

# WRITTEN COMMENTS

BY THE EUROPEAN ROMA RIGHTS CENTRE CONCERNING THE POST-2020  
ROADMAP FOR ROMA INCLUSION

Written comments by the European Roma Rights Centre, concerning the Post-2020 Roadmap for Roma Inclusion announced by the European Commission for the feedback period 17 February 2020 - 16 March 2020 to inform the upcoming EU Framework for Roma Inclusion

CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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## **ERRC COMMENTS ON 'THE INITIATIVE SETTING OUT THE EU POST-2020 ROMA EQUALITY & INCLUSION POLICY'**

The ERRC welcomes the Commission's declared intent to develop a strengthened post-2020 strategic approach to Roma inclusion, and appreciates the opportunity for consultation concerning the "Initiative setting out the EU post-2020 Roma equality and inclusion policy".

In light of the lack of any substantive progress since 2011, we welcome any guidance the Commission can provide for Member States (MS) on how to design better strategies. However, vigilance is required to ensure that a "common but differentiated strategic framework" does not allow room for MS to use "country-specific challenges" as an excuse to fall short on their international and legal obligations, to postpone the 'equality and justice' moment, or to set lower and less ambitious targets for 2030.

We welcome the Commission's "stronger focus on non-discrimination and antigypsyism (as root causes of exclusion)" and hope that this translates into a strengthened rights-based approach in national strategies for equality and inclusion of Roma.

It is important that EU-level recognition of antigypsyism as a specific form of racism translates into comprehension across MS that antigypsyism is inherently a problem of the majority society; that this racism is deeply embedded in state structures; and manifests in multiple forms of direct and indirect discrimination against Roma. We urge the EU to be forthright and prompt in condemning specific incidents of anti-Roma hate speech emanating from Prime Ministers or leading politicians in liberal and illiberal democracies alike. There is precedent for this, and it is time to revive the habit of adopting a very public zero-tolerance stance when it comes to racism.

With particular reference to the rights and well-being of children, and bearing in mind the history of both the EC and MS in this regard, targets for Romani children in terms of access to education, health, development etc. cannot be lower than general EU targets. No child must be left behind, and no 'country-specific challenges' can be used to provide cover for denying Romani children their fundamental rights. 2030 targets for Romani children must be as ambitious as those for every other child in the European Union and the accession countries. As guardians of the treaties and overseers of the post-2020 initiative, the Commission should ensure that MS take all the necessary affirmative actions to ensure equality of access and equity in outcomes become a reality for Romani children and young people. The following observations and recommendations are based on ERRC's extensive work in monitoring, research and litigation on Roma rights and its collaboration with the Roma Civil Monitor (RCM).

### **ACCESS TO JUSTICE**

The initiative will need to go further than contributing "to promoting equality and combat socio-economic exclusion of Roma." More than promoting equality, access to justice must become a declared priority. Post-2020, there can be no more debate about whether to privilege socio-economic inclusion over combating racism and discrimination. There is no either/or, without access to justice, all efforts to promote inclusive education, greater labour market opportunities, improved access to services will founder.

The post-2020 Agenda for Roma inclusion should embrace the UN Sustainable Development Goals (SDGs), and in particular Goal 16: "to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels."

The evidence amassed by the ERRC in numerous submissions makes one thing clear: unless justice can prevail without prejudice for Roma citizens of the European Union, the post-2020 initiative will fail "to put an end to the exclusion of Roma" in exactly the same manner as the EU Framework.

Access to justice is indispensable to inclusive development. ERRC's experience and research combined with the findings from the Civil Monitor provide evidence of the 'justice deficit' and what recommendations about needs to be done post-2020 to remedy the situation.

The Fundamental Rights Agency (FRA), the Roma Civil Monitor (RCM), and ERRC research and monitoring confirm the persistence of direct and indirect racial discrimination, harassment and hate crime against Roma. The RCM found that in those countries with the largest Roma populations, discrimination goes effectively unchallenged and has multiple adverse effects on the everyday lives of Roma.

At the 2020 conclusion of the EU Roma Framework, there has been no progress with regards to the 2016 European Commission opinion that discrimination against Roma “continues to be widespread across the EU and is present in all societies, and in all key areas.”

Official bodies responsible for combating discrimination remain limited in terms of independence, resources and mandate. A lack of ethnically disaggregated data combined with a low level of rights awareness among marginalised Roma, a lack of trust in institutions, and a well-founded and widespread scepticism concerning enforcement of justice further aggravate this problem. Many Roma respondents surveyed in the RCM, “did not pursue justice for fear that things might turn out even worse, and their lack of trust was grounded in a perception that judges lacked sensitivity and harboured the same anti-Roma prejudices as the majority population.”

A recurring point common in many of the RCM country reports was that full transposition of the RED into domestic law has not translated into effective action against anti-Roma discrimination. The opinion of the RCM researchers is that, despite EU legislation “there are no effective mechanisms to protect victims of police violence, little reliable information or data to give a precise account of the scale of the problem, and a low success rate in cases investigated.”

