

WRITTEN COMMENTS

BY THE EUROPEAN ROMA RIGHTS CENTRE CONCERNING ROMANIA

For Consideration by the European Commission on the Transposition and Application of the Race Directive and on the Legal Issues Relevant to Roma Integration.



CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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Romania

CASE REVIEW: ROMANIA

This case review focuses on the transposition and implementation of the Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive or RED), and the impact on Roma in Romania. It does not purport to be comprehensive and, in particular, Section 5 on instances of discrimination against Roma refers to cases in which the European Roma Rights Centre (ERRC) has been actively involved.

1 TRANSPOSITION OF RED INTO DOMESTIC LEGISLATION

1.1 THE UNSUCCESSFUL PROCESS OF TRANSPOSITION OF THE ROMANIAN ANTI-DISCRIMINATION FRAMEWORK, AND THE EUROPEAN COMMISSION'S CRITICISM DURING THE PRE-ACCESSION PROCESS

The EU Race Directive (2000/43/EC) and the EU Framework Directive (2000/78/EC) were transposed in Romania by Governmental Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination on 31 August 2000.¹ The Ordinance was finally approved with amendments and additions by Law no. 48/2002.² In successive regular reports on Romania's progress towards accession, the European Commission criticised Romanian legislation on substantive content (including the concepts of indirect discrimination, harassment and victimisation and the burden and standard of proof) and on the independence of Romania's equality body, the National Council for Combating Discrimination (NCCD).³

In order to ensure a transposition process in compliance with EU law as well as other international standards,⁴ the Romanian Governmental Ordinance no. 137/2000 was amended in 2003 and 2004.⁵

In 2006, the anti-discrimination law (ADL) was amended again and significantly improved in terms of meeting substantial EU law standards.⁶ In order to comply with the requirement to have an independent specialised equality body at the national level, the 2006 amendments of the ADL provided that the National Council for Combating Discrimination (NCCD) is a quasi-judicial body, an autonomous state authority, under parliamentary control.⁷

In its monitoring report on Romania's state of readiness for EU membership, the European Commission took notice of the 2006 legislative changes, in particular regarding the equality body, and stated that "the law on preventing and sanctioning all forms of discrimination has been amended to meet EU standards related to the independence of the National Council for Combating Discrimination."⁸

1 Published in the Official Gazette of Romania, no. 431 of 2 September 2000.

2 Published in the Official Gazette of Romania, Part I, no. 69 of 31 January 2002.

3 2000 Regular Report from the Commission on Romania's Progress towards accession, p21 available at: http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/ro_en.pdf, 2002 Regular Report from the Commission on Romania's Progress towards accession, p 29 available at: http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/ro_en.pdf, 2003 Regular Report from the Commission on Romania's Progress towards accession, p 22, available at: http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/rr_ro_final_en.pdf, 2004 Regular Report from the Commission on Romania's Progress towards accession, 6.10.2004, pp 23 and 95, available at: http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_ro_2004_en.pdf, 2005 Regular Report from the Commission on Romania's Progress towards accession, pp 54 and 55, available at: http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/sec1354_cmr_master_ro_college_en.pdf.

4 For example ECRI, *General Policy Recommendation no.2 on specialized institutions for combating racism, xenophobia, anti-Semitism and intolerance at national level*; ECRI, *General Policy Recommendation no.7 on national legislation for combating racism and racial discrimination*.

5 Governmental Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, approved and modified by Law 48/2002 concerning the adoption of the Government Ordinance 137/2000 (31.01.2002); Government Ordinance 77/2003 for the amendment of the Government Ordinance 137/2000, (30.08.2003); Law 27/2004 concerning the adoption of the Government Ordinance 77/2003 for the amendment of the Government Ordinance 137/2000a (11.04.2004).

6 For example: the standard of shifting the burden of proof, acceptance of statistical data as evidence of indirect discrimination, clarifications on the status of the equality body etc.

7 Law no. 324/2006 for the amendment of the Government Ordinance 137/2000, (20.07.2006).

8 Communication from the Commission, Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania, Brussels, 26/09/2006, COM (2006); 2.1 Political criteria, Protection and integration of minorities, p 40, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2006/sept/report_bg_ro_2006_en.pdf.

1.2 LEGISLATIVE CHANGES AND CONSTITUTIONAL DECISIONS ON THE ROMANIAN ANTI-DISCRIMINATION FRAMEWORK

The anti-discrimination law was modified in 2008 by the Government through Emergency Ordinance no.75. The modification related to financial issues in the system of justice but with direct implications for the equality body as it quashed its mandate to address discrimination complaints in the area of salary-related rights and benefits of public civil servants. However, the adopted law in April 2009 for the approval of the Emergency Ordinance repealed the limitation of the equality body.⁹ Yet, the Constitutional Court in a series of decisions stated that the provisions from the anti-discrimination law, as well as the entire anti-discrimination law, is unconstitutional as long as the civil courts or the equality body assess complaints of discrimination arising from legislative measures in regard to salary-related rights. Basically the Constitutional Court stated that it is the only forum to be addressed in the Romanian system with such complaints in nature and as long as the courts or the equality body would decide *ratione materiae* on such cases they would act contrarily to the Constitution.¹⁰

In 2010 at the instigation of some members of the Parliament the anti-discrimination law was challenged by an initiative to amend in a rather negative manner the provisions related to the shifting the burden of proof and the procedures on the appointment of the steering board of the equality body. The proposal was adopted in December 2010 by the Senate¹¹ but did not reach a final procedure vote with the Chamber of Deputies by January 2013.¹² Later, on 25 March 2013 the draft was adopted and subsequently published as Law no. 61/2013¹³ amending the anti-discrimination law in regard to the standard of the shifting the burden of proof and the procedure for appointing the members of the Steering Board.

