

ROMA RIGHTS

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Positive Action to Ensure Equality

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Cover photo: Romani children in the village of Chminianske Jakubovany, April 2004, eastern Slovakia.
PHOTO: RACHEL CORNER

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Binding States by Law to Roma Inclusion

In Slovakia (and not only), there are several hundred extremely substandard Romani slum settlements. These are characterised by extreme deprivation. They generally are missing one or many of the following: electricity, heating, provision of potable water, sewage and/or solid waste removal, street lighting, pavement, paved roads and inclusion in the public transport system. In addition they are frequently far from schools, hospitals and municipal or other public offices. Denial of postal services has in a number of instances meant that inhabitants of such settlements have missed court appearances, failed to learn of the receipt of scholarships, or failed simply to receive word from loved ones far away. Some, such as the settlement near Rudn'any called Pătoracka, are extremely dangerous; Pătoracka is located on the tailings of a former mercury mine.

The extreme conditions in some of the eastern Slovak Romani settlements, places such as Hermanovce, Letanovce, Svinia and Jarovnice, prompted – after a visit in 1999 by then-EU Commissioner for Enlargement Gunther Verheugen – the European Union to approve significant funding for infrastructure in Slovak Romani settlements within the EU funding scheme for EU candidate countries called Phare. The first major project for Romani settlements in Slovakia was included in the Phare 2001 scheme. When first adopted, Phare 2001 involved infrastructure development in Romani communities (including benefits also for surrounding non-Romani localities) in 30 municipalities in Slovakia. Phare 2001 envisaged millions of Euro in EU contributions, to be matched by a similar level of Slovak State funding. The sums – close to 20 million Euro in total – are among the largest Roma-specific allocations anywhere to date. Activities implementing Phare 2001 were slated to take place

throughout 2004 (EU nomenclature is not always as clear as one might hope).

As of early December 2004, according to the EU delegation office in Bratislava, formal assessment of the impact of Phare 2001 had not yet been undertaken. However, indications are that in a number of municipalities, implementation has been problematic. One village (Svinia) refused implementation outright. A number of others have apparently implemented projects in haphazard, wasteful and/or corrupt fashion. There is a steady stream of frustrated and quasi-existential muttering coming from non-Slovak members of the EU delegation office in Bratislava, to the effect that projects are not working well.

Monitoring of Slovak Phare 2001 Infrastructure in Romani Communities and other projects raises questions as to what extent Commission and other funding, combined with anti-discrimination laws in conformity with the EU Race Equality Directive (Directive 43/2000), are alone sufficient to secure Roma inclusion in the member states. Observation of the impact of projects such as Phare 2001 have given rise to a number of calls for legal measures at the level of the EU binding the member states to ensure Roma inclusion.

There are currently a number of proposals in the field as to the further development of legal instruments at EU-level, EU laws which would either mandate positive action for Roma, or on behalf of weak groups generally. Notably:

1. In its “Report on the Situation of Fundamental Rights in the European Union for 2003”, dated January 2004 but only published on May 26, 2004, the European Union Network of Experts in Fundamental Rights recommended the

adoption of a “Directive specifically aimed at encouraging the integration of Roma”.¹ The EU Network of Experts in Fundamental Rights is a distinguished body established by the European Commission at the request of the European Parliament, charged with monitoring fundamental rights in the Member States and in the Union. It comprises leading jurists from all of the EU Member States. In presenting the need for such a Directive, the EU Network of Experts first states: “The most important contribution which the European Community could make to the protection of minorities, within the framework of its existing powers, would be the adoption of a Directive specifically aimed at encouraging the integration of Roma. [...] The urgent need to adopt a specific Directive [...] in order to encourage the integration of the Roma minority not only stems from the grave concerns that have been expressed in the evaluation reports on the situation of this minority in several Member States of the European Union, and not just in the acceding States where the question of integration of the Roma arises with particular acuteness. This urgency also stems from the inappropriateness in several respects of Directive 2000/43/EC, which was not specifically aimed at achieving the integration of groups that are traditionally excluded, such as the Roma”. Detailed reasoning for such a Directive within various sectors such as employment, housing, education, health and access to personal documents follows in the report. A discussion of the proposal with the co-ordinator European Union Network of Experts in Fundamental Rights appears in the pages of this issue of Roma Rights.

2. A second mooted proposal as to EU-level law in the field of Roma integration involves a “Desegregation Directive” covering the fields of education, housing and health. This idea has been a central plank in the proposals of MEP Viktória Mohácsi, currently one of two Romani MEPs currently in Brussels (both are from

Hungary). Although the ERRC has not seen a full proposal as to the dimensions of a “Desegregation Directive”, its legal dimensions would presumably aim to bring into EU law a supplementary ban similar to the Article 3 ban on segregation included in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

3. Others have floated the possibility of working toward a “Positive Action Directive” which would bind EU Member States to undertaking “positive” or “affirmative” action on behalf of minorities and other weak groups, or otherwise clarify EU Member States obligations in the field of positive action. Such a “Positive Action Directive” might include a specific chapter on Roma, or otherwise make specific reference to Roma.

The EU Race Equality Directive leaves open the possibility for Member States to adopt positive action measures and makes clear that such measures are not discrimination (and therefore are not illegal under the Directive). However, unlike some international law provisions, the Directive stops short of actually requiring positive action: “With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin.” Outside the EU system, a legal basis exists for establishing positive measures for weak groups. With respect to minorities, the International Convention on the Elimination All Forms of Racial Discrimination (ICERD) establish basic parameters for positive action. The Council of Europe system has in recent years significantly developed this normative basis, particularly via the Framework Convention for the Protection of National Minorities. However, the question of the EU role in pressing Member States to act upon these obligations has not yet been clarified.

¹ *European Union Network of Experts in Fundamental Rights, “Report on the Situation of Fundamental Rights in the European Union for 2003”, Brussels, January 2004, p. 103. The full text of “Report on the Situation of Fundamental Rights in the European Union for 2003” is available on the Internet website of the European Commission’s Directorate General of Justice and Home Affairs: http://europa.eu.int/comm/justice_home/index_en.htm.*

One possible way forward may be to build fiscal, transparency and accountability arguments in favour of legal measures binding states to ensure Roma inclusion. The profile of such legally binding measures might include: (1) the requirement that governments adopt a Roma Inclusion programme; (2) the obligation to allocate sufficient funding for the programme's implementation; (3) requirements of clearly assigned local responsibility for implementation; (4) requirements to develop and meet Roma-specific integration targets and indicators, such as school desegregation indicators and similar; (5) the necessity of ensuring that, internal to the programme and related minority rights frameworks, fundamental human rights are upheld; (6) other. Such an approach may have possibilities for success, proceeding as it would not solely from the anti-discrimination law and social inclusion policy mandates, but also because it might build on parallel discussions concerning the necessity to ensure sound fiscal policy. Some Roma rights activists have already taken this approach in domestic-level advocacy.²

Among the many difficulties plaguing the road to positive action to ensure equality for Roma is deep-seated hostility among the public at large. A number of Central and Eastern European countries had positive action policies under Communism. For example, under Communism, Czechoslovak authorities preferentially provided housing to Roma ahead of non-Roma, amid a gen-

eral housing shortage, in which married couples frequently waited for periods of many years for housing. The policy generated significant levels of anti-Romani hostility, hostility which found no expression in public debate, since it transpired under totalitarian conditions. Following 1989, anti-Romani sentiment – as well as anti-Romani violence – broke out with great intensity in Czechoslovakia, and it remains at disturbing levels today. Elsewhere, Bulgarian lawmakers have to date rejected efforts to see a law passed which would fund school desegregation efforts in that country, because of widespread views that such a law would “discriminate against non-Roma” and “establish unfair privileges to the detriment of the majority”.

There is a need for any positive action measures adopted to be accompanied by significant levels of public debate and efforts at consensus. The governments of Europe must lead and foster those debates, because the longer no serious action is taken in these areas, the more likely it is that scenarios such as the rioting in Slovakia in 2004 becomes the norm, as significant parts of excluded minorities sink further and further into extreme states of degradation.

Debates on the need for positive action measures for a number of burdened groups, and/or for legal measures binding states to ensure Roma inclusion, are now open. How these will be resolved is as yet unclear. This issue of Roma Rights hopefully provides useful input to such discussions.

² See for example Clements, Luke and Rachel Morris, *At What Cost? The Economics of Gypsy and Traveller Encampments*, Policy Press, 2002.



Positive Obligations: Shifting the Burden in Order to Achieve Equality

Barbara Cohen¹

“Equality” is enshrined as a fundamental principle in international instruments and in the constitutions of most countries. What does “equality” mean today? And, how will we get there? What types of laws, what types of action, by whom, will help to achieve equality within our societies? And what are the barriers that we will need to overcome?

In countries that have had anti-discrimination legislation for some time, the concept of equality has undergone a number of transformations:²

- ✧ Equality is unlikely to be achieved simply by treating everyone the same. Whether the defining feature is race or sex or religion or disability or sexual orientation or age or any of a long list of other features, the fact of differences between groups will mean that a “colour blind” approach cannot guarantee equality of outcomes. Such an approach involves detaching a person from the groups to which she belongs, expecting her therefore to be able to conform to a norm defined by the majority (white, male, heterosexual, able-bodied of the majority faith and not too old). Further, by focusing on the individual, it discounts both the disadvantages and positive aspects of group membership – looking towards assimilation rather than pluralism.
- ✧ The ‘equal opportunities’ approach recognises the barriers that exclude members of particular groups from full participation and

seeks to remove them. Firstly, in some cases the barriers may be justifiable, such as a requirement to have job-related qualifications. Secondly, merely ensuring that the door to employment or education or services is fully open to all may not be sufficient to enable members of certain groups to participate, if, due to historic or current disadvantage or discrimination, they lack the qualifications or experience or physical or social mobility that is needed.

- ✧ To achieve substantive equality, institutions may involve making some accommodation for the special needs of a particular group. This approach, which was first developed in relation to disability equality, is equally relevant for other grounds. Accommodation could involve modification of the working environment or the allocation of tasks to enable disabled people to do a job or modifying the working day/week to enable women with caring responsibilities or members of particular faiths to be fully employed. It could also involve adjusting job requirements and incorporating compulsory on-the-job training or mentoring to enable members of groups that had historically been excluded from jobs or education or training to take up employment in a new field. It could mean changing the way services are delivered to overcome language or cultural barriers which have had the effect of excluding certain groups from health or education provision.

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² *See Sandra Fredman. “The Future of Equality in Britain”. Equal Opportunities Commission Working Paper, No. 5, Autumn 2002.*

The new concept of equality, as outlined by Fredman,³ should encompass four central aims:

- ✧ to break the cycle of disadvantage associated with membership of a particular group;
- ✧ to promote respect for equal dignity and worth of all persons, redressing stigma, stereotyping, humiliation based on membership of the group;
- ✧ to provide positive affirmation of individuals as members of the group;
- ✧ to facilitate full participation in society.

The realisation of this new concept of equality requires radical change at institutional level; such change will remain at the unattainable end of the rainbow if it is left to victims of discrimination to challenge practices and policies.

In a recent consultation document,⁴ the UK government acknowledged that

“the traditional model of discrimination law ... is insufficient to drive forward the changes in society that are necessary if all people... are to realise their potential and make a full contribution to wider society. For example:

- ✧ “change depends on disadvantaged people enforcing their rights, rather than on bodies ensuring that they meet their responsibilities;
- ✧ “bodies may act to minimise the risk of legal action, rather than to achieve the full spirit of the law; and
- ✧ “while the law protects people from discrimination in the future, it does nothing to tackle the consequences of past discrimination.”

It may, therefore, be necessary to re-think our equality laws, and to transfer the burden from the

victim, whose only lever may be to seek legal redress, to institutions that have the capacity to bring about wide scale and lasting change, whether or not that are or have been perpetrators of discrimination.

The resistance to change in relation to patterns of discrimination and the maintenance of inequalities has shown itself to be very strong, regardless constitutional and legislative proscription. The experience in countries like the UK or the USA is that, over time, even unwelcome laws begin to change behaviour. However where behaviour derives from well-entrenched attitudes, however irrational they may be, to secure real change in society and its institutions is likely to require more than progressive legislation. Often the impetus for change occurs when the injustice of current practice becomes so stark that it can no longer be sustained. Northern Ireland and South Africa offer useful examples. In both jurisdictions the urgent need to redress historical disparities in employment opportunities was recognised and legislation was adopted that impose positive obligations on employers.