## RECOMMENDATIONS

### (1) RACE EQUALITY DIRECTIVE RED

The existing evidence of widespread discrimination against Roma strongly suggests that the Racial Equality Directive is not effective. As FRA has stated in an opinion, critical assessment by both the EU and the Member States is needed of why this is the case and what measures are required to remedy the existing situation. Whatever the outcome of ongoing deliberations on RED, with respect to the Roadmap for a post-2020 EU Roma equality and inclusion policy, we draw the attention of the Commission and Member States to the following:

- It is necessary to research the barriers that Roma face in access to justice and protection against discrimination, to lower the threshold for reporting discrimination, and to increase support, including free legal aid, for victims who might otherwise lack ability or willingness to go through lengthy, legally complex administrative or juridical processes.
- Diverse authorities, particularly on the local level where the daily discrimination occurs, can use mediation between the perpetrator and victim as an effective tool for ensuring justice and raising awareness about equal treatment.
- Make existing institutions and laws effective: the lack of capacity, and in many cases, plain ignorance of responsible authorities suggest that anti-discrimination training needs to be stepped up for law enforcement, prosecutors, judges, and other relevant duty bearers.
- In many states national equality bodies lack adequate autonomy, remits, mandates, and human resources to function effectively. The Commission should do all within its competence to step up support and capacity-building to set minimum professional standards and operational mandates for equality bodies across the Union.
- Anti-discrimination work must involve members of minorities in the delivery of study and training programs at educational institutes preparing law enforcement officers, legal professionals, and providers of public services. Such programs can include critical perspectives to explain hidden barriers and the danger of indirect discrimination.
- Clear, measurable objectives in improving access to justice and the fight against discrimination should be devised for inclusion in the post-2020 Roma Initiative, national strategies, and EU policy tools such as the European Semester Review.

- Complaints of alleged ill-treatment by police officers, including complaints with a possible racial motive, should be investigated by a fully autonomous body outside the structures of the Interior Ministry or the police. Victims or witnesses of police ill-treatment should be provided with protection against harassment and victimisation.

## **(2) MORE ROBUST ACTION TO COMBAT SCHOOL SEGREGATION**

Despite ongoing infringement proceedings against three MS, dozens of rulings in regional and national courts, and a clutch of ECtHR judgments which not only ruled school segregation to be discriminatory and illegal, but affirmed that states have a positive obligation to make amends for a history of segregation, the situation vis-à-vis school segregation has actually worsened since the 2011 launch of the EU Roma Framework. We appreciate that the Commission has already provided MS with ‘how-to’ guidance on ending both residential and school segregation, regrettably to little avail.

In the context of the post-2020 Roadmap we would highlight the following:

- More robust mapping and monitoring of patterns and practices of school segregation, with independent oversight should be made mandatory, and undertaken as a matter of urgency by the competent and responsible local and national authorities.
- Those authorities directly responsible for primary and secondary education should be assisted, and where necessary compelled to accept assistance in the development of desegregation measures and strategies. Violation of the legal prohibition of segregation should be sanctioned.
- Public funding and particularly ESIF should be made conditional upon the relevant directly responsible authorities mapping segregation and developing strategies to overcome segregation and provide all children with equal access to quality education, following the desegregation guidelines developed by the European Commission.
- ESIF resources should be invested primarily into sustainable structural transformations of the educational sphere, including teacher training and inclusive education rather than being used to cover daily operations and maintenance of schools.

## **(3) RESIDENTIAL SEGREGATION AND FORCED EVICTIONS**

The RCM identified systemic practices that prevent Roma from moving out of segregated and often illegally occupied areas. In those countries with the largest Roma populations, little evidence was found of actual or intended policy interventions to overcome residential segregation; some countries are even witnessing a growth in the number and size of ‘socially excluded localities’, often in appalling conditions lacking basic infrastructure and access to basic public services.

Of particular concern is the failure of the Italian state to meet its commitment to ‘overcome the system of camps’; the appalling conditions that prevail in authorized and unauthorized camps and segregated emergency shelters; and the Commission’s verdict that such conditions and practices do not constitute a breach of RED.

The RCM uncovered examples of municipalities purchasing cheap houses in remote villages to ‘export their problematic’ Roma residents; and public funds have been allegedly used to build segregation walls, and to ‘relocate’ Roma on the outskirts of villages into newly built, poor quality housing units, without proper access to basic utilities.

In light of the complete failure to make any progress on the priority of housing since the launch of the EU Framework, and in the hope that this travesty does not simply roll on to 2030, the following points should be heeded by MS and the EU:

- Any public investments into the housing of vulnerable groups, particularly Roma, should be driven by desegregation objectives. Procurement of new dwellings with public support should not increase the number of inhabitants in segregated areas.
- Development of social housing policies on the local level should be supported and driven by housing needs rather than by other criteria. Public resources should not be invested into temporary accommodation or separate housing schemes for Roma and other inhabitants.