1.3 ISSUES ON NON-COMPLIANCE OF THE EXISTING ANTI-DISCRIMINATION LAW WITH THE RACE EQUALITY DIRECTIVE

Despite several amendments made from 2002 to 2006 the Romanian ADL has a number of flaws in relation to transposition of the RED.

Permitted exceptions to direct discrimination

The anti-discrimination law in its general part defines discrimination without providing for any general exemption from or justification for direct discrimination. In fact, the concept of discrimination is defined in art. 2 par. 1 of Government Ordinance no. 137/2000 republished and constitute a replication of the definition incorporated in Article 1 of the International Convention on the Elimination of all Forms of Racial Discrimination.¹⁴

Against this background, in the area of housing, access to services and access to goods, the law allows for exceptions to direct discrimination. For example, Article 10 permits a refusal of granting certain goods or services, in a situation in which “this restriction (i.e. the refusal) is objectively justified by a legitimate aim and the means of achieving that

⁹ Emergency Ordinance no.75 from June 2008 establishing measures to resolve financial issues in the system of justice, published in the Official Gazette no. 462 of 20 June 2008, approved by Law no. 76 of 1 April 2009, published in the Official Gazette no. 231 of 8 April 2009.

¹⁰ Romanian Constitutional Court; Decision no. 818 from 3 July 2008; Decision no. 819 din 3 July 2008, Decision nr. 820 from 3 July 2008, Decision no. 821 from 3 July 2008; Decision no. 1.064 from 14 October 2008, Decision no. 1.065 from 14 October 2008, Decision no. 1.197 from 11 November 2008; Decision no. 1.325 from 4 December 2008.

¹¹ Romanian Senate, draft law proposal approved in 8 December 2010, available at: <http://www.senat.ro/legis/lista.aspx> or see also <http://www.senat.ro/Legis/PDF/2010/10L462FS.pdf>.

¹² Chamber of Deputies, draft law proposal, last report from the specialized Commission on human rights, cults and minority protection as well as the Juridical Commission on 26 November 2012, see for details http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=11635.

¹³ Law no. 61/2013 for the amendment of the G.O. no. 137/2000 on preventing and combating of all forms of discrimination, published in the Official Journal no. 158 from 25th March 2013.

¹⁴ The International Convention defines racial discrimination as: “...any distinction, exclusion, restriction or preference based on race, color, 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”. The Romanian Government Ordinance no.137/2000 republished defines discrimination as “any distinction, exclusion, restriction or preference based on race, nationality, ethnic and social origin, language, religion, beliefs, gender, sexual orientation, age, disability, non-infectious chronic disease, HIV contamination, affiliation to a disadvantaged category, as well as on any other criterion aiming or resulting in the restriction or hindering of the recognition, use or exercise, under equality conditions, of the human rights and fundamental freedoms or of the rights recognized by the law in the political, economic, social and cultural field, or in any other fields of public life”.

aim are appropriate and necessary”.¹⁵ The possibility to allow a justification for direct discrimination in the fields of housing and access to services and goods is in breach of the Race Directive, which does not foresee such a possibility in Article 2 when defining direct discrimination nor in Article 3 when defining the scope of RED.¹⁶ These gaps have been partially addressed through Governmental Emergency Ordinance no. 19 from 27 March 2013 published in the Official Journal no. 183 from 2nd April 2013.

The standard of shifting the burden of proof

The 2006 amendments to the ADL introduced the standard of proof in discrimination cases, but not entirely in accordance with the shifting of the burden of proof as outlined in RED. The Romanian anti-discrimination law regulates rather a concept of “sharing the burden of proof” which means that “the interested person has the obligation of proving the existence of facts which allow to presume the existence of direct or indirect discrimination and the person against whom a complaint was filed has the duty to prove that the facts do not amount to discrimination.”¹⁷ While the NCCD’s interpretation of this provision was to comply with the Directives in *most* cases, judicial interpretation varied and some courts interpreted it as placing an unreasonable burden on the victim, in contradiction of the substantive provisions of the Directives. Article 8 of RED, which states that the plaintiff has “to establish facts” and that it is for the respondent “to prove that there has been no breach”, the Romanian law creates “a duty for the plaintiff to prove the existence of facts”,¹⁸ a much heavier burden.