In the early 1960's, during the prolonged conflict in Northern Ireland (NI) in which religion was inextricably intertwined with political affiliation, there were growing demands for action to deal with the social and economic disparities between the Roman Catholic and Protestant communities. The rate of unemployment among Catholics was far higher, and Catholics were effectively excluded from certain types of employment. In 1976, the UK Parliament passed the Fair Employment (NI) Act, which outlawed discrimination in employment on grounds of religious belief and political opinion. After 10 years the problems of inequality in the labour market⁵ or religion-based job segregation had changed very little, and appeared to be unlikely to change unless employers were made part of the solution. The 1989 Fair Employment Act imposed specific obligations on employers. These were incorporated and strengthened in the Fair Employment and Treatment (NI) Order 1998 (FETO).

³ See Sandra Fredman. “The Future of Equality in Britain”. *Equal Opportunities Commission Working Paper, No. 5, Autumn 2002, pp. 10 – 16.*

⁴ Delivery Equality for Disabled People. *Department for Work and Pensions. July 2004, Cm 6255, page 17.*

⁵ *Catholic male unemployment still 2.5 times that of Protestant male unemployment.*

All private sector employers with more than 10 full-time employees and all public sector employers must register with the Equality Commission for Northern Ireland (ECNI) and submit annual returns showing the number of Catholics and Protestants and men and women in their workforce. At least once every three years they must review the composition of their workforce. Where such review indicates that Catholics or Protestants are not enjoying, or are unlikely to continue to enjoy, fair participation in employment within their enterprise, the employer may voluntarily undertake “affirmative action”,⁶ or may be directed to do so by the Equality Commission.

The affirmative action permitted under FETO includes:

- ✧ the encouragement of applications for employment or training for people from under-represented groups;
- ✧ targeting training in a particular area or at a particular class of person;
- ✧ the amendment of redundancy procedures to help achieve fair participation; and
- ✧ the provision of training for non-employees of a particular religious belief, following approval by the Equality Commission.

A recent publication⁷ assessed changes in labour market and employment opportunities of Catholics and Protestants and the influence of the fair employment legislation. Among the findings were:

- ✧ a substantial improvement in the employment profile of Catholics;

- ✧ a considerable increase in the numbers of people working in integrated workplaces, in contrast to continuing segregation in public housing;
- ✧ education, rather than religion, now the main determinant of social mobility;
- ✧ employers indicating that strong legislation has helped change practices, and evidence suggesting that affirmative action agreements have helped to redress workplace under-representation.

Any consideration of positive action to redress historic disadvantage must consider the bold and creative measures that have been adopted in South Africa during its 10 years of democracy.

The South African Employment Equity Act (EEA) was approved in 1998 to achieve equity in the workplace by:

- a. promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and
- b. implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories and levels in the workforce⁸

where “designated groups” means Blacks (Africans, Coloureds and Indians), women and people with disabilities.⁹

The EEA was introduced against a background of extreme disparities in the distribution of labour market opportunities, most of which stemmed from past discriminatory laws.

⁶ For the purposes of the law, “affirmative action” is defined as “action designed to secure fair participation in employment by members of the Protestant, or members of the Roman Catholic, community in NI, including (a) the adoption of practices encouraging such participation; and (b) the modification or abandonment of practices that have or may have the effect of restricting or discouraging such participation”, Article 4, Fair Employment and Treatment (NI) Order 1998.

⁷ Fair Employment in Northern Ireland: A Generation On. Bob Osborne (ed.). Blackstaff Press and the Equality Commission for Northern Ireland. ISBN 0-85640-752-6.

⁸ Section 2, Employment Equity Act 1998.

⁹ Section 1, Employment Equity Act 1998.

One indicator was labour market segregation which, in turn, created and maintained gross under-representation of Blacks, women and disabled people in key areas of work, in particular senior and top management.

As well as prohibiting discrimination, the EEA requires designated employers¹⁰ to analyse their employment policies, practices, procedures and working environment to identify barriers that adversely affect people from designated groups. Employers must then prepare and implement a timetabled employment equity plan. The plan should set out the employer's proposed affirmative action measures, that is, measures to eliminate barriers and to make reasonable accommodation to ensure equality of opportunity and equitable representation within each occupational category and level).

The employer must consult employees from all groups and must report to the Director General of the Department of Labour.

The Act provides enforcement through the labour inspectorate and the courts. A labour inspector can enter an employer's premises to check on compliance, and can request a written undertaking in respect of any employment equity duties the employer has failed to meet. The inspector can issue a compliance order for failure to give an undertaking or to comply with the terms of an undertaking; the order should state time for compliance and the maximum fine for failing to comply with the order. Ultimately the order is enforceable by the Labour Court.

The most recent report of the Commission for Employment Equity, covering the period 2002-03 shows that reports have been received from 6,990 employers covering 2.6 million employees.¹¹

¹⁰ *Employers with 50 or more employees or with an annual turnover at or above a specified level; municipalities and most state institutions and employers appointed as 'designated employers by the terms of a collective agreement, Section 1, Employment Equity Act 1998.*

¹¹ *South Africa Labour Market Survey 2002 showed an economically active population of more than 16 million.*

¹² *Commission for Employment Equity Annual Report 2002-2003. South Africa Department of Labour. July 2004, p. 59.*

¹³ *COSATU Weekly, 16 July 2004.*

The picture presented by these reports is not very encouraging. While Blacks comprise 86% of the economically active population, they occupy 18% of top management posts and 83% of unskilled posts. Blacks comprise 36% of recruits for top management posts and 95% of recruits for unskilled posts. Women account for only 14% of top management posts, of which only 4% are Black women; Black women account for 9% of recruits for top management posts and 32% of unskilled posts. Overall, Black women remain the most disadvantaged, other than disabled people whose participation in employment remained at only 1% of the total workforce (with disabled people comprising 1% of recruitment and more than 2% of all terminations).

The Commission concluded, "there has been progress, albeit at a snail's pace, towards the achievement of the objectives of the Employment Equity Act. However ... if we continue at this pace employment equity will become a challenge for decades."¹² In response to this disappointing report, the Congress of South African Trade Unions (COSATU) pledged to become "more involved in overseeing the satisfactory implementation of the Act by all employers".¹³

Looking beyond the workplace, the UK government has, gradually, come to recognise the need for the public sector to demonstrate by action as well as words its commitment to equality. There is now legislation in both Great Britain (GB) and Northern Ireland (NI) that applies the concept of positive equality obligations to public sector institutions in respect of the full range of their functions. The development of such legislation may offer some lessons.

It could be said that the UK was a pioneer in enacting laws to combat discrimination. In 1965, anxious to prevent urban unrest, the government

secured the passage of the first Race Relations Act; it prohibited discrimination in “places of public resort” – restaurants, hotels, bars, cinemas, public transport – in GB, and established a specialised body, the Race Relations Board, to investigate and conciliate complaints of discrimination. The 1965 Act also made it a criminal offence to incite racial hatred. A second Race Relations Act was passed in 1968, extending protection to employment, access to goods, facilities and services and housing, and enabling the Race Relations Board to bring civil proceedings in cases where conciliation was unsuccessful. By 1975, although some of the most overt forms of racial discrimination were being challenged, and “No Blacks” signs were no longer commonplace, an evaluation of the legislation in a government white paper¹⁴ indicated that additional measures were needed if the discrimination and cumulative disadvantage – in employment, housing, health education – experienced by members of ethnic minorities was ever to be overcome.

The government acknowledged that most victims of racial discrimination do not complain, and advised, “Although it is necessary for the law to provide effective remedies for the individual victim, it is also essential that the application of the law should not depend upon the making of an individual complaint.”¹⁵

The government therefore included in the 1976 Race Relations Act (RRA) power for the specialised body, now the Commission for Racial Equality (CRE), to conduct investigations into public and private sector organisations to expose discriminatory practices. Under the RRA, the CRE can subpoena evidence and can serve notices requiring organisations to stop discriminating. Since 1977 the CRE has conducted more than 100 investigations. Some investigations are strongly resisted; some have resulted in major institutional change, for example recruitment

practices in the armed forces. Others have led to changes in particular policies, for example, criteria for school admissions or housing allocations.

While relieving victims from having to prove discrimination, CRE investigations¹⁶ are still reactive, triggered by a suspicion of discrimination and limited in terms of enforceable remedial action to requiring the respondent to stop discriminating.

It would be wrong to suggest that giving individuals the right to seek redress was not of considerable importance. The RRA has enabled thousands of people to challenge discrimination, harassment, victimisation in their place of work, at schools, in restaurants and shops and in access to public and private sector services. However, despite successful outcomes¹⁷ of individual cases and exposure by the CRE investigations of patterns of racism and discrimination in different organisations, the facts of discrimination and disadvantage of ethnic minorities in Britain changed very little. There continue to be huge disparities in the rates of unemployment between ethnic minorities and their white counterparts. Ethnic minorities are over-represented amongst those stopped and searched by the police and amongst men and women serving prison sentences. Children from some ethnic minority groups have lowest rates of success in schools and highest rates of school exclusion. Ethnic minority families are more likely to be homeless and to live in overcrowded accommodation; they are more likely than their white counterparts to suffer ill health.

That this is the case is not news for the people who meet racism and discrimination on a regular basis. What jolted the whole of the British population to understand, possibly for the first time, what it means to be black in Britain was the 1998 inquiry into the failed police investigation of the racist murder of the black teenager, Stephen Lawrence.

¹⁴ “Racial Discrimination”. Home Office. September 1975.

¹⁵ *Ibid.*, para. 36.

¹⁶ and investigations by the Equal Opportunities Commission under the Sex Discrimination Act 1975 and by the Disability Rights Commission under the Disability Rights Commission Act 1999.

¹⁷ Contested race discrimination cases at the employment tribunal in England and Wales during 2000-2001 had a 16% success rate, compared to 20% for disability discrimination, 28% for sex discrimination and 31% for unfair dismissal. Labour Research, April 2002.

The Stephen Lawrence Inquiry heard evidence about every aspect of the police response, including the treatment of Stephen's friend who was with him at the time and Stephen's family. They also heard evidence from ethnic minority communities in various parts of Britain about racist crime and their treatment by the police and other agencies. The Inquiry formulated a definition of institutional racism:

“Institutional racism” consists of the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes, and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.¹⁸

This definition moved the focus from individual acts of racism or discrimination to the racism that is rooted within institutions infecting all of their actions. From the evidence they received, the Inquiry was satisfied that the need to eradicate institutional racism was not a matter solely for the police.

It is incumbent upon every institution to examine its own policies and the outcome of these policies and practices to guard against disadvantaging any section of our communities.¹⁹

While the definition of institutional racism produced some negative reactions, especially amongst police officers who, erroneously, read it to mean that every officer is a “racist”, a majority of public authorities reluctantly accepted that the definition applied to them. For the first few months after the Inquiry, there was remarkable energy throughout the public sector, as bodies began to examine their policies and practices to identify ways in which they may be failing to take account of the needs of

ethnic minority communities. For the first time in many organisations, senior managers and elected members showed an interest in the views and experience of the ethnic minority employees, and some efforts were made to talk to and learn from ethnic minority communities.

The government agreed to implement most of the Inquiry's 70 recommendations. This included legislation to extend the scope of the RRA to all activities of the police and other public authorities. This would greatly increase the range of discriminatory acts that victims could challenge or the CRE could investigate, but on its own would not eradicate institutional racism. However, as a result of strong lobbying by the CRE in collaboration with Lord Lester of Herne Hill QC, a distinguished anti-discrimination barrister, and the work of a sympathetic (black) civil servant, by the time the Race Relations (Amendment) Act 2000 received royal assent it included a positive duty on public authorities to promote race equality, in the following terms:

Every body or other person specified in Schedule 1A²⁰ or of a description falling within that Schedule shall, in carrying out its functions, have due regard to the need:

- a) to eliminate unlawful discrimination; and
- b) to promote equality of opportunity and good relations between persons of different racial groups.²¹

Regulations impose on the main authorities certain “specific duties”, that is, mandatory practical steps intended to help them meet the above “general” duty. The CRE has explicit powers to enforce compliance with these regulations.

The vision of the CRE and others was that a positive duty to promote race equality would

¹⁸ The Stephen Lawrence Inquiry. Report of an Inquiry by Sir William Macpherson of Cluny. *CM4262-I*, para 6.34.

¹⁹ *Ibid.*, para 46.27.

²⁰ *Schedule 1A includes all government ministers and central government departments (including executive agencies), local government, police, health institutions, governing bodies of all publicly maintained schools, colleges and universities, audit and inspection agencies, bodies that regulate the professions, public bodies concerned with the arts and broadcasting, etc. It has been amended by regulations in 2001 and 2003.*

²¹ *Section 71(1) Race Relations Act 1976 as amended by Race Relations (Amendment) Act 2000.*

make a difference. It would force organisations to institutionalise anti-racism and to adopt and maintain new norms involving the promotion of equality and good race relations.

