned everywhere, even if your country has never made any laws against it or ratified the ICERD.

So in the field of racial discrimination, your instincts are in fact a very good guide -- if you feel as though you have suffered discrimination, there is a quite strong chance that you have.

How can I fight racial discrimination?

There are a number of instruments developed to assist victims of racial discrimination. These include:

- Domestic anti-discrimination laws;
- Other domestic laws not directly pertaining to discrimination, but that might be creatively applied in discrimination cases, such as tort laws protecting dignity of person;
- International laws, including:
- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), in particular Article 14 of the ICERD, allowing the

Committee on the Elimination of Racial Discrimination to consider communications from individuals and groups concerning violations of the Convention;

- The European Convention on Human Rights (ECHR): Article 14 of the ECHR prohibits discrimination with respect to rights guaranteed under the Convention. Protocol No. 12 to the ECHR, which was opened for signature in 2000, will add a comprehensive ban on discrimination in the application of any right provided by law, following its ratification by ten member states of the Council of Europe. Activists have an important role to play in bringing pressure on governments to ratify Protocol 12 without delay;
- The European Union Race Equality Directive: This Directive requires states to adopt comprehensive anti-discrimination laws and establish effective enforcement bodies. It forms part of the body of EU law which member states and candidate countries alike must comply with. Activists have a significant role to play in ensuring that states amend legislation to meet the requirements of this important instrument.

The ERRC acts to combat discrimination against Roma through a range of activities, including:

- publicising information about the human rights situation of Roma;
- advocating Roma rights at the international level;
- empowering Roma to act on their own behalf through human rights education programs;
- bringing lawsuits in domestic and international courts on behalf of Romani victims of discrimination and other forms of human rights abuse.

If you believe you have suffered or are currently suffering discrimination, you might consider approaching a local lawyer and, working with him or her, applying to the ERRC for an ERRC Legal Representation Grant. Application criteria for ERRC Legal Representation Grants are available on the ERRC Internet website in English and Romani at: Legal Representation Grants, or by contacting the offices of the ERRC.

Legal action is crucial in fighting discrimination. However, legal action alone is often unlikely to have impact outside the individual case at issue. Human rights action against discrimination is best done in planned and co-ordinated fashion. Indeed, it is worth thinking out strategies in which any powerful friends -- the media, international NGOs, intergovernmental bodies, etc. -- are considered as allies. In the Ostrava case described above, for example, after the ERRC had carefully documented a grotesque pattern of racial segregation in the Ostrava schools system, it not only filed law suits in domestic and international courts on behalf of the parents of fifteen Romani children segregated in Ostrava schools, but also:

- held a press conference for members of the domestic and international media to announce the filing of the law suit;
- published a comprehensive report, in Czech and English, on the issue of the segregation of Romani children in the Czech school system;
- worked with local community groups, both before and after the lawsuit, to raise awareness about the empowerment possibilities of such action;
- submitted ERRC materials pertaining to segregation in the Czech school system to international bodies such as the UN Committee on the Elimination of Racial

Discrimination and the Council of Europe's European Commission against Racism and Intolerance;

- continued to work with journalists after filing the suit to publicise the case further.

1.

The ERRC welcomes discussions with activists and partner organisations as to how to make the best use of human rights information and heighten the effect of human rights action. Further information about ERRC activities is available on the ERRC website (<http://errc.org>). Further inquiries pertaining to the issues raised above can be directed to:

European Roma Rights Center
PO Box 906/93
H-1386 Budapest 62
Hungary

Tel: (36 1) 413 2200

Fax: (36 1) 413 2201

E-mail:

Additionally, the ERRC is currently carrying out a joint project together with two partners Interights in London and the Migration Policy Group in Brussels aiming to make the most of the opportunity for enhanced anti-discrimination litigation and advocacy created by the adoption of the EU Race Equality Directive and Protocol No. 12 to the ECHR. If you would like to join our on-going efforts promoting anti-discrimination legislation throughout Europe, or simply receive more information about our activities in this area, please get in touch with the offices of the ERRC at the contact information above.