A draft bill amending the ADL, including amendments to the burden of proof before the national equality body, was approved by the Senate in December 2010. The draft approved by the Senate proposed the amendment of the Art. 20 paragraph 6 maintaining the duty of the interested person (i.e. the victim of discrimination or the one bringing the case) in providing evidence leading to a presumption of discrimination but abolished the duty of the defendant and turned it into an option.¹⁹ On 25 March 2013, the draft was adopted by the Chamber and subsequently published as Law no. 61/2013²⁰ amending Article 20 paragraph 6. The text was reshaped as the “interested person will present facts from which it may be presumed that there has been direct or indirect discrimination, and the respondent has will prove that there has been no breach of the principle of equal treatment.”²¹

1.4 OTHER LEGAL DEFICIENCIES IN THE ANTI-DISCRIMINATION LAW

Lack of regulating segregation on the basis of racial or ethnic origin as a form of discrimination and subsequent sanctions for such discrimination

The segregation of Romani children in education on the basis of racial or ethnic origin was first officially acknowledged in 2004 when an internal notification of the Ministry of Education was enacted which prohibited segregation.²² It was only in 2007 that a Ministerial Order officially prohibited school segregation of Romani children as a form of discrimination and a methodology for preventing and eliminating school segregation has been subsequently adopted.²³ Reports from non-governmental organisations on school segregation consistently highlighted that the Order was not properly implemented at the local level.²⁴ In fact, following a continuous

15 Art. 10, Romania/ Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, (20.07.2006).

16 European Network of Legal Experts in the Non-discrimination Field, Report on measures to combat discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report Romania, Romanita Iordache, State of affairs up to 1st January 2012, available at: http://www.non-discrimination.net/content/media/2011-RO-Country%20Report%20LN_final.pdf.

17 Art. 20 (6) of the Governmental Ordinance 137/2000.

18 European Network of Legal Experts in the Non-discrimination Field, Report on measures to combat discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report Romania.

19 Romanian Senate, draft law proposal approved in 8 December 2010 and sent to the Chamber of Deputies for debate, available at: <http://www.senat.ro/Legis/PDF/2010/10L462FS.pdf>.

20 Law no. 61/2013 for the amendment of the G.O. no. 137/2000 on preventing and combating of all forms of discrimination, published in the Official Journal no. 158 from 25th March 2013.

21 Law no. 61/2013, Single article regarding the amendment of Article 20 paragraph 6.

22 Ministry of Education - Cabinet of the State Secretary; Notification no. 29323/20.04.2004 for prohibiting segregation of Roma children in education.

23 Ministry of Education, Order no. 1.540 from 19.07.2007 on prohibiting school segregation of Romani children and approval of the Methodology for preventing and eliminating school segregation of Romani children; published in the Official Journal no.692 from 11.10.2007.

24 Romani CRIS and UNICEF Romania, Laura Surdu, Raport on Monitoring the measures against school segregation in Romania, 2008, available at: <http://www.unicef.ro/wp-content/uploads/monitorizarea-aplicarii-masurilor-impotriva-segregarii-scolare-in-romania.pdf>.

number of reported segregation cases of Romani children, the Cabinet of the Ministry of Education in 2010 adopted a new notification with the aim of reinforcing the provisions of its Order against school segregation.²⁵ Despite this initiative, cases of segregation of Romani children in education as well as complaints before the equality body on this topic have been further reported by Roma organisations.²⁶

Despite almost a decade of theoretical prohibition of segregation of Romani children in education, cases persist. This is in part due to the fact that the practice is regulated only at administrative level by the Ministry of Education. This highlights a major deficiency of the ADL, which does not refer to nor define segregation in education on the basis of racial or ethnic origin as a form of discrimination. It is therefore not translated into the special section of the law that regulates which acts of discrimination are sanctioned accordingly by administrative fines. In its 2011 report, Romani CRISS points to the fact that the NCCD, despite founding a violation of the law in these cases, has never applied effective and dissuasive sanctions against school authorities, but rather has issued warnings or recommendations without any concrete positive consequences of their decisions.²⁷

Inconsistencies regarding the mandate of the equality body to mediate discrimination cases

The concept of mediation was introduced into the ADL as part of the 2003 amendments, however the concept has never been fully clarified. According to the law, the equality body can mediate as a means to solve by amicable settlements conflicts that arise from committing acts of discrimination.²⁸ The internal procedure of the equality body for solving complaints of discrimination²⁹ makes a single reference to mediation but it does not refer to the process of mediation of the parties. The procedure only refers to the fact that the parties are presented with the option of mediation by amicable settlement..

In reality, this means that the role of the NCCD is simply to inform parties that mediation can be considered. It does not regulate the process between the parties, between the parties and third parties, parties and a qualified mediator. The law and the procedure of the equality body do not elaborate the process of mediation and does not set of the steps necessary to lead to an outcome. The ADL does not regulate the situation in which the parties initiate mediation but they cannot reach an agreement and subsequently they turn back to the equality body in order to continue a litigious procedure. Not only is there a problem with the regulation of mediation; but also an inherent weakness in the situation whereby the judging body is involved in the mediation process and is required eventually to rule on a violation and sanction one of the parties.³⁰

Legal uncertainty on the mandate of the equality body to remove the consequences of discrimination and re-establish the situation prior to discrimination

According to Article 20, paragraph 3 of the ADL, the victim of discrimination can refer to the NCCD with a complaint of discrimination having the right to request the removal of the consequences of discrimination as well as the re-establishment of the situation prior to the act of discrimination.³¹ On the other hand, Article 27 paragraph 1 of the anti-discrimination law provides that the victim of discrimination can refer to the civil court with a request for compensation and re-establishment of the situation prior to the discrimination act or nullifying the situation created by discrimination.³²

25 Ministry of Education, Cabinet of the State Secretary, Notification no.28463 from 3.03.2010 on preventing and eliminating segregation of pre schooling children and Roma children in education.