Consider, for example, the impact on the allocation of public housing. Under its RRA duty a housing authority would be expected to examine its existing policies and practices, consulting local communities and asking questions along the following lines:

- a. are our criteria directly or indirectly discriminatory? For example, a policy that gave priority to people who had lived in the area for more than 10 years could be indirectly discriminatory if people from particular racial/ethnic groups with the same or greater housing need have been in the area for less than 10 years.
- b. do our policies promote equality of opportunity? Are we aware of different housing needs? For example, do we provide equally for different household sizes of different groups? Do we enable Gypsies and Travellers to have suitable homes?
- c. do our policies promote good relations between different racial groups? For example, how do we support victims of racial harassment? What housing-related sanctions do we impose on perpetrators?

If this scrutiny reveals a need for change, where should change occur: do we need to revise our policies or alter the way officers carry out these policies? What forms of intervention will be most effective to meet our duty to promote race equality?

The RRA duty on public authorities came into force in April 2001. It has not yet begun to approach the vision of its promoters. In January 2004, the Audit Commission²² published the report²³ of

their investigation into the response by various local agencies and how well they were delivering improved outcomes to local black and minority ethnic communities. They found local agencies at different stages:²⁴

- ✧ intending: claim race equality is important but little motivation or understanding of the depth of change needed;
- ✧ starting: better understanding and vision but more likely to be reactive – recognise need for corporate approach but plans disconnected;
- ✧ developing: understand the issues and where they are trying to get to – ambitious targets, but need to prioritise;
- ✧ achieving: have vision – prioritised improvements to specific local outcomes – highly motivated – shifting resources.

The CRE has used its limited enforcement powers very sparingly. The energy to tackle institutional racism that followed the Stephen Lawrence Inquiry has waned. As the Audit Commission review shows, lack of clear corporate leadership is a main reason that agencies are still a long way from the “achieving” stage.

It is therefore interesting to note that the government intends to enact a new law that would impose a similar duty to promote equality for disabled people and has announced plans for a gender-equality duty as well.

In Northern Ireland, the Good Friday Agreement 1998, which was intended to bring an end to sectarian conflict and to establish the framework for NI self-government, included a commitment by the British Government “to create a statutory obligation on public authorities in Northern Ireland to carry out all their functions with due regard to the need to promote equality of

²² *An independent public body with responsibility to ensure that public money is spent economically, efficiently and effectively in the areas of local government, housing, health, criminal justice and fire and rescue services.*

²³ “The Journey to Race Equality”. *Audit Commission Report, Jan. 2004.*

²⁴ “The Journey to Race Equality” *Audit Commission Report, Jan. 2004, p. 19.*

opportunity in relation to religion and political opinion; gender; race; disability; age; marital status; dependants; and sexual orientation.” The Northern Ireland Act 1998²⁵ (NIA) did precisely that.

Under the NIA, public authorities must publish equality schemes approved by the ECNI. Before adopting a new policy, they are expected to assess its likely impact on all of the above grounds. Where the assessment indicates adverse impact on a particular group, then the authority must return to the aim of the policy and determine whether the policy should be modified or an alternative policy adopted instead. With a commitment to promoting equality, authorities may develop policies specifically to improve the opportunities for, say, Gypsies and Travellers, or for young Asian girls, where differential impact will be an unintended consequence.

The latest ECNI Report²⁶ noted the impact that section 75 had had on different public authorities. For government departments the impact was:

1. increased awareness of equality considerations in design, delivery and monitoring of policies and services;
2. increased engagement with the groups identified in section 75; and
3. changes and adjustments to policies and the delivery of services.

In her foreword, the ECNI Chief Commissioner includes as an area for improvement, “the importance of overarching high level policies such as the Programme for Government acknowledging the importance of section 75 and identifying the way in which policies emanating from the Programme should be assessed

for equality impact.” Training is another area for improvement, so that people will have the skills and knowledge to mainstream equality into policy development and decision making at all levels.

A recent decision of the High Court in Northern Ireland²⁷ suggests that the courts may not yet be ready to play a leading role in enforcing statutory equality duties. The case concerned an application for judicial review of the failure by the Minister of State for Criminal Justice to consult on, or to consider, the impact on children and young people of proposed legislation for anti-social behaviour orders which could be used against anyone age 10 or above. The judge said he could find no arguable case. A reading of the judgement suggests that the judge did not understand the aim, let alone the contents of the NIA duty to promote equality.

To have laws that are intended to bring about institutional change is a huge step forward. None of the EC equality directives includes any such provision. Nevertheless, having legislation can only be a very first step; in each of the jurisdictions mentioned above there is some form of formal reporting and measurement of progress. There is concern by the groups intended to benefit from change and those advocating on their behalf that change is too slow, that public authorities are failing to have regard to equality, that equality is a lesser priority; where the duty falls onto employers, that their equality obligations are outweighed by commercial priorities.

Inertia remains very strong, and achieving equality demands change. Unless the promotion of equality is ensconced at every level and regularly reinforced, and unless it remains an unequivocal priority for those at the heart of government and at the top of industry and commerce, there is a real risk that the journey to equality could be seriously, if not permanently, delayed.

²⁵ *Section 75 and Schedule 9.*

²⁶ *Report on the Implementation of the Section 75 Statutory Duties 2002-2003, ECNI.*

²⁷ *R –v- Minister of State for Criminal Justice ex parte Northern Ireland Commissioner for Children and Young People [2004]NIQB 40 23.06.04.*



Towards Realising a Right to Positive Action for Roma in Europe: Connors v. UK

Claude Cahn¹

IN OCTOBER 2004, Slovak Minister of Justice Daniel Lipšic filed a complaint at the Slovak Constitutional Court requesting that that body quash the positive action provisions of the new Slovak anti-discrimination law. Minister Lipšic had been threatening to file such a complaint since the law was adopted earlier this year. Many had previously assumed that Lipšic was merely making populist hay among the many segments of Slovak society who apparently can be rallied to oppose something called “positive discrimination”, a phrase in which images of Gypsies eventually coming to rule over ethnic Slovaks as slave-driving task-masters, dance in the heads of the fearful. Judgment is currently pending in the case.

In light of the foregoing, it is of interest that, in May 2004, the European Court of Human Rights, ruling in the case of *Connors v. United Kingdom*, has apparently taken new steps to anchor the principle that in some instances, positive action may in fact be a right flowing to members of disadvantaged groups, in particular Roma. The decision, which has in many ways redrawn the contours of the international law obligations of Council of Europe Member States, has not yet received due attention in Roma rights circles, or indeed among individuals and groups working on anti-discrimination generally in Europe. This is unfortunate, since the implications of the Court’s decision in *Connors* are of great significance for activists and policy-makers alike.

The Party of Moderate Progress Revisited: International Law and Positive Action

Until *Connors*, it could be plausibly claimed that the cause of arguing the proposal that simply removing formal obstacles to equal treatment would be unlikely actually to result in equality of outcomes, if measures for the support of persons facing historic discriminatory burdens (not to mention present hostility) were not adopted, had gotten stuck in the mud. The dull middle of opinion on international law obligations flowing to states in the area of positive action on behalf of weak groups – and especially weak ethnic groups – is that it is “permitted, but not required, and should only be temporary and remedial”. This view – around which consensus appears at present to be frozen – falls considerably short of the standards set down under international law, in particular in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

Elaboration by UN bodies of the concept of “positive action” or “affirmative action” has become increasingly equivocating, and language more-and-more tentative. Paradigmatic of the onset of exaggerated caution in the area of positive action is the 2001 report on the “Concept and Practice of Affirmative Action”, tabled by the UN Special Rapporteur on the Prevention of Discrimination and Protection of Indigenous Peoples and Minorities at the request of the UN Sub-Commission on the Promotion and Protection of Human Rights.² This document makes

¹ *Acting Executive Director, European Roma Rights Center; comments to: ccahn@errc.org. The author is indebted to Luke Clements, Lanna Hollo and Savelina Russinova for a number of the observations herein, as well as for reviewing drafts of this article.*

² *United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Fifty-third session, Prevention of Discrimination and*

fascinating reading in its labored effort to take no stand on any matter of import. Here, for example, are the conclusions of the Special Rapporteur to the question “Is Affirmative Action Mandatory?”:

Some international doctrine and jurisprudence suggest that, when a State ratifies a human rights treaty, it agrees to take positive State action to “ensure” enjoyment of, or to take steps to achieve “full realization” of, the rights recognized in that treaty, as is the case with the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women.³

The Human Rights Committee has made a number of statements in its General Comments with respect to the necessity of positive government action.⁴ It has often remarked that this cannot be done by simply enacting law and has asked State parties to provide information in their subsequent reports

concerning the measures they have taken or are taking to give effect to the precise and positive obligations under article 3 of the International Covenant on Civil and Political Rights.⁵

The Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights have both adopted several general recommendations which indicate their view that the respective Conventions impose positive state action for achieving equality.⁶ However to state that international law impose a duty to take affirmative action is too extreme. What it does promote is the possibility of taking affirmative action to achieve de facto equality.

The Committee on the Elimination of Discrimination against Women reiterated the importance of this possibility in its General Recommendation No. 5:

“Taking note ... that there is still a need for action to be taken to implement fully

Protection of Indigenous Peoples and Minorities, “The Concept and Practice of Affirmative Action”, Progress report submitted by Mr. Bossuyt, Special Rapporteur, in accordance with Sub-Commission resolution 1998/5, E/CN.4/Sub.2/2001/15, 26 June 2001. The footnotes following numbered in Roman numerals are from the original report by the Special Rapporteur.

³ Article 2.2 of the International Convention on the Elimination of All Forms of Racial Discrimination states: “State Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved”.

Article 3 of the Convention on the Elimination of All Forms of Discrimination against Women states: “State Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men.”

(Editors note: the footnotes to text from the 2001 report on the “Concept and Practice of Affirmative Action” by the UN Special Rapporteur on the Prevention of Discrimination and Protection of Indigenous Peoples and Minorities at the request of the UN Sub-Commission on the Promotion and Protection of Human Rights were included in the original text of the report).

⁴ See, for example, Human Rights Committee, General Comment 4 on article 3, (see HRI/GEN/1/Rev.1, Part I) (1994), para. 2: “Firstly, article 3, or articles 2 (1) and 26 insofar as those articles primarily deal with the prevention of discrimination on a number of grounds, among which sex is one, requires not only measures of protection but also affirmative action designed to ensure the positive enjoyment of rights.”

⁵ *Ibid.*

⁶ For example, Committee on the Elimination of Discrimination against Women, General Recommendation No. 8 on implementation of article 8 of the Convention (see HRI/GEN/1/Rev.1, Part IV) (1994): “Recommends that States parties take further direct measures in accordance with article 4 of the Convention to ensure the full implementation of article 8 of the Convention and to ensure to women on equal terms with men and without any discrimination the opportunities to represent their Government at the international

the convention by introducing measures to promote de facto equality between men and women ... Recommends that States parties make more use of temporary special measures such as positive action, preferential treatment or quota systems to advance women's integration into education, the economy, politics and employment."⁷

The Human Rights Committee has interpreted the International Covenant on Civil and Political Rights as requiring affirmative action programmes in certain circumstances. In its General Comment on non-discrimination the Committee points out that: "... the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population".⁸

The Committee on Economic, Social and Cultural Rights has raised a number of questions concerning affirmative action, especially as regards people with physical disabilities and ethnic or racial minorities, and in doing so, Craven maintains, it seems to accept the legitimacy of affirmative action. However, it still has not explicitly recognized the obligatory nature of affirmative action.⁹

Yet, some commentators have argued that States are indeed obliged to take affirmative action for the benefit of disadvantaged groups.¹⁰ They base their arguments on the theory of "effet utile". The rights contained in the human rights treaties have to be given appropriate and full effect, and in some cases affirmative action is the most appropriate technique to ensure this.¹¹ Those commentators also base themselves on case law developed by the European Court of Human Rights, which has found that in some circumstances passivity on the part of the State will not be sufficient, but there will be positive obligations inherent in an effective respect for the rights inscribed in the Convention. The Marckx case, especially, seems to strengthen them in their belief that positive State action, and in certain cases affirmative action, is sometimes required of the State in order for it to fulfil its duty to respect equality.¹²

level and to participate in the work of international organizations." Committee on Economic, Social and Cultural Rights, General Comment No. 5 on persons with disabilities (see E/C.12/1994/13) para. 9: "The obligation of States parties to the Covenant to promote progressive realization of the relevant right to the maximum of their available resources clearly requires Governments to do much more than merely abstain from taking measures which might have a negative impact on persons with disabilities. The obligation in the case of such a vulnerable and disadvantaged group is to take positive action to reduce structural disadvantages and to give appropriate preferential treatment to people with disabilities in order to achieve the objectives of full participation and equality within society for all persons with disabilities."