- Residents of informal dwellings should be protected from eviction and demolition of their homes, unless they are provided with substitute standard housing in a desegregated setting with access to public services.
- The ESIF should not support the conservation of existing segregation or investments leading to further segregation. The existing legal and administrative framework prohibiting such investments (such as the EC's 'Guidance for Member States on the use of ESIF in tackling educational and spatial segregation'<sup>30</sup>) should be rigorously reinforced by the EC services responsible for ESIF implementation.
- Forced evictions should be used only as a last resort and prevention of forced evictions should be strengthened by provision of services such as social counselling, debt management and mediation, and active detection of households or areas at higher risk.
- It is necessary to create an early warning system for potential victims of evictions and provide them access to legal aid, either by public authorities or by NGOs with public financial support. The moratorium on evictions in winter should be respected and particularly vulnerable persons such as the elderly the infirm, and families with children should be provided with special protection.
- In case of mass evictions performed by public authorities, a clear strategy about what social assistance will be provided to the evictees should be required, ideally with provision of substitute accommodation or housing; the consequences of evictions on further social inclusion should be considered.

#### **(4) ACCESS TO CLEAN WATER AND SANITATION**

The EU Roma Framework paid scant attention to the issue of access to clean water and sanitation and the role discrimination, segregation and social exclusion play in denying many Roma access to basic services. The human rights to water and sanitation require that these services be available, accessible, safe, acceptable, and affordable for all. Moreover, they require sanitary services that provide individuals with sufficient privacy and dignity. These rights also entail an explicit focus on the most disadvantaged and marginalized, as well as an emphasis on participation, empowerment, accountability and transparency.

- National authorities should adopt laws explicitly recognising the human right to water and sanitation and ensure that all people in the country enjoy access to safe drinking water and sanitation; ensure that conditions of housing informality do not prevent people from enjoying the right to safe drinking water and sanitation; adopt policies and allocate budgets for connecting Roma settlements to public drinking water and sewage systems; ensure that an adequate number of safe drinking water and sanitation facilities is available in Roma neighbourhoods and settlements.
- The European Commission should ensure that Union law is brought in line with the UN legal framework and recognise the human right to water; propose expanding the applicability of water-related directives to include problems with accessibility and affordability of water supply and services.
- Develop indicators and monitoring mechanisms on social equity in access to water and sanitation in member states and task the Fundamental Rights Agency (FRA) to conduct annual data collection, in accordance with Article 4(1)(c) and/or (d) of Regulation 168/2007; and earmark funds to tackle limited access to water and sanitation supply services for socially excluded and ethnically discriminated groups.

#### **(5) RACISM AND MENTAL HEALTH**

It is imperative that the post-2020 Roadmap makes up for the complete neglect of the impact racism takes on the mental health and wellbeing of children and young people. Beyond recognition and working definitions of antigypsyism, there is a need for urgent action to address the toll everyday anti-Roma racism takes on the mental health of Romani children and young people.

Racism is a direct cause of illness, and countering the impacts of racism must become a public health issue. Research shows that the cumulative impact of racism and discrimination is especially damaging to children and adolescents. The extent of mental distress in Ireland is evident by the fact that the suicide rate among Travellers is six-times higher than that of wider society, with over 65 per cent of Traveller suicides occurring among those aged under 30.

- The Commission should utilize its convening power to bring together mental health professionals, youth and civil society groups and policy experts with experience in Roma and Traveller mental health issues, as well as

other experts and practitioners who work on racism and mental health with other ethnic minorities from different MS to develop a post-2020 action research and policy agenda on young Roma and mental health.

- Considering racism as a cause of ill health would mark an important step for the post-2020 Roadmap in developing the research agenda and response from health services. As with other policy areas, quality disaggregated data needs to be collected to develop effective evidence-based policies and interventions, that are fully cognizant of the intersections of ethnicity, gender, sexual orientation, disability and socioeconomic status.
- Develop a clearer picture of the mental health needs of the different and diverse Roma groups, taking into account the needs of children and youth, as well as migrant and mobile groups.
- Ensure that access to mental health services is not blocked by lack of a formal address, ID papers or social insurance; ensure that health service providers are aware and recognise the impact of racism and discrimination on accessing mental health care and in perpetuating ethnic inequalities.
- Increase practitioners' understanding of how loss and trauma are contributing factors of mental illness, and provide resources and guidance to develop and change approaches towards a more holistic approach that integrates mental and physical health, and ensures that services are accessible and non-stigmatising.
- Focus on prevention through understanding and addressing the wider determinants of health, and fully integrate such interventions into the NRIS as part of a wider attempt to address the persistent nature and impact of drastic inequalities, segregation, exclusion and extreme poverty.
- Actively support the participation of Roma civil society and voluntary community groups in setting the agenda and implementing concrete programs, as they are often better-placed to develop new interventions that address the causes of mental health, and can draw on the trust they have with the community, something that is often lacking with the official authorities.