26 Romani CRISS, the case of C.G.M., G.N., Romani CRISS vs. Colegiul National „Ionita Asan”, Inspectoratul Scolar Judetean Ilt, case report available in Romanian language at: <http://www.romanicriss.org/PDF/Raport%20de%20caz%20lonita%20Asan%20segregate%20EDU.pdf>.

27 Romani CRISS, Human Rights in Practice, From discrimination against Roma to law enforcement officials abuse, 2011, available at: <http://www.romanicriss.org/PDF/Raport%202008-2009%20rom.pdf>.

28 Government Ordinance 77/2003 for the amendment of the Government Ordinance 137/2000, (30.08.2003).

29 Internal procedure for solving complaints of discrimination approved by Order no. 144 from 2008 of the President of the NCCD, published in the Official Gazette, no. 348 from 6 May 2008.

30 Policy paper of the non-governmental organisations on the anti-discrimination law, presented to the equality body in 31st July 2003, Center for Judicial Resources, Open Society Foundation Romania, ACCEPT, APADOR-CH Helsinki Committee, Romani CRISS, Center Partnership for Equality, Pro Europa League and Institute for Public Policies. Similarly, Romani CRISS, Implementing anti-discrimination law in Romania, Combating ethnic discrimination by judicial proceedings, D. Gergely, M. Morteau, Bucuresti, 2004, Romani CRISS, Human Rights in Romania: Roma citizens of the state of law, 2007, available at: www.romanicriss.org.

31 Government Ordinance no. 137/2000 republished, Article 20 paragraph 3.

32 Government Ordinance no. 137/2000 republished, Article 27 paragraph 1; “The person considered to be a victim of discrimination may lodge a request, in front of the court, for compensation and reestablishment of the situation prior to discrimination or nullifying the situation created by discrimination, according to the common law.”

The main competence of the NCCD is to adjudicate on alleged violations of the ADL and to sanction administratively any such violations. However, there is a fundamental question mark over the competence of the equality body to remove the consequences of discrimination or to re-establish the situation prior to discrimination and overlap with the competence of the civil courts to provide redress for discrimination.

Legal uncertainty on the locus standi position of the equality body before the Courts

Another closely related ambiguity created by the ADL regards Article 27, paragraph 3, which provides that the civil court in addressing a complaint of discrimination will subpoena the NCCD.³³ The main problem is that the law does not define the *locus standi* of the equality body in litigation processes; it does not substantiate its role in the procedures before the Court, and the judicial consequence of the opinion provided if requested by the judge (whether or not it is binding), as well as the situation whereby a victim lodges simultaneously a complaint before the equality body and the civil court in regard to the same act of discrimination. In practice, the equality body has in several cases been summoned by courts as respondent, as third party, as independent from the parties or as expert; but without a precise legal position of the equality body.

2 THE ROMANIAN EQUALITY BODY AND THE STANDARDS IN THE RACE DIRECTIVE

2.1 ESTABLISHMENT OF A STATE INSTITUTION DEALING WITH NON-DISCRIMINATION CONTRARY TO THE REQUIREMENTS OF THE RACE DIRECTIVE

The Government Ordinance no. 137 of August 2000 on the prevention and sanctioning of all forms of discrimination provided in Article 23, paragraph 1 that the equality body, the National Council for Combating Discrimination, is a specialised body subordinated to the Government.

However, the European Commission expressed criticism towards the independence of the equality body during the pre-accession process. In 2001, the Commission noted that “the NCCD has not been established”.³⁴ In 2002, it note that the NCCD “in practice [was] not an independent institution since it is administratively subordinated to the Government”.³⁵ The Commission underlined that the legal framework had to be revised in order to clarify the role of the Council in relation to other public bodies³⁶ as well as the administrative subordination by the Government which limits its capacity to act independently³⁷. Similarly, in its 2004 and 2005 Regular Reports on Romania’s Progress towards accession, the European Commission emphasised that “the NCCD’s capacity should be strengthened”³⁸ alongside providing financing for the institution, ensuring transparency and especially, “securing independence”.³⁹ Similar concerns about the lack of independence of the NCCD have been expressed by Council of Europe bodies, among others the European Commission against Racism and Intolerance⁴⁰ and the Advisory Committee of the Framework Convention for the Protection of National Minorities.⁴¹

33 Government Ordinance no. 137/2000 republished, Article 27 paragraph 3; “the case will be judged with the mandatory subpoena of the Council”.

34 Regular Report from the Commission on Romania’s Progress towards accession, 13 November 2001, p 22, available at: http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/ro_en.pdf.

35 Regular Report from the Commission on Romania’s Progress towards accession, 9 October 2002, p 29. available at: http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/ro_en.pdf.

36 Regular Report from the Commission on Romania’s Progress towards accession, 2003, p 22, available at: http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/rr_ro_final_en.pdf.

37 *Ibid.*

38 Regular Report from the Commission on Romania’s Progress towards accession, 6 October, pp 23 and 95, available at: http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_ro_2004_en.pdf.

39 European Commission Comprehensive Monitoring Report on Romania, 2005, pp 54, 55, available at: http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/sec1354_cmr_master_ro_college_en.pdf.

40 ECRI, Second Report on România published in 23 April 2002, pp 11,12, available at: http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_02/02_CbC_eng/02-cbc-romania-eng.pdf. Third Report on Romania published in 21 February 2006, page 18-20, available at: http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/ROM-CbC-III-2006-3-ENG.pdf.