⁷ *Committee on the Elimination of Discrimination against Women, General Recommendation No. 5 on temporary special measures (see HRI/GEN/1/Rev.1. Part IV).*

⁸ *Human Rights Committee, General Comment 18 on non-discrimination (see HRI/GEN/1/Rev.1, Part I, (1994), para. 10.*

⁹ *M. Craven, The International Covenant on Economic, Social and Cultural Rights, a Perspective on its Development, Oxford, Clarendon Press, 1995, p. 186.*

¹⁰ *B.G. Ramcharan, op. cit. p. 261; A. Bayefsky, loc. cit., pp. 27-33; E. Vogel-Polsky. Les actions positives et les contraintes constitutionnelles et législatives qui pèsent sur leur mise en œuvre dans les Etats Membres du Conseil de l'Europe, Comitè européen pour l'égalité entre les femmes et les hommes, Strasbourg, 27-29 avril 1992, CEEG, (87), 14, 11.*

¹¹ *E. Vogel-Polsky, "Les actions positives dans la théorie juridique contemporaine", in B. de Grave, (ed.), Positieve actie, positieve discriminatie, voorrangbehandeling voor vrouwen, Tegenspraak-Cahier 8, Antwerpen, Kluwer, 1990, p. 79.*

¹² *European Court of Human Rights, Marckx v. Belgium, 13 June 1978, vol. 31, Ser. A., para. 31.*

The contention that international law imposes no duty to take affirmative action – that it merely “promotes the possibility of taking affirmative action to achieve de facto equality” – is derived from a highly selective reading of international law on the matter.

Were the sole source for affirmative action measures Article 1(4) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), indeed the position above might hold some validity. Article 1(4) of the ICERD states:

Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

The wording of ICERD Article 1(4) is primarily designed to shelter positive action policies from the kinds of legal action that has been brought repeatedly against US “affirmative action” policies – actions which argue that policies preferring members of one ethnic group are discriminatory against other ethnic groups, or against members of the “majority”. The inclusion of Article 1(4) has been key in ensuring that the primary international law regulating states obligations to stamp out racism is not itself enlisted in the service of policies hostile to action against racism.

However, Article 1(4) is not the only provision of the ICERD relating to positive action measures. Article 2(2) of the ICERD provides:

States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural

and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

ICERD Article 2(2) clearly imposes a burden (“shall, when the circumstances so warrant”) on states to adopt positive action measures if there is evidence that such are needed in order to ensure equality of outcome. This goes well beyond merely “promoting the possibility of taking affirmative action to achieve de facto equality”; it in fact engages the positive obligations of the state.

European Union law in the field of combating racial discrimination has to date followed Article 1(4) of the ICERD (if not indeed taking a more pusillanimous approach), but not yet taken notice of Article 2(2). Specifically, Article 5 of the EU Race Directive, addressing the issue of “Positive Action”, states: “With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin.”¹³ In light of the fact that both Article 1(4) and Article 2(2) comprise components of European Union Member States’ obligations to end racial discrimination, the currently diminished EU standard will need to change, and the sooner the better, to end a situation in which states are faced with discord between requirements flowing from the EU *acquis* on the one hand, and their international obligations on the other.

Above and beyond problems arising due to dissonance between two legal regimes, the standard promoted in the UN Special Rapporteur’s paper cited above would enshrine a framework more

¹³ Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 5. EU jurisprudence on positive action in the field of gender discrimination has been extensively elaborated by the European Court of Justice, but issues related to positive action for ethnic groups have not yet been ruled upon by the Court.



Romani boy in a Romani ghetto of the village of Chminianske Jakobovany, April 2004, eastern Slovakia.

PHOTO: RACHEL CORNER

harmful than good and therefore fundamentally at odds with the requirements of justice. This is because, if taken seriously, such an approach would establish a fundamental paradox, the shape of which is roughly as follows: where groups are despised and subject to discrimination, governments may adopt positive measures on their behalf; but if the governments concerned are democratic, it is highly unlikely that the public at large will endorse such measures, and hence unlikely that they will be adopted. Said differently, if one is a member of a group suffering racial discrimination, and one seeks positive action measures, then one's best move is not to be a member of a group suffering from racial discrimination. It would only be at the moment at which a group had shed the stigma of racial animus and emerged as sheltered by the prestige enjoyed by privileged groups that such a group could ever hope to garner the support needed to win positive action measures. But of course such a moment would be precisely the moment at which such measures would no longer be necessary. Such a standard, if proven durable, would be patently inadequate. Thankfully, pressure has mounted to establish a framework more amenable as a rights-based anchor for positive action.

Expanding Minority Rights Regime in Europe

Although positive action measures are different from minority rights, significant developments at the Council of Europe in recent years in the field of minority rights have fostered possibilities for advancing a right to positive action. Positive action measures are temporary, and aim to ensure diversity, where procedural neutrality would result in disparate negative outcomes for weak groups. Minority rights are a significantly more complex series of norms, and it is beyond the scope of this article to examine the minority rights regime in detail.¹⁴ It is however significant

that minority rights standards within the Council of Europe system significantly expanded during the 1990s. Moreover, these standards provided a range of explicit links between anti-discrimination and minority rights frameworks, and additionally included provisions on positive action. Among other things, minority rights approaches significantly heighten discursive possibilities for naming burdened groups explicitly, since although minority rights (as anchored under the ICCPR) are individual, pressure arises to name the "community" to which a minority individual belongs, so as to ensure effective realisation of the rights concerned.

Two legal instruments are of particular significance. First of all, the European Charter for Regional or Minority Languages, which was opened for signature in 1992 and entered into force in 1998, provides significant programmatic flesh to states' minority rights commitments, by offering a range of options for the realisation of minority expression to which states' parties commit to implementing. At Article 7(2), the Charter affirms:

The Parties undertake to eliminate, if they have not yet done so, any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it. The adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages.

Perhaps more significantly, in 1994, the Council of Europe adopted the Framework Convention for the Protection of National Minorities. This document provided an extensive series of bridges between minority rights and anti-discrimination discourses under no less than three of its substan-

¹⁴ *The primary source under international human rights law for minority rights is Article 27 of the International Covenant on Civil and Political Rights (ICCPR), which states, "In those states where ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."*

tive provisions.¹⁵ Additionally, at Articles 4(2) and 4(3), the Framework Convention provides affirmation of the need for positive action measures where relevant:

2 The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

3 The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

The Framework Convention and the European Charter for Regional or Minority Languages anchor minority rights within the Council of Europe system, and moreover link these explicitly to the anti-discrimination framework. Additionally, by requiring “where necessary” measures to ensure equality of outcomes for burdened minorities, the Framework Convention comes significantly closer to bringing the standard es-

tablished in the ICERD at Article 2(2) into European human rights law. The adoption of these two standards must be regarded as a milestone on the road to the Connors decision.

Setting the Stage for Connors

The Court reached a crucial milestone on the road to the Connors decision when it anchored, in its decision in *Thlimmenos v. Greece* in 2000, the following principle:

The Court has so far considered that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification [...]. However, the Court considers that this is not the only facet of the prohibition of discrimination in Article 14. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.¹⁶

¹⁵ *The Framework Convention on the Protection of National Minorities* states:

- *At Article 3(1): “Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.”*
- *At Article 4(1): “The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.”*
- *At Article 6(2): “The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.”*

¹⁶ *European Court of Human Rights, Judgment, Thlimmenos v. Greece, (Application no. 34369/97), 6 April 2000.* The Court’s moves in *Thlimmenos* were noteworthy, given that the facts in *Thlimmenos* indicated a person denied employment because of a previous criminal conviction for refusing to serve in Greece’s armed forces for reasons of conscientious objection on grounds of religion. There is no Convention right to employment, and the Court was asked to consider finding a violation of Article 9 (the right to freedom of thought, conscience and religion) in conjunction with Article 14, even though it was not being asked to consider the actual criminal conviction, which had taken place many years before. The Court found such a violation, indicating that it may be prepared to find violations of the principle of equal treatment even in areas not secured by the Convention, if the facts involved are sufficiently compelling and/or if level of impairment of a given right is particularly grave. The Court granted itself permission to rule in this manner by holding the following: “The Court recalls that Article 14 of the Convention has no independent existence, since it has effect solely in relation to the rights and freedoms safeguarded by the other substantive provisions of the Convention and its Protocols. However, the application of Article 14 does not presuppose a breach of one or more of such provisions and to this extent it is autonomous. For Article 14 to become applicable it suffices that the facts of a case fall within the ambit of another substantive provision of the Convention or its Protocols (see the *Inze v. Austria* judgment of 28 October 1987, Series A no. 126, p. 17, § 36).” (*Judgment, Thlimmenos v. Greece, para. 40*).

However, the issues in Thlimmenos did not relate to racial discrimination – Thlimmenos hinged upon clear-cut facts related to matters of religious conscience. As has been detailed elsewhere, in recent years, the European Court of Human Rights has increasingly moved to reassess its approach to the issue of racial discrimination.¹⁷ In the years since its founding, the Court had, until its ruling in February 2004 in the case of *Nachova v. Bulgaria*, never found a violation of the European Convention’s Article 14 anti-discrimination provisions in a case in which racial discrimination was at issue. The primary legal obstacle to such a ruling had been the Court’s “beyond a reasonable doubt” standard of proof, under which the Court was apparently only prepared to recognise racial discrimination in cases of “95% or more probability of fact”, a very unlikely state-of-affairs in race discrimination cases.¹⁸ In *Nachova*, at least partially as a result of ERRC argument in the case, the Court was persuaded to apply a different standard of prove in at least some cases,¹⁹ and it consequently found that Bulgaria had violated the European Convention when it failed to investigate adequately the killing by Bulgarian police of two Romani men in circumstances which indicated that race factors had at least in part influenced the actions of police.

This change in approach has been widely celebrated and in many ways stems from vocal dissatisfaction coming from a number of sectors, not least from within the Court itself. In the case

of *Anguelova v. Bulgaria*, for example, a 2002 ruling by the European Court, Bulgaria was found in violation of the Convention in a case involving the killing by police of a Romani man but – still pre-*Nachova* – the Court declined to find a violation of the Convention’s Article 14 anti-discrimination provisions. This unwillingness by the Court (again) to tackle the race factor in the killing prompted Judge Bonello to the following dissent:

Leafing through the annals of the Court, an uninformed observer would be justified to conclude that, for over fifty years democratic Europe has been exempted from any suspicion of racism, intolerance or xenophobia. The Europe projected by the Court’s case-law is that of an exemplary haven of ethnic fraternity, in which peoples of the most diverse origin coalesce without distress, prejudice or recrimination. The present case energises that delusion ... Frequently and regularly the Court acknowledges that members of vulnerable minorities are deprived of life or subjected to appalling treatment in violation of Article 3; but not once has the Court found that this happens to be linked to their ethnicity. Kurds, coloureds, Muslims, Roma and others are again and again killed, tortured or maimed, but the Court is not persuaded that their race, colour, nationality or place of origin has anything to do with it.²⁰

The persuasive force of dissenting opinions such as this and similar dissenting opinions from the pen

¹⁷ See Plese, Branimir, “The Strasbourg Court Finally Redresses Racial Discrimination”, *Roma Rights 1/2004*, pp. 109-120.

¹⁸ *Ibid.* p.110.

¹⁹ In its decision in *Nachova*, the Court justified encroaching upon the “beyond a reasonable doubt” standard of proof with reference to the particularly egregious facts of the case, in particular holding that “The Court considers that when investigating violent incidents and, in particular, deaths at the hands of State agents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events.” This has caused some commentators to worry that the Court may be prepared to examine racial discrimination under the reduced standard only in cases of the death of the victim at the hands of the state authorities. However, the Court’s reference to cases such as *Conka v. Belgium*, in which the Court also suspended use of the “beyond a reasonable doubt” standard as a result of its displeasure at the fact that Belgian police had tricked Romani asylum seekers into coming to the police station by lying to them in a written communication, indicate that it is more likely to adopt a “stinking fish” approach when assessing racial discrimination claims. That is, where certain factual profiles (death of the victims, abandonment of bona fides, or other egregious breaches catch the eye of the Court), it will be particularly likely to act to assess a case under loosened proof standards.