41 Advisory Committee of the Framework Convention for the Protection of National Minorities, *Opinion on Romania* adopted on 6 April 2001, p 8, opinion available at: http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_OP_Romania_en.pdf; Second Opinion on Romania adopted on 24 November 2005, available at: http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_OP_Romania_en.pdf.

2.2 AMENDMENTS TO THE ANTI-DISCRIMINATION LAW TO BRING THE EQUALITY BODY IN LINE WITH THE RACE DIRECTIVE STANDARDS

Following 2006 amendments, the National Council for Combating Discrimination became the national authority that investigates and contravenitionally sanctions discrimination deeds or acts, autonomous, with legal personality, under the Parliament's control and a guarantor of the observance and enforcement of the non-discrimination principle, according to internal legislation in force and international documents to which Romania is a party.⁴²

Following these legal adjustments the European Commission noted that the law on preventing and sanctioning all forms of discrimination had been amended to meet EU standards related to the independence of the National Council for Combating Discrimination".⁴³ However, in addition to the legislative omissions and uncertainties noted above, there remain serious obstacles to the proper functioning of the NCCD.

2.3 THE POLITICAL MISUSE OF THE CONDITIONS ON THE APPOINTMENTS OF THE STEERING BOARD MEMBERS OF THE NCCD

The change of the status of the equality body under the control of the Parliament brought a risk of increased politicisation of the NCCD Steering Board,⁴⁴ as the appointment of the members was made on the basis of political representation in the parliament, informally based on the number of seats held by each party.⁴⁵ For example, during the procedures to appoint two new members in 2007, several human rights NGOs publicly expressed their concerns that the appointments followed political negotiations, and not the conditions set out under the law regarding professional standards to be met by candidates.⁴⁶

Similarly, as other reports indicate⁴⁷ the NCCD encountered a stalemate between the summer of 2009 and early 2010 when, due to the expiration of the mandates of the Steering Board members beginning with May 2009 and the delays and failure in making new appointments for six out of the nine members, the equality body was unable to issue decisions. With only two positions of former members renewed and four new members, some of whom lacked any prior experience with human rights or discrimination issues in general, the new composition of the NCCD had been criticised by NGOs active in the field for being too political at the expense of the independence and professionalism of the institution.⁴⁸

The US State Department Human Rights Reports on Romania from 2009⁴⁹ and 2010⁵⁰ noted that the "NCCD's activity was blocked when the Parliament, because of political turmoil, failed to appoint members to NCCD's board". The reports from 2010 and 2011 also mentioned concerns expressed by NGOs namely that "Romani CRISS criticized the appointment of CNCD board members proposed by political parties, arguing that this violated the principle of the body's independence and that some of the appointees lacked expertise in the human rights area"⁵¹ and respectively that "the Center for Legal Resources and Romani CRISS expressed concern about

42 Art. 16 of Law no. 324/2006.

43 Communication from the Commission, Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania, Brussels, 26/09/2006, COM (2006); 2.1 Political criteria, Protection and integration of minorities, p 40, available at : http://ec.europa.eu/enlargement/pdf/key_documents/2006/sept/report_bg_ro_2006_en.pdf.

44 The NCCD is governed by a Steering Board of nine members ranked as Secretaries of State, managed by a President elected by the members of the Steering Board (Art. 22). The Steering Board is a collegial body, responsible with enforcing the legal mandate of the NCCD (Art. 23). The members of the Steering Board are proposed and appointed in a joint session of the Parliament by the two Chambers.

45 European Network of Legal Experts in the Non-discrimination Field, Report on measures to combat discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report Romania, Romanita Iordache, State of affairs up to 1st January 2012, available at: http://www.non-discrimination.net/content/media/2011-RO-Country%20Report%20LN_final.pdf.

46 Press release 09.10.2006 and letters of October 2006 and February 2007 signed by a number of twenty NGOs, available at: <http://www.antidiscriminare.ro/> (15 October 2006).

47 European Network of Legal Experts in the Non-discrimination Field, Report on measures to combat discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report Romania.

48 *Ibid.*

49 US Department of State, Bureau of Democracy, Human Rights, and Labor, 2009 Human Rights Report: Romania, available at: <http://www.state.gov/j/drl/rls/hrrpt/2009/eur/136053.htm>.

50 US Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Romania, available at: <http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154446.htm>.

51 *Ibid.*

the NCCD's alleged preferential and politicized approach to cases involving high officials.⁵² Another issue highlighted in the US reports relate to the inadequate resources for the NCCD in the last years.⁵³ The NCCD allocated budget suffered several cuts during the years, from approximately 1,500,000 EURO in 2008 to 980,000 EURO in 2010.⁵⁴ The officials of the NCCD and the NGOs alike consider that the budget of the NCCD is insufficient for adequately fulfilling their mandate and manifest concerns regarding the gradual decrease of the budget.⁵⁵

2.4 OTHER CRITICISMS OF THE EQUALITY BODY EXPRESSED BY NATIONAL NGOS

While acknowledging the importance and the value of the equality body, national Roma organisations have consistently expressed their criticism of excessive delays in resolving discrimination complaints by NCCD, contrary to the provisions of the ADL.⁵⁶ As discussed above, most cases of segregation of Romani children in education resulted in no sanction. Another critical issue regarded the lack of motivated decisions adopted by the equality body, without comprising a clear and comprehensive analysis of the facts and the relevant legal provisions applicable in the cases.⁵⁷