²⁰ European Court of Human Rights, Judgment, *Anguelova v. Bulgaria*, (Application no. 38361/97), 13 June 2002.

of other Judges on the Court appear to have finally moved the Court to reassess its approach to race. The Nachova ruling should therefore be seen as part of an overall reevaluation going on now at the Court as to the role of race factors in human rights issues in Europe, as well as a re-positioning of the Court itself as to its own role in combating racism and racial discrimination. As we will see below, however, the Court's moves in Nachova are in many ways a mere technical prelude for the sea change in approach it undertakes in Connors three months later.

Connors v. United Kingdom

In the first place, it must be noted that the decision in Connors v. United Kingdom has not received the attention that Nachova has in anti-racism circles, probably because in Connors, the Court declined to find a violation of the Article 14 anti-discrimination provision of the Convention. The unwillingness of the Court to find a violation of Article 14 should not however blind observers to how significant the moves of the Court are in Connors.

James Connors and his family are Gypsies who lived on a public site provided for Travellers at Cottingley Springs in Leeds, England. During 1999, the family became involved in a dispute with the local council due to the unwillingness of the latter to undertake repairs to the site. This issue appears to have led ultimately to the eviction in dramatic circumstances by police of the family from the site on August 1, 2000. Mr Connors and his family had lived on the site, with a short absence, for some fourteen to fifteen years. Following the eviction they suffered difficulties in finding a lawful alternative location for their caravans, in coping with

health problems in the family and with caring for young children in the family, and in ensuring continuation in the children's education. In his application to the European Court of Human Rights, Mr Connors told the Court that following the eviction he and his family were required to move on repeatedly. Partly at least due to the stress and uncertainty, the applicant's wife chose to move into a house with the younger children and they were separated in May 2001. Their son Daniel lived for a while with Mr Connors. Following the eviction, he did not return to school. Mr Connors stated that he continued to travel in his caravan, with his son Michael and occasionally Daniel, but that they were unable generally to remain in any place for more than two weeks. He had chest pains for which he received medication and tests. As he had no permanent address, he used his wife's address for postal purposes, including medical appointments. Indeed, the family was effectively homeless and although they returned repeatedly to the site, they were treated there "as trespassers".

In the case, the Court was asked by counsel to consider breaches of Article 8 (right to family and private life), Article 14 (ban on discrimination), Article 1 of Protocol 1 (right to peaceful enjoyment of one's possessions), Article 13 (right to an effective remedy) and Article 6 (right to a fair trial). By far the most detailed claim pertained to the alleged Article 8 violation.

In its review of domestic law and practice related to the Article 8, much of the Court's discussion turned on the question of whether key elements of a fundamental human right – in this case the legal security of tenure component of the Article 8 right to private and family life²¹ – extended to

²¹ Article 11 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR") states: "The States Parties ... recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions...." In its General Comment 4 on the right to adequate housing, the United Nations Committee on Economic, Social and Cultural Rights stated:

"7. In the Committee's view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity [...] irrespective of income or access to economic resources. Secondly, the reference in article 11 (1) must be read as referring not just to housing but to adequate housing."

In Paragraph 8 of the same General Comment, the Committee elaborated an approach whereby adequate housing was to be understood in terms of seven key elements. These include:

persons taking advantage of an arrangement established for the purpose of assisting members of a minority in pursuing a traditional practice. Although the Court did not so articulate the issue, one may view this aspect of the problem being examined as the mirror image of the question of a right to positive action. The Court examined a number of U.K. cases in which domestic courts apparently came to the conclusion that Roma/Gypsies living on sites established by local authorities for the purpose of furthering traditional Gypsy lifestyles did not in fact have a right to legal security of tenure, as required by international law. For example, in the case of *R. (Smith) v. Barking and Dagenham London Borough* [2002] EWHC 2400, the presiding judge concluded, “I am satisfied that ... the absence of security of tenure for all gypsy/travellers on all local authority sites, is still appropriate and justified. [...]” The conclusion that one category of persons might be required to choose between a fundamental human right on the one hand and pursuing elements of their traditional practices on the other, where these traditional practices involved not harmful acts such as the repression of women, but rather traditional housing arrangements, cannot have sat well with the Court. Indeed, on a previous occasion on which the Court had been asked to review similar matters, vigorous dissent on this issue had been lodged by Judge Pettiti:

The Strasbourg institutions’ difficulty in identifying this type of problem is that the deliberate superimposition and accumulation of administrative rules (each of which would be acceptable taken singly) result, firstly, in its being totally impossible for a Gypsy family to make suitable arrangements for its accommodation, social life and the integration of its children at school and, secondly, in different government departments combining measures relating to town planning, nature conservation, the viability of

access roads, planning permission requirements, road safety and public health that, in the instant case, mean the Buckley family are caught in a ‘vicious circle’.²²

In discussing the particular “interference” – the August 2000 eviction – the Court examined, as is standard under its review of alleged Article 8 violations, whether the measure was justified as “necessary in a democratic society”. On this matter, the government argued a basis in equality. The judgment states, under Point 77, “Similar terms would have applied to a secure housing tenant.” The government also argued that suitable safeguards existed for procedural guarantees against arbitrary eviction (although the wording of the judgment begs the question of whether in fact that assessment is accurate): “If there had been no proper basis for the eviction or the applicant had mounted a substantial factual challenge to the asserted justification, the domestic courts would have been able, through their scrutiny, to provide a remedy against arbitrary action.”

From this point on, however, the judgment begins to raise questions as to the status of government policy as a positive action measure. In language which appears to be clearly aimed at weighing the status of measures against the international law provisions quoted above, the government argues that although it had previously promoted public sites for Gypsies, this policy had served its purpose and then, as specified under international law, been ended: “Regarding the provision for gypsies, it had to be recalled that the 1968 Act had sought to remedy the grave shortage of sites for gypsies who led a nomadic lifestyle by placing a duty on local authorities to provide such sites. By 1994, the Act was found to have served its purpose as far as it could reasonably be expected to, with local authority sites providing the largest contribution to the overall accommodation needs of gypsies. Policy then

“(a) Legal security of tenure. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;”

²² *Dissenting opinion of Judge Pettiti, Decision on Merits, Buckley v. United Kingdom, 25.9.1996.*

changed its emphasis to encouraging gypsies to promote their own sites via the planning process. The authorities were keeping the situation under review, as seen in the independent reports issued in October 2002 and July 2003, which did not reveal that the exemption posed any problems in practice in the operation of local authority gypsy sites.”

The consequences of this suspension of the positive action measure did, however, apparently lead to forced evictions, practices which the UN Committee on Economic, Social and Cultural Rights has called *prima facie* incompatible with the Covenant and which raise serious concerns under Article 8 of the European Convention. Although the government contended that local authorities used powers to evict “sparingly and as a sanction of last resort”, it nevertheless referred to such evictions as “an important management tool”. The Court was thus confronted with assessing the consequences of the end of a positive action measure, where its absence resulted in practices highly questionable under human rights law, and where procedural guarantees against abuse were not convincingly evident.²³

Indeed, in its previous case law, developed in similar cases against the U.K., the Court has identified the need to “facilitate the gypsy way of life” as a “positive obligation” of the State. In *Connors*, this is put bluntly, as a matter of established principle:

“The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle

both in the relevant regulatory framework and in reaching decisions in particular cases (Buckley judgment [...], pp. 1292-95, §§76, 80 and 84). To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way of life (see Chapman, [...], §96 and the authorities cited, *mutatis mutandis*, therein).”

In those *Buckley* and *Chapman* however, despite establishing and reaffirming this principle, the Court had cited the “wide margin of appreciation” afforded to States and had therefore not found a violation of Article 8 (or indeed any other provision of the Convention). The central revolution of the *Connors* decision is that, despite the complexity of the issues at hand, including unresolved issues as to who, precisely, is meant when one speaks of “Gypsies”,²⁴ on this issue, the Court is apparently no longer prepared not to interfere with the “wide margin of appreciation” afforded states. In the *Connors* decision most significant passage, the Court overturns at a stroke the Court’s approach to assessing domestic housing policy:

[...] The Court has also stated that in spheres such as housing, which play a central role in the welfare and economic policies of modern societies, it will respect the legislature’s judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation (see *Mellacher and Others v. Austria*, judgment of 19 December 1989, Series A no. 169, p. 27, §45, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, ECHR 1999-V, §49). It may be noted however that this was in the context of Article 1 of Protocol No. 1, not Article 8 which concerns rights

²³ *Rendered more precisely: the U.K. government argued that a measure aimed at protecting a minority right – minority lifestyle nomadism -- entailed the need to not have security of tenure, as well as the need to be able to easily expel troublemakers. The question then arose as to whether the eviction truly seemed to be carried out in fulfillment of this measure aimed at protecting a minority right. The Court’s answer to those questions was “no”, and it held that the eviction practices in question could not seriously be defended by recourse to such arguments. In this vein, the Court held, “even allowing for the margin of appreciation which is to be afforded to the State in such circumstances, the Court is not persuaded that the necessity for a statutory scheme which permitted the summary eviction of the applicant and his family has been sufficiently demonstrated by the Government. The power to evict without the burden of giving reasons liable to be examined as to their merits by an independent tribunal has not been convincingly shown to respond to any specific goal or to provide any specific benefit to members of the gypsy community. The references to “flexibility” or “administrative burden” have not been supported by any concrete indications of the difficulties that the regime is thereby intended to avoid” (*Connors Judgment*, para. 94).*

²⁴ *See Connors Judgment*, paras. 57-58.

of central importance to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community (see, *mutatis mutandis*, *Gillow v. the United Kingdom*, cited above, §55; *Pretty v. the United Kingdom*, no. 2346/02, ECHR 2002-III; *Christine Goodwin v. the United Kingdom*, no. 28957/95, §90, ECHR 2002-VI). Where general social and economic policy considerations have arisen in the context of Article 8 itself, the scope of the margin of appreciation depends on the context of the case, with particular significance attaching to the extent of the intrusion into the personal sphere of the applicant (*Hatton and others v. the United Kingdom*, [GC] no. 36022/97, ECHR 2003-..., §§103 and 123).²⁵

The Convention reason the Court found through which to move substantially into positive action is procedural. The judgment states: "The central issue in this case is [...] whether, in the circumstance, the legal framework applicable to the occupation of pitches on local authority gypsy sites provided the applicant with sufficient procedural protection of his rights."²⁶

The Court also goes to great lengths to reassure that precisely what it is not doing is establishing any sort of right to positive action:

"The Court would also observe that this case is not concerned with matters of general planning or economic policy but with the much narrower issue of the policy of procedural protection for a particular category of persons. The present case may also be distinguished from the *Chapman* case [...], in which there was a wide margin of appreciation, as in that case, it was undisputed that the applicant had breached planning law in taking up occupation of land within the Green Belt in her caravans and claimed, in effect, special exemption from the rules applying to everyone else. In the present case, the applicant was lawfully on the site and claims that the procedural guarantees available to other mobile home sites, including privately run gypsy sites, and to local authority housing, should equally apply to the occupation of that site by himself and his family."

²⁵ *Connors judgment para. 82.*

²⁶ *This paper will not assess the implications of the Connors decision on domestic housing policy, although the new standard set out in Paragraph 82 of the decision may beg the need for such an assessment.*

Are the Court's pronouncements that it is solely concerned with procedure and not at all with the substance of rights-based policy to be taken at face value? This is debatable.

In the first place, embedded at the centre of the passage above is the seed of equality of outcome. Although the central preoccupation of the text itself is "procedural guarantees", in fact what is examined is whether a policy arrangement established under the (now required) Convention principles to "facilitate a gypsy way of life" and to provide "special consideration" to Roma as a result of their vulnerable position in practice secure fundamental rights of equality. In examining this issue further in the *Connors* decision, the Court delved deeply into whether or not Gypsies in fact derived benefit from the policies nominally ascribed to assist them. The judgment states, at Point 90:

"Nor does the gypsy population gain any benefit from the special regime through any corresponding duty on the local authority to ensure that there is a sufficient provision for them (see *P. v. the United Kingdom*, no. 14751/89, decision on admissibility of 12 December 1990, Decisions and Reports 67, p. 264, concerning the regime applicable before the repeal of section 6 of the Caravan Sites Act 1968 and paragraphs 35-36 above). The October 2002 report noted that 70% of local authorities did not have any written gypsy/traveller accommodation policy and commented that this reflected the lack of a specific duty on local authorities to consider their needs [...]. Since the 1994 Act came into force, there has been only a small net increase in the number of local authority pitches. The case of *Chapman*, together with the four other applications by gypsies decided by the Grand Chamber (*Beard v. the United Kingdom*, no. 24882/94, *Coster v. the United Kingdom* no. 24876/94, *Jane Smith v. the United Kingdom*, no. 25154/94, and *Lee v. the United Kingdom*, no. 25289/94, judgments of 18 January 2001), also demonstrate that there are no special allowances made for gypsies in the planning criteria applied by local authorities to applications for permission to station of caravans on private sites."