Similarly, the NCCD does not use the mechanism to monitor its decisions, as provided by law, in order to make an evaluation of the impact of different measures (warnings, recommendations, fines), nor the way these decisions are implemented or if the fines are being paid.⁵⁸

3 THE GOVERNMENT STRATEGY ON THE ROMA INCLUSION AND THE ROLE OF THE NCCD

The Romanian Government recently adopted an Inclusion Strategy of citizens belonging to the Roma minority for the period of 2012-2020,⁵⁹ which failed to underpin social inclusion with an effective rights-based approach. The fight against discrimination is unsubstantiated and lacks coherence in the overall frame of the measures envisaged to address access to education, employment, health and housing. The issue of preventing and fighting discrimination is scarcely indicated as a problem and there is no reference to data any newer than a 2009 FRA report. Notably available data from the NCCD in regard to forms of discrimination manifested against Roma and the impact on accessing public services were not cited.⁶⁰

3.1 NON-DISCRIMINATION AS A GOVERNING PRINCIPLE BUT NOT TRANSLATED INTO ACTION PLANS

Non-discrimination as provided by the Romanian anti-discrimination law⁶¹ is one of the nine principles governing the implementation of the Strategy. Despite this positive aspect, the fight against discrimination is

52 US Department of State, Bureau of Democracy, Human Rights, and Labor, 2011 Human Rights Report: Romania, report available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.

53 US Department of State, 2009, 2010 and 2011 Human Rights Report: Romania.

54 European Network of Legal Experts in the Non-discrimination Field, Report on measures to combat discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report Romania.

55 *Ibid.*

56 Romani CRISS, Human Rights in Practice, From discrimination against Roma to law enforcement officials abuse, 2011, available at: <http://www.romanicriss.org/PDF/Raport%202008-2009%20rom.pdf>. The Report indicates a number of cases where the lengths of proceedings before NCCD exceeded 1 year contrary to the legal term of solving a complaint, in 90 days. Examples such as the case of *CRISS v. Dumbraveni School*, aprox. 1 year; in case of *CRISS v. School no. 19 Craiova*, over 10 months, as well as the case of *CRISS v. School Atid* and over the 90 days in the case of *CRISS v. School Magheru* or the case of *CRISS v. School Albeni*.

57 *Ibid.*

58 Romani CRISS- Roma Centre for Social Interventions and Studies and Roma Civic Alliance from Romania, Shadow Report for the Committee on the Elimination of Racial Discrimination, 2010, report available at: <http://www.romanicriss.org/PDF/Shadow%20report%20CERD%20Romania%20-2010.pdf>.

59 Strategy approved on 14 December 2011 by Governmental Decision no. 1221/2011, published on the Official Journal no.6 from 4 January 2012.

60 Strategy for the Inclusion of citizens belonging to Roma minority for the period of 2012-2020, Chapter II Relevant General information and Chapter IV Defining the problem, point 1-7.

61 The Strategy, in Chapter VI Principles mentions "the principle of non-discrimination and respect for human dignity in exercising the rights provided by Article 1 Para. 2 of the governmental Ordinance 137/2000 on prevention and punishment of all forms of discrimination, republished, as subsequently amended and completed".

not mentioned among the priorities, policies and the framework set for the implementation of the strategy.⁶² Similarly the principle of non-discrimination is not coherently and substantially translated into effective actions alongside the measures envisaged in regard to education, employment, health and housing.

The NCCD is indicated among other public authorities responsible for implementing the Strategy.⁶³ However, there is no reference to its potential role, implication or at least cooperation with relevant Ministries, public authorities and local institutions in implementing the Strategy.⁶⁴

There is neither role nor cooperation envisaged for the NCCD with regard to education. In the area of health and housing⁶⁵ the Strategy lacks specific measures aimed at addressing non-discrimination. In the area of employment it provides only for “promoting programmes designed to raise employers’ awareness of the discrimination phenomenon at work, equal opportunities, psychological harassment and social dialogue”.⁶⁶ Annex no. 1 of the Strategy refers to the Ministry of Labour and local authorities in implementing such programmes; but does not mention any role or cooperation with the equality body.⁶⁷

The role of the NCCD in cooperating on anti-discrimination issues appears to be clearer in regard to the measures outlined in the area of Child Protection and Justice and Public Order. The Strategy includes programmes for preventing and fighting discrimination affecting Romani children, including by promoting partnerships between non-governmental organisations and local public structures for child protection. In regard to such programmes, the NCCD is indicated as a responsible institution together with the Ministry of Labour, the National Agency for Roma, UN agencies in Romania and social partners.⁶⁸ In the area of Justice and Public Order the Strategy refers to organising campaigns to promote and respect human rights and fundamental freedoms generally and in particular the right to non-discrimination; developing information programmes for Romani leaders and managers of public institutions and NGOs on how to identify and solve properly discrimination cases; developing courses, seminars, round tables, editing and printing publications and materials on preventing and combating discrimination; and initiating programs of legal and civic education as well as on preventing discrimination for members of the Roma minority.

The Strategy does not offer any clarity in regard to how the measures set within its framework relate to the equality body’s activities or those set to be implemented in cooperation with other institutions, for example in regard to child protection, as well as the procedure or the reporting framework of the implemented measures. To date, there is no available information from the NCCD, the National Agency for Roma or other responsible institutions on the implemented programmes in 2012 in connection with the area of child protection, justice and public order on non-discrimination.

4 DISCRIMINATION AGAINST ROMA

The Council of Europe’s Advisory Committee to the Framework Convention on National Minorities in 2012 highlighted as an issue for immediate action the allocation of adequate resources to address the situation of Roma with regard to housing, infrastructure, employment, access to health care and education. The Committee also called on the state to respect a number of principles when carrying out relocations, such as respecting the right to consultation, provision of adequate alternative housing without delay, and ensuring that relocations do not increase isolation or restrict the right of access of children to education.⁶⁹

62 Strategy for the Inclusion of citizens belonging to Roma minority for the period of 2012-2020, Chapter III Priorities, Policies, Existing Legal Framework; There is no reference to importance of effective implementation of anti-discrimination law, cross cutting cooperation with the equality body etc.

63 Strategy for the Inclusion of citizens belonging to Roma minority for the period of 2012-2020; Chapter XII Further Stages and Responsible Institutions; Central level, a2) (...) National Council for combating Discrimination.

64 Strategy for the Inclusion of citizens belonging to Roma minority for the period of 2012-2020; Annexes to the Strategy; Plans of Measures.

65 In the area of Housing the Strategy refers to legislative amendments in order to regulate the means to guarantee the quality of housing and to increase social housing by identifying solutions for disadvantaged, vulnerable or exposed to discrimination categories.

66 Strategy for the Inclusion of citizens belonging to Roma minority for the period of 2012-2020; Chapter VII Directions for Action, B. Employment.

67 Strategy for the Inclusion of citizens belonging to Roma minority for the period of 2012-2020; annex no.1 Plan of measures, B. Employment, point no. 7.

68 Strategy for the Inclusion of citizens belonging to Roma minority for the period of 2012-2020; annex no.1 Plan of measures, F. Social Infrastructure, F1 Child protection and annex no.1 Plan of measures, F.

69 Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Romania adopted on 21 March 2012*, (ACFC/OP/III(2012)001), p 2.

4.1 HOUSING

The Romanian Government has not taken adequate steps to address the housing situation of Roma. There is little indication that the 2012 National Strategy for Roma Inclusion submitted by the Government to the European Commission will have a positive impact on the housing situation of Roma as was the case with the 2005 National Strategy. The 2010 midway assessment of Decade implementation found that existing policy or legislative initiatives had not been put into practice to improve Roma housing conditions. Decade Watch researchers concluded that housing was the lowest priority of the Government which had not demonstrated any serious political will to improve the situation.⁷⁰

In December 2010 representatives of the Cluj-Napoca municipal authority informed the residents of Coastei Street that they had to submit a request for social housing for homeless people by noon of the following day. The next day the residents were instructed to pack all of their belongings. On 17 December several hundred local authority staff and law enforcement officers with bulldozers and trucks evicted 56 families: 40 families were living in public housing rented from the City Council while the others were living in informal housing. Their homes were immediately demolished. The authorities did not provide legal authorisation for the eviction. The eviction was carried out in temperatures that reached minus 10 degrees Celsius, and in contravention of a prohibition on evictions during winter months in Romania. During the demolitions, furniture, flooring, windows and personal possessions of the residents were destroyed.⁷¹

The residents were given modular accommodation in Pata-Rât, the site of the local garbage dump. The accommodation provided gives an average living space of 4.01 metres squared per person, and each available bathroom is shared between at least 17 people. There is no water connection directly to any of the homes, and no hot water provided at all. Heating is only provided through wood-burning stoves, and 11 homes are without electricity. 92% of residents report the presence of mould in their accommodation, and 89% report that they do not have adequate cooking facilities. The National Council for Combating Discrimination held that the eviction, relocation and isolation of the families in Pata-Rât amounted to ethnic discrimination, and the municipal-ity was fined approximately €2,000.⁷²

The Advisory Committee to the Framework Convention on National Minorities visited the town of Baia Mare, where a high wall had been constructed, paid for by the municipal authorities, around three apartment blocks which are inhabited by Roma. The Committee noted the terrible state of these apartments, which present a danger to the health and lives of the residents.⁷³ The ERRC has also reported about the forced eviction of Roma individuals who were relocated to the site of a run-down chemical plant in the town.⁷⁴

Research carried out by the ERRC has identified many Romani individuals who claimed that they had applied for social housing but were subsequently denied, often without explanation. For example, one individual reported that: “I live with my seven children in a 16 square metre room, in a basement. I have no water, no electricity, no natural gas and no toilet. [...] I tried to ask for a social house from the city hall. [...] They told me that it is useless to submit the application and they didn't let me write it. [...] I don't want to report their names because I receive social assistance and I am afraid that I will lose it.”⁷⁵

70 ERRC, *Standards do not Apply: Inadequate housing in Roma communities*, December 2010, available at: <http://www.errc.org/cms/upload/file/standards-do-not-apply-01-december-2010.pdf>.

71 ERRC, *Taken from the City: Romanian Roma evicted to a rubbish dump*, December 2012, available at: <http://www.errc.org/cms/upload/file/romania-report-pata-rat-17-dec-2012-en.pdf>.