These concerns can hardly be said to constitute solely a preoccupation with procedure, insofar as what is examined is whether or not there is “any benefit” flowing to Gypsies from the special regime in place.

One key aspect of *Connors* thus involves a significant deepening of the European Court of Human Rights’ commitment to the idea that equality does not necessarily mean treating all individuals in the same way. In *Connors*, the Court cites *Chapman v. UK* in explaining that “The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases ... To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way of life...” However, the Court found no violations in *Chapman*. At that time, the Court was content to note principle, but to leave the question of problematic implementation to the “margin of appreciation” left to states. Apparently that is no longer true. Indeed, the Court now justifies its intrusion in this case into the “wide margin of appreciation” accorded to states with reference to the reasoning set out above (“the vulnerable position of gypsies”, etc.). Although in *Connors* the Court found no violation of the Article 14 ban on discrimination, the Court’s decision in *Connors* can be considered important in the Court’s developing strengths in the area of racial discrimination, particularly in the area of positive obligations to establish policies aiming to secure equality of outcome.

Conclusion

In the *Connors* decision, much of the Court’s reasoning hinged upon evaluation of a statutory regime adopted into domestic law (the U.K. policy of providing sites for Travellers), and whether that policy provided suitable and sufficient guarantees for the full realisation of the fundamental human rights secured under the European Convention. In the Court’s assessment, in the case of

Connors, a “positive action” policy established by the U.K. lawmakers did not provide such guarantees, and the Court therefore found the U.K. in violation of the Convention.

The contours of the right established in the *Connors* decision looks, at minimum, roughly as follows:

- ✧ There must be a framework to ensure that a “gypsy way of life” is facilitated, and that due to “the vulnerable position of gypsies as a minority”, “special consideration” is given to their needs;
- ✧ That framework must be implemented;
- ✧ Local responsibility for implementing the framework must be clearly allocated;
- ✧ There should be no arbitrary obstacles to making use of the framework;
- ✧ The effectiveness of the framework will be assessed at least in part to determine whether “any benefit” flows to Roma as a result of the framework;
- ✧ Internal to the framework, fundamental human rights – in particular the European Convention rights – must be effectively realised.

Left as yet unaddressed is how the Court will assess the compliance of states which have not yet adopted any positive action policies for Roma, aware as the Court is that the U.K. is not the only country in Europe in which such policies would be required in order to ensure equal realisation of Convention rights. How would the Court assess the housing policies of a country such as Romania, for example, where in recent years protections to individuals against evictions have been slashed and Roma disproportionately evicted from housing, while government social housing policy remains resolutely color-blind, despite the obvious need for Roma-specific housing policies to counter a housing emergency? Or how would the Court assess any one of the now many government programmes for improving the situation of Roma, filled as they are with lofty declarative goals, but for the most part lacking entirely in local implementation duties?²⁷

Here there is clearly reason for optimism on the part of Roma rights activists. Given the Court's willingness to take a State to task for providing a dysfunctional and apparently unimplemented legal regime for positive action (and one with no clearly allocated duty for local implementation), one can only assume that where no such positive action regime exists, the Court will find the rights at issue that much more frustrated. This is indeed the core meaning of the Court's recognition that "there is [...] a positive obligation imposed on the Contracting States [...] to facilitate the gypsy way of life" and that "the vulnerable position of gypsies as a minority means that some special consideration should be given to their needs". However, argument in those cases still lies ahead, and it will tax the creativity of advocates to bring them well.

The fact that a right of Roma in the Council of Europe Member States to positive action is currently waxing does not abrogate the requirement that officials in the Member States explain to their publics why such measures are good. To date no sensible debate has begun in Central and Eastern Europe as to why positive action measures for Roma should be embraced by the public at large. This is unfortunate, in light of the fact that positive action measures can potentially provoke public backlash, if undertaken in a void of public support. There are clear indications that such support could be garnered, were policy-makers to engage well to build it. In light of the foregoing, the Slovak Minister of Justice's lawsuit should be seen as another of that country's thoroughly senseless detours on the road to finally establishing full compliance with its international human rights commitments.

²⁷ *Recent review by the European Committee of Social Rights concerning Greece's compliance with the European Social Charter in the matter of European Roma Rights Center v. Greece focussed explicitly on the question of to whom statutory obligations to implement a government policy concerning sanitary provisions for nomadic groups flowed and what measures are undertaken if measures to fulfil these obligations are not undertaken. Decision in the complaint is pending.*



EU Roma Integration Directive – Filling the Gap in the Equality Legal Regime

On May 26, 2004 the EU Network of Independent Experts in Fundamental Rights¹ published its “Report on the Situation of Fundamental Rights in the European Union for 2003”. In the report, among other things, the Experts called on the European Union to develop a “Directive specifically aimed at encouraging the integration of Roma”. Below is the interview conducted by the ERRC with Mr Olivier De Schutter, Coordinator of the EU Network of Independent Experts in Fundamental Rights, discussing matters related to that recommendation.

ERRC: *When did the idea first come to you that an EU Directive on Roma Integration would be worthy of proposing?*

Olivier De Schutter: This idea, although it was first put forward in the Report on the situation of fundamental rights in the European Union and its Member States in 2002 – which was published by the EU Network of Independent Experts in Fundamental Rights in March 2003 – really imposes itself naturally. Where there exists a history of discrimination, resulting in the segregation of a community in large fields of social life such as employment, housing and education, affirmative measures are required to move beyond the traces it leaves. In 1968, more than a decade after the United States Supreme Court declared, in *Brown v. Board of Education*, that segregation in public education was unconstitutional, it had to declare in *Green* that simply proclaiming equality was not enough: the constitutional mandate was to get rid of racism “root and branch”, and that “in order to move beyond racism, you must first take racism into account”. This was the beginning of court-ordered affirmative action and “busing” policies, all intended to get rid of the heritage left by Jim Crow laws

in American society. Non-discrimination is crucial of course, but the principle of equal treatment may require more: that we strive towards positive integration, until it will have become unnecessary.

ERRC: *Explain your reasoning behind proposing a Roma Integration Directive but at the same time not supporting calls for a Directive related to the rights of the disabled.*

Olivier De Schutter: As a matter of fact the EU Network of Independent Experts has strongly advocated in favor of going beyond the Framework Directive 2000/78/EC of 27 November 2000 with respect to persons with disabilities, also since the first report it published. The argument there is simple: you cannot pretend to effectively combat discrimination in work and employment, without also addressing the question of access to goods and services, including in particular public transportation. Equal access to employment requires that the artificial barriers to integration are removed, not only at the workplace, not only in the working environment, but also in the general environment. As the UN Committee on Economic, Social and Cultural

¹ *The EU Network of Experts in Fundamental Rights is a body established by the European Commission at the request of the European Parliament, charged with monitoring fundamental rights in the Member States and in the Union. It is comprised of leading jurists from all of the EU Member States. The full report can be read at: http://europa.eu.int/comm/justice_home/index_en.htm).*

Rights emphasizes, “it is very often the physical barriers that society has erected in areas such as transport, housing and the workplace which are (...) cited as the reason why persons with disabilities cannot be employed” (General Comment n°5 (11th session, 1994). Report of the Committee on Economic, Social and Cultural Rights, UN doc. E/1995/22, at para. 22).

ERRC: *If an Integration Directive is adopted, what would be its relation to the other EU Directives? Would it be an ordinary EU Directive? This is in practice an affirmative action instrument focusing, moreover, on one particular ethnic group. What are the arguments defending such an approach. Do you think such instrument could also have influence on international human rights law?*

Olivier De Schutter: General international human rights law clearly recognizes that the adoption of such initiatives by States not only should not be considered as a form of discrimination – as confirmed by Article 1(4) of the International Convention on the Elimination of All Forms of Racial Discrimination – but may even be required. The Human Rights Committee takes the view that “the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant” (Human Rights Committee, General Comment n°18: Non-discrimination, adopted at the thirty-seventh session of the Committee (1989), in Compilation of General Comments and

General Recommendations adopted by Human Rights Treaty Bodies, UN doc. HRI/GEN/1/Rev.7, 12 May 2004, para. 10). In its important General Recommendation XXVII (2000), the UN Committee on the Elimination of Racial Discrimination requested from States, in particular, that they “take special measures to promote the employment of Roma in the public administration and institutions, as well as in private companies [and that they] adopt and implement, whenever possible, at the central or local level, special measures in favour of Roma in public employment such as public contracting and other activities undertaken or funded by the Government, or training Roma in various skills and professions” (para. 28-29). In fact, by taking an initiative encouraging the EU Member States to adopt affirmative action measures in favor of the Roma, the European Community would simply be facilitating the implementation, in that respect, of their international obligations. The situation of the Roma, in my view, would justify this. The Roma cannot be compared to any other ethnic group in the Union, by the level of their exclusion and by the entrenched character of this exclusion.

ERRC: *The text explaining reasoning behind your proposal for a Roma Integration Directive relies on gaps in the Race Directive (Directive 2000/43/EC), for example the observation that access to documents is not covered by the Race Directive, as well as with reference to issues related to nomadism. If you had to propose this list today, would you add any additional reasons?*

Olivier De Schutter: Those who are better aware of the situation of the Roma would have many other concerns to express, which might justify a further initiative of the European Community. One particularly delicate question, which the last Report of the EU Network of Independent Experts on Fundamental Rights does not address, is the question of access to citizenship. This is of course a matter for the Member States to act upon. In the General Recommendation mentioned above, the UN Committee

on the Elimination of Racial Discrimination requires that the States “ensure that legislation regarding citizenship and naturalization does not discriminate against members of Roma communities” (para. 4).

ERRC: *How would you respond to persons who suggest that a legal mechanism is too radical a proposal and who would propose a financial instrument instead?*

Olivier De Schutter: The two approaches are not mutually exclusive. In order to justify the adoption of a legal initiative, we do not have to underestimate the need for financial schemes which favor integration of Roma in schools, employment and housing. But a legal initiative grounded on the principle of equal treatment would have a strong symbolic value. Currently, the Member States are free to decide or not to adopt certain positive action measures in favor of certain ethnic groups, including the Roma. It is important to affirm that, in certain situations, there is an obligation to adopt such measures, as the simple prohibition of discrimination combined with market mechanisms will not suffice to ensure effective integration. We should never forget that anti-discrimination, just like market relationships, reward “merit”, and remain blind to the adverse circumstances which certain individuals may have been facing because of their background. The market and anti-discrimination are excellent tools in a world where no group is facing an entrenched, durable, exclusion from the mainstream of social institutions. This world is unfortunately not ours yet.

ERRC: *How would you respond to opponents of the idea of a Roma Integration Directive who argue that the legal obligations suggested by such a Directive could not be made sufficiently clear so as to render them enforceable?*

Olivier De Schutter: Such an instrument could be procedural rather than substantive. It could build on Directive 2000/43/EC, and define as one of the missions of the equality bodies set up in accordance with Article 13 of that instrument that they request from all public bodies that they present equality schemes defining how they intend to promote the integration of

the Roma, and that they define quantitative objectives in order to attain that objective. In fact, it seems crucial for the success of such an integration process that it be monitored at national level, more closely than it could be followed by the European Commission for instance, if the objectives to be attained were to be defined uniformly throughout the Union.

Alternatively, we could of course consider an initiative imposing on States to collect adequate information about the situation of Roma in different sectors, to report to the Commission or within the Council, to define targets to achieve in order to improve the integration of the Roma, and to share best practices. In fact, the ideal instrument for this is not a Directive, but rather a form of coordination of the initiatives adopted by the Member States in order to fulfil objectives set at the level of the Union. Since the entry into force of the Nice Treaty on 1 February 2003, Article 13(2) EC provides that “incentive measures” may be adopted, “excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1 [combating discrimination based, inter alia, on ethnic origin]”. This may be the best way ahead. Politically, it is more realistic. It is easier to justify in terms of subsidiarity. And we have much to gain in sharing knowledge about the best ways to promote the integration of Roma within our different national traditions.

ERRC: *How would you respond to those who might oppose the idea of a Roma Integration Directive by arguing that the Union would be incapable of adopting an instrument sufficiently strong to be worth the advocacy effort?*

Olivier De Schutter: The advocacy is a goal in itself. Mobilizing in order to achieve such an objective may prove to be a powerful unifying factor for the Roma community, which today often appears fragmented, lacking recognised spokespersons. And it will be an important achievement if such an advocacy already succeeds in launching a debate and in leading the Member States to ask them-

selves whether in fact enough is being done in order to integrate Roma. Of course the final objective is important, but the process of trying to achieve it has its own benefits. Some people travel to arrive at their destination. Others travel for the sake of it, and for these, traveling is far more rewarding.

ERRC: *Do you think we will see a Roma Integration Directive adopted by the EU in the near future? Has there been any discussion on this issue following your proposal? What arguments do you think should be brought to policy makers to persuade them of the necessity of such an instrument?*

Olivier De Schutter: Such proposals take time to mature. Once the maturation is complete, it then may go very quickly. We are at the beginning of a process, but we need to prepare for the moment where the institutions will be ready to act. For the moment, the collection of data, the launching of a public debate on whether or not there would be an added value in an initiative being adopted by the European Community, should go ahead – and this is being done. I expect a lot from the report commissioned to the European Roma Rights Centre and Focus Consultancy on the situation of Roma of Europe. I think the time has come for the preparation and public discussion of an initiative which the Commission could be encouraged to take. Whether this is justified or not, the enlargement of the Union has made this a priority.



The Future of Romani: Toward a Policy of Linguistic Pluralism

Yaron Matras¹

Executive Summary

The past decade has seen the emergence of linguistic pluralism in the use of Romani in institutions such as media and education: language codification is primarily regional, targeting a regional audience. Regional initiatives are autonomous and implement their own solutions. At the same time, an international network of Romani language codification activities is emerging – through meetings, correspondence, exchange of publications, and via the internet. The question facing agencies engaged in language policy is how to pursue networking and international collaboration, while taking into account the de-centralised achievements of the past decade. The practical way forward is to adopt linguistic pluralism as a policy: to support regional initiative and creativity, while also strengthening international networking efforts and exchange. Users of written Romani should embrace the idea that different forms of the language may be used in different contexts, and that codification can be flexible and oriented toward practical communication, rather than rigid, serving as a symbol of loyalty to a particular Standard. Collective ownership of language will thus encompass a web of language varieties, and not just one single form of the language. Such a policy fits the specific Romani situation of a trans-national minority with dispersed, regional centres of cultural and public life. It is also suitable for the young generation of language users, who are accustomed to trial & error, individual creativity and flexibility in their use of written language in new communication technologies such as text-messages, internet chat-rooms and email.

Language Rights as Human Rights

In recent years, especially since 1990, the loose network of activists and initiatives known as the ‘Romani movement’ has managed to raise awareness among national governments and international institutions to the needs of the Roma as an ethnic minority. It has placed Romani human rights on the agenda of national and international politics. Countless resolutions by multilateral organisations such as the Council of Europe, the UN Human Rights Commission, the OSCE, and others, and various governmental initiatives testify to this achievement.

As in the case of other ethnic minorities, Romani human rights have two principal dimensions: First,

the protection of the right of Roma to have equal access to the opportunities that society offers to all its other citizens. Second, the right to exercise control over a domain of cultural activities that are particular to the minority; in other words, the right of Roma to run their own cultural affairs.

Language is perhaps the most conspicuous of cultural assets which a minority may aspire to manage and develop on its own. This has long been acknowledged in the context of international debates on human rights: While discrimination on the basis of language is a violation of the Universal Declaration of Human Rights, the UN Convention on the Rights of the Child (1989) goes further and protects the right of the child belonging to a minority to use his or her own language. The right of minority

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communities to use their own languages in private and in public, and to develop their own languages in various spheres of public life, is anchored in the UN Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1993) and in greater detail in the European Charter for Regional or Minority Languages (1992). There is thus general awareness that support for minority languages is an integral part of the package of securing the human rights of a minority.

The need for measures in support of the Romani language has been mentioned explicitly in numerous international resolutions.² One of the most frequently cited is Council of Europe Recommendation 1203 On Gypsies in Europe (1993), which calls for a European programme for the study of Romanes (Romani). In several countries, including Macedonia, Finland, Sweden, and Austria, there is at least some form of legislative or even constitutional recognition of the Romani language. Several other European countries have been pursuing policies of active encouragement and support of pilot projects engaged in teaching and broadcasting in Romani.

The Challenge of Language Planning

What do we envisage when speaking about the protection of minority languages? The European Charter for Regional or Minority Languages lists several concrete implementations of recognition and protection:

- ✧ General safeguarding, by promoting respect toward the language and encouraging its use in private and in public;
- ✧ Facilities to teach and to learn the language, for both speakers and non-speakers;
- ✧ Inclusion of the language in the education curriculum, especially at primary level;
- ✧ Provisions for pre-school education in the language for pupils whose families request it;

- ✧ Promotion of the study and research on the language, and teaching of the language at secondary and tertiary levels;
- ✧ Provision of translation facilities and interpreters for the language in public services;
- ✧ Provision of radio and television broadcasting in the language, and support of newspapers and the production and distribution of audio and audiovisual works in the language.

The task of governments in relation to these challenges are first of all to enable such activities (for instance by taking decisions on the shape of the school curriculum); next, to support them financially (by paying for the production of resources, or hiring and training personnel); and finally, to adopt a policy that encourages the use and development of the minority language. However, there is a further challenge in cases where, as in Romani, there is no tradition of using the language for the functions outlined above, and no pool of personnel – teachers, authors, broadcasters – or of resources – teaching materials, books, films – to enable to introduce the language into the relevant domains. Such situations call for language planning – a targeted effort to re-shape the language and to equip it with the necessary functions: a writing and spelling system, and a technical vocabulary to cover institutional domains of use.

Traditionally, language planning is viewed as involving two activity domains. The first is primarily social-political, and targets the status regulation of the language. The second is more technical-linguistic, and targets the body of linguistic material or corpus of the language. Here, decision-making processes traditionally aim at resolving the following questions: Which form of the language (e.g. which dialect) should be used for writing and in education, the media, and other public functions? Which writing system should be adopted or designed for the language (i.e. how should the language be codified)? How can the vocabulary of the language be expanded to cater

² See P. Bakker & M. Rooker. 2001. The political status of the Romani language in Europe. *Mercator Working Papers 3*, Barcelona: CIEMEN (www.ciemen.org/mercator/pdf/wp3-def-ang.PDF).

to its new functions? And finally, how can the decisions taken in relation to choice of variety, writing system, and vocabulary be propagated among the potential users of the language?

Obstacles Facing Language Planning in Romani

Romani is only one of many languages around the globe that does not have an established tradition of a single, Standard written variety. The absence of a Standard is sometimes confused with the supposed lack of ‘a distinct Romani language’ and the presence instead of numerous dialects. In fact, most European languages show dialectal variation, and the type of differences found between the various dialects of Romani is not at all unusual. The absence of a Standard language for use in cross-regional communication, in writing, or in institutions does however mean that there is no obvious choice of any single variety for the more public functions of an official or written language.

In some respects, Romani is indeed in a unique situation: It is dispersed among many different regions and countries across Europe and beyond. There is no single, accepted authority or agency that is, or could be, entrusted with taking language-planning decisions for Romani as a whole, much less so with implementing them in the various regions; the responsibility rests with individual governments, while codification activities are diverse and regionally based. Romani populations are all bilingual, and the respective state languages (and sometimes other minority languages) influence the individual dialects of Romani. This concerns both the internal shape of the language, especially the use of technical or institutional vocabulary, and its ‘external’ shape: The choice of writing system is often dependent, for reasons of convenience and accessibility, on the writing system of the respective state language.

The dilemma is therefore this: In order to protect and promote Romani language rights as human rights, there is a need to develop educational materials and media in the language, and to train teachers and writers. In the absence of an existing Standard written language, this cannot be done without language planning. However, there is no uniform concept on which to base language planning, and no obvious accredited or authorised body that could draft and implement such a concept.

Regional Codification in Romani: A Brief Overview

Nonetheless, Romani language planning is not a vacuum. Indeed, in the past decade or more there has been an upsurge of local and regional language planning activities across Europe. The reality on the ground is that of a dynamic, organic movement of language codification efforts that has yielded results in the form of regional networks of media, publications, and teaching resources, results that can no longer be ignored and must be taken into consideration in any global assessment of the state of the art of Romani language planning. I will present a brief survey of some of these activities.³ It is a sample, with no claim to deliver a comprehensive description either of all countries, or of all relevant activities in those countries that are named.

✧ **Czech Republic and Slovakia:** Codification efforts began already in the late 1960s, and were revived after the political transition in 1990.⁴ Most written material is in the East Slovak dialect, but some in other varieties spoken in the country, including Lovari. The writing system is based on those of Czech and Slovak and features the diacritic symbols {š č ž} as well as {d' l'}. Aspirates are expressed by {ph th kh čh} and {h} and {ch} are distinguished. Publications in Romani include original lit-

³ For other surveys of codification practices in Romani see: Matras, Yaron. 1999. Writing Romani: The pragmatics of codification in a stateless language. *Applied Linguistics* 20, 481-502; Halwach, Dieter & Zătreanu, Mihaela. 2004. Romani in Europe. http://www.coe.int/T/F/Coop%20Education_culturelle/education/Enfants_Roms-Tsiganes/report.pdf?L=F.

⁴ See Hübschmannová, Milena. 1995. Trial and error in written Romani on the pages of Romani periodicals. In: Matras, Yaron. ed. *Romani in contact*. Amsterdam: Benjamins. 189-205.

erature and poetry, educational materials, several bilingual periodicals, some with their own websites, and at least one bilingual academic journal. Romani language instruction is carried out in various parts of both countries at primary and secondary levels, and in the Czech Republic also at university level.

- ✧ **Hungary:** Written Romani is usually based on the Lovari dialect. The writing system makes use of the symbols {ny ly gy} for palatals, as in Hungarian, but differs from Hungarian in the use of {sh ch zh} and the avoidance of vowel length distinctions. Aspirates are {ph th kh}. Publications in Romani include grammatical descriptions and language teaching materials, literary translations, and periodicals, some of which appear on the web. Romani is taught sporadically at primary and secondary level, and at least at one university. There are also regular television broadcasts in Romani.
- ✧ **Romania:** The Romanian ministry of education adopted Romani into the official curriculum in the early 1990s, and it is now taught at all levels in schools and at university. The ministry has produced and adopted a series of Romani language textbooks and other teaching materials for this purpose. The variety used is based to some extent on the Kelderash dialect, but attempts are made to form a ‘common language’ by incorporating elements from other dialects as well. The official curriculum adopts a writing system designed by Marcel Cortiade (Courthiade). It is a rather unusual alphabet, which features alongside the diacritics {š} and {ž}, also ‘archegraphic’ symbols: {□} is intended to be pronounced differently in different dialects, as either dž, ž or ź, while {q 3 □} represent the sound variations k/g, s/ts and t/d respectively in a series of grammatical endings – specifically: case endings of the noun and pronoun – thus: man-ge ‘for me’ is spelled {manqe} whereas tu-ke ‘for you’ is {tuqe}. There are also independent text productions in Romani,

whose authors tend to use writing systems based on Romanian, with some adoption of more international conventions such as {љ}.

- ✧ **Macedonia:** A flexible form of literary Romani was proposed already in 1980 by Kepeski and Jusuf⁵, based on either the Džambazi (Gurbet) or Arli dialects, and using the South Slavic writing system in both its Roman and Cyrillic forms, the Roman variant featuring the diacritics {š č ž} and aspirates {ph th kh čh}. Similar principles were adopted by a standardisation conference in the early 1990s, and implemented in a series of publications, including the national census documents and periodicals.⁶ Alongside printed periodicals there are several Romani websites based in Macedonia, some of them preferring the symbols {sh ch zh} to the counterpart diacritics. There are also regular television broadcasts in Romani.
- ✧ **Serbia:** Most publications appear to be in the Gurbet/Džambazi dialect, and follow the writing system of Serbian, either in its Cyrillic or, more frequently, Roman variant, featuring {š č ž ć} and {ph th kh čh} for aspirates. The periodical ‘Them’ which appears in the Vojvodina district is one of the few popular journals that are monolingual in Romani. Other publications include political journalism and biographical collections. A series of teaching materials have been prepared at the local level, drawing on the private initiative and often resources of individual teachers, and there are pilot attempts to introduce them into primary school curriculum. Courses on Romani are now being introduced at least at one university. There are regular radio broadcasts in Romani, and several Romani websites are based in Serbia.
- ✧ **Bulgaria:** Authors tend to use their own individual dialects in writing, and there are Romani language publications in such dialects as the Erli of Sofia, the Kalburdžu varieties of the Varna district, and the so-called ‘Drindari’ dialect of Sliven. There is now an overwhelming

⁵ Jusuf, Šaip, and Kepeski, *Krume*. 1980. Romani gramatika. Skopje: Naša Kniga.