72 ERRC, *Taken from the City: Romanian Roma evicted to a rubbish dump*, December 2012, available at: <http://www.errc.org/cms/upload/file/romania-report-pata-rat-17-dec-2012-en.pdf>. CNCD, *Comunicat de presa referitor la deciziile Colegiului director al CNCD din data de 15.11.2011*, available at: <http://www.cncd.org.ro/presa/Comunicate-de-presa/Comunicat-de-presa-referitor-la-deciziile-Colegiului-director-al-CNCD-din-data-de-15-11-2011-124/>.

73 Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Romania* adopted on 21 March 2012, (ACFC/OP/III(2012)001), p 17.

74 ERRC, *What's left of Government commitments to Roma inclusion if Mayors completely ignore them?*, 3 July 2012 available at: <http://www.errc.org/article/whats-left-of-government-commitments-to-roma-inclusion-if-mayors-completely-ignore-them/4023>.

75 ERRC, *Standards do not Apply: Inadequate housing in Roma communities*, December 2010 available at: <http://www.errc.org/cms/upload/file/standards-do-not-apply-01-december-2010.pdf>.

4.2 EDUCATION

Research conducted by the ERRC in a Roma settlement in Pata-Rât, Cluj-Napoca showed that 25% of children reported being subject to racist remarks at school, while 19% of children were refused admission to a school, and had to enrol at a different school. 10% of children in the settlement had been placed in special education classes. In one case the parents of a child who had been recommended for special education classes took him to a specialist, who confirmed their belief that he did not need to be enrolled in such a class. The boy changed schools and had no further problems with the school curriculum or his grades.⁷⁶

Romania fails to provide adequate protection to Romani children placed in institutionalised care. In State care, some Romani children are subjected to physical abuse, ill-treatment and various forms of discrimination. They also experience discrimination in access to public services outside the institutions, such as education and health care. Discrimination may be experienced on multiple grounds, including their ethnicity and their status as an institutionalised child. Furthermore, a disproportionately high number of Romani children in State care are enrolled in special education, which has a negative impact on their education. Additionally, it is common for institutionalised Romani children to lose or distance themselves from their ethnic identity due to the lack of programmes which promote Romani identity and the lack of Romani workers in State children's homes.⁷⁷

In 2012 the Advisory Committee to the Framework Convention on National Minorities drew attention to continued reporting of cases of Roma children being placed in schools for children with disabilities, in separate schools, or in separate classrooms. The Committee also noted that although a number of decisions of the NCCD had found these practices to be discriminatory in nature, the impact of the NCCD decisions remains limited.⁷⁸

4.3 HEALTHCARE AND EMPLOYMENT

In November 2011 the ERRC conducted field research with residents of a Roma community now living in Pata-Rât, Cluj-Napoca, after being evicted from their previous location in the city. Pata-Rât is the location of the city dump, and is an isolated area outside the city, poorly served by public transport. This makes access to healthcare and other amenities difficult. Several of the interviewed residents report discrimination in access to health services. Due to the location, people rely more frequently on emergency health services. Residents reported four occasions, including one involving an ill three-year-old child, when an ambulance was called for but refused to come to Pata-Rât. On several occasions residents reported waiting for two and half to three hours for an ambulance to arrive.⁷⁹

Research by Romani CRISS in 2011 showed that certain maternity hospitals accommodated Roma women in different wards from other patients, and poorer quality treatment for Roma women and children. The research also uncovered other incidents of discrimination, such as use of derogatory language towards Roma, and examining Roma patients after the examination of all non-Roma patients, regardless of the time of arrival.⁸⁰

A review of the application of the RED in trade unions revealed that trade union representatives themselves often hold prejudiced views against Roma. One trade union representative, when questioned about Romania's anti-discrimination legislation, stated that "There exists a level of annoyance among Romani people about being considered gypsies or criminals, but, frankly, there are very many examples which make them to be considered like that."⁸¹

⁷⁶ ERRC, *Taken from the City: Romanian Roma evicted to a rubbish dump*, December 2012, available at: <http://www.errc.org/cms/upload/file/romania-report-pata-rat-17-dec-2012-en.pdf>.

⁷⁷ ERRC, *Parallel Report to the Human Rights Council, within its Universal Periodic Review, for consideration at its 15th session* (21 January to 1 February 2013) available at: <http://www.errc.org/cms/upload/file/romanian-un-upr-submission-9-july-2012.pdf>.

⁷⁸ Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Romania* adopted on 21 March 2012, (ACFC/OP/III(2012)001), pp 7 - 8.

⁷⁹ ERRC, *Taken from the City: Romanian Roma evicted to a rubbish dump*, December 2012, available at: <http://www.errc.org/cms/upload/file/romania-report-pata-rat-17-dec-2012-en.pdf>.

⁸⁰ Romani CRISS, *Roma Health: Perspective of the actors involved in the health system – doctors, health mediators and patients*, 2011, p 15 - 16 available at: <http://www.romanicriss.org/PDF/brosura%20osi%20engl%20final.pdf>.

⁸¹ Pop and Stoian, *The impact of the Racial Equality Directive: a survey of trade unions and employers in the member states of the European Union – Romania*, Fundamental Rights Agency, 2010, p. 4, report available at: http://fra.europa.eu/sites/default/files/fra_uploads/846-RED_Romania.pdf.