⁶ Friedman, Victor A. 1999. The Romani language in the Republic of Macedonia: status, usage, and sociolinguistic perspectives. *Acta Linguistica Hungarica* 46: 317-339.

tendency to use the Roman script for Romani, sometimes adopting the diacritics {š č ž}, but more commonly drawing on the diacritic-neutral combinations {sh ch zh}, with aspirates {ph th kh} and palatals {ty ly} etc.. A unique feature is the central vowel {w}. Publications in Romani include educational material, biographies, anthologies and political journalism, and the bilingual periodical 'Andral'. Sporadically there has been inclusion of Romani in the curriculum at primary school level, and the ministry of education has appointed a coordinator for Romani language instruction, serving schools across the country. Recently, a Romani language course has been launched at university level.

- ✧ **Austria:** In the early 1990s a project was launched with the aim of codifying the endangered Romani variety of the Burgenland district.⁷ A survey was carried out by a team of linguists and community representatives, and the speaker population was polled in respect of their preferred writing system. As a result of the survey, a written form of the Burgenland Romani dialect was introduced, based on the German writing system. The project has received government support and has produced anthologies of traditional tales and biographical texts in books and audio CDs, language education materials including interactive computer games in Romani, comics, and two regular periodicals, one of them directed at children. Romani is now a regular part of the regional curriculum at primary and secondary school levels, and is offered at university level as well. Projects are under way to codify and develop similar materials for other Romani varieties of Austria, including Kelderash, Lovari, and Arli. Other publications include biographical anthologies in Lovari, a bilingual periodical in Kelderash Romani, and occasional local broadcasting in Romani.
- ✧ **Russia:** There has not been very intensive exchange between the Russian Romani community and other parts of Europe in recent years, but there is a Russian tradition of codification of Romani, based on the Russka Roma dialect and the Russian writing system in Cyrillic script, going back to the 1930s. Many of the older texts have been destroyed, but several hundred books and periodicals in Romani have recently been re-published on the web by the 'rombiblio' project.
- ✧ **Finland:** Codification efforts began here in the mid-1990s. Using the local Finnish Romani variety, a group of linguists and community representatives designed a writing system which makes use of the diacritic symbols {š č ž} and the aspirates {ph th kh čh}, and introduces a new diacritic {□} to represent a unique sound adopted into the dialect from Swedish. As in Finnish, doubling of letters represents a long articulation of sounds. This writing system has served for the production of several educational textbooks and public information material. There is occasional teaching of Romani at primary and secondary school levels, and research on the language is being carried out at a state research institute. There are also teacher training activities and weekly radio broadcasts in Romani.
- ✧ **Sweden:** Here, the production of educational material has been ongoing since the mid-1980s. The groups catered for are the local Kelderash/Lovari speaking community, and more recent immigrants speaking Arli varieties. Some texts adopt the former dialects, others are written in a mixture of two or more varieties. The writing system is generally that adopted in central Europe, featuring the diacritics {š č ž ć} and aspirates {ph th kh čh}.
- ✧ **Germany:** Although Germany ratified the European Charter of Minority or Regional Languages and recognised Romani as one of its minority languages, recognition is restricted to the dialects of Romani that are spoken by German citizens. Paradoxically, the most established Romani association in the country, the Central Council of German Sinti and Roma, has opposed both the development of written materials in Romani and

⁷ Halwachs, Dieter W. 1996. Verschriftlichung des Romani. (*Arbeitsbericht 2 des Projekts Kodifizierung und Didaktisierung des Romani*). Oberwart: Verein Roma.

the use of the language in public life. Nevertheless, there are various local initiatives to develop both printed and audio-visual materials in Romani for inclusion in the primary school curriculum. The author supervised the translation of a series of primary and pre-school level booklets into three different dialects (Gurbet, Lovari/Kelderash, and Polska Roma) in 1996, using the central European type or 'international' writing system with {š č ž ć} and {ph th kh čh}. Teachers at individual schools have been developing their own materials. Romani is used by political activists as the language of correspondence with fellow activists in other countries, and internet chat-rooms offer a forum for written exchange in various dialects of Romani, most notably Sinti. Missionary activities have also been flourishing in Germany, leading to publications of religious material and Gospel translations in various Romani dialects, especially Sinti.

Though far from complete, this survey demonstrates firstly that Romani is gradually occupying a position in the public life of Romani communities, including periodicals, broadcasting, educational material and the school curriculum. It also shows that initiative is regional, and often local. Authors tend to write for an audience consisting of their immediate community, and language planners adopt solutions that can be implemented within the framework of their own region, or sometimes within the boundaries of the state. The resources that support these activities are also largely local: Sometimes the authors' private resources are invested in codification activities, sometimes support is received from local, regional, or state authorities, and quite often it is distributed via NGOs to individuals from

grants provided by international foundations and multilateral organisations.

The most distinctive feature of current Romani codification attempts is therefore their polycentric character. Calls such as those made by Romani activists I. Hancock⁸ or V. Kochanowski⁹ to adopt a single dialect as a Standard are not being followed. Nor has M. Cortiade's proposal for a uniform alphabet and an artificially constructed Standard, a proposal backed by a resolution of the International Romani Union from 1990,¹⁰ gained any wide popularity apart from its use within the Romanian education system, as well as by a small number of individuals mainly in Serbia, Macedonia and Albania. Instead, the overwhelming trend is toward a 'polycentric' model,¹¹ where various codification models coexist side by side, as legitimate and coherent concepts in their own respective contexts.

Although the various models are independent of one another, some global tendencies may be identified in the choice of writing system. First, most if not all codification models seek a kind of compromise between the writing system of the respective state alphabet, and the 'international' transliteration conventions adopted by linguists for the purpose of descriptive analysis of Romani dialects, which feature the use of {š č ž} and {ph th kh čh}. The stronger the clash between the state language and this international transliteration system – for instance in Sweden, Finland, Hungary, or Bulgaria – the greater the compromises that authors are willing to make in favour of the 'international' system. Parallel to the three diacritics with wedge accents {š č ž} we find a second option, an 'anglicised' one, featuring {sh ch zh}. The latter has advantages especially in email and web communication, where diacritics are not always transmitted across different software platforms.

⁸ Hancock, Ian F. 1993. The emergence of a union dialect of North American Vlax Romani, and its implications for an international standard. *International Journal of the Sociology of Language* 99: 91-104.

⁹ Kochanowski, Vania de Gila. 1995. Romani language standardization. *Journal of the Gypsy Lore Society, fifth series* 5: 97-107.

¹⁰ Courthiade, Marcel. 1990. Les voies de l'émersion du romani commun. *Études Tsiganes* 36: 26-51.

¹¹ See Hübschmannová, Milena, and Neustupný, Jiří V. 1996. The Slovak-and-Czech dialect of Romani and its standardization. *International Journal of the Sociology of Language* 120: 85-109.

The fact that authors adopt compromises and show tendencies to accommodate to international solutions indicates that international networking does play a role even in regional and polycentric codification activities. This is becoming even more apparent in recent years, where many Romani periodicals and other publications have websites which are easily accessible and are read by an audience of readers outside their base country. Some Romani-language web-publications even incorporate contributions from other countries, written in different dialects and in a different writing system. Indeed, variations in writing conventions and choice of dialect are often found even within a single printed publication. Apart from the technical aspects of orthography, exchange and mutual accommodation is recognisable also in the spread of new vocabulary. Terms such as *čačipena* for 'rights' or *raja* for 'authorities' are drawn from the old vocabulary of the language, but assigned new, institutional meanings, which are understood throughout the diverse and dispersed activity centres of the Romani cultural and political movement.

Email correspondence is probably the most powerful vehicle of written communication in Romani. Orthographic variation in emails is levelled due to the absence, by and large, of diacritics in most systems. On the other hand, email brings together writers of different dialectal backgrounds. By its very nature – as a loose, spontaneous, rapid, yet effective means of communication, both private and public – email supports a trial-and-error approach to writing: Writers use their own dialects, but respond to individual usages coined by their interlocutors. They experiment with terms and writing conventions without the fear of either embarrassment or sanctions of any kind, creating their own individual blends of what they might consider their 'own, genuine' variety and the 'other, distinct' structures to which they choose to accommodate. Emailing in Romani is thus a pool of linguistic diversity, and at the same time a powerful force of convergence.

The Meaning of 'Pluralism'

One of the remarkable features of the polycentric language planning landscape in Romani is the absence of any overt competition. On the whole,

those engaged in codification activities appear tolerant of the diversity of codification models, and although discussions and consultations are commonplace, there are few if any visible attempts to interfere with solutions and strategies adopted by others. The first conclusion to be drawn from this observation is that linguistic uniformity and the symbolism attached to it do not, for most Romani cultural activists, constitute an agenda item of high priority. Indeed, if we examine the historical circumstances in which Standard languages emerge, we find that they generally satisfy a quest for power – by imposing one single variety of the language on all users in the public spheres such as education, public services, and broadcasting; a quest for control – by rewarding those who adhere to the Standard, and imposing sanctions on those who don't, usually via tests within the education system and the qualifications that it awards; and finally a need for a national symbol of unity, with which users of the language can identify and call their 'own'. For the bulk of users of written Romani, none of these demands can be identified beyond the local or regional domain. Although political unity (in the sense of pursuing a common cause) is on the agenda of most associations and initiatives, most do not regard linguistic diversity as an obstacle to unity.

It may be useful at this point to return to the question of dialect differences in Romani, whose role as potential obstacles to mutual comprehensibility is often emphasised. In fact, Romani dialects form a continuum across Europe, with neighbouring dialects tending on the whole to be quite similar to one another. In addition there are of course those dialects that are spoken by communities whose ancestors emigrated into their present locations after the 18th-19th century, whose dialects are in some sense 'insular'. On the whole, the dialects of Romani are quite homogeneous, having descended from the same ancestor language (which we call 'Early Romani') only about 600 years ago and having still been exposed to mutual influences since their dispersion. Basic vocabulary and grammar do not generally offer any barriers to mutual intelligibility. A greater obstacle are loanwords from the surrounding languages, which differ of course among the dialects. However, in oral conversa-

tion among people from different backgrounds speakers tend to avoid incorporation of a large number of foreign words, switching off code-switching, as it were, and paraphrasing many terms instead.

From the point of view of rhythm and phonology (so-called ‘accent’), which do impose difficulties on mutual comprehensibility, Romani dialects might be divided into three main groups: The dialects of south-eastern and central-eastern Europe (from Greece and Turkey to Hungary and Slovenia, including Moldavia) are all mutually intelligible in face-to-face communication, with little effort. The same can be said for the dialects of the Baltic areas and eastern Europe (Poland, Slovakia, Ukraine, Russia). Finally, the dialects of western Europe (Germany and neighbouring countries) form a coherent group, with Finnish Romani and some of the Romani dialects of southern Italy in a somewhat more isolated position. Face-to-face communication across any of these groups is more difficult and requires somewhat more adjustment and experience, but it is far from impossible.

Bearing this in mind, one can appreciate that written exchanges between writers of different dialects can certainly allow efficient communication, as long as three main conditions are met:

- ✧ The participants are willing to accept other forms that are not their own, and to insert mild adjustments into their own writing; in short, participants must be prepared to accommodate to the requirements of the situation.
- ✧ The use of loanwords must be kept to a minimum and instead paraphrases of terms, or well-known internationalisms must be chosen.
- ✧ The writing systems used by the participants must be similar enough for them to be able to decode the graphic representation of sounds and words.

The result of such exchanges in written Romani across different dialects can be compared with the reading ability of Scandinavians (speakers of Norwegian, Danish and Swedish), who can easily understand each other’s written languages, even if they have difficulties understanding some of

the Scandinavian languages in oral face-to-face communication. Linguistic pluralism in Romani can thus be taken to mean three basic principles:

- ✧ **Regional pluralism:** Different forms of the written language can be used in different regions with no substantial obstacles to mutual comprehensibility, and so without constituting a hindrance to trans-national communication among Roma.
- ✧ **Contextual pluralism:** Individual users of written Romani may choose to use different forms and even different codification (writing) systems in different contexts. For example, certain writing conventions may be followed in the education system in a given country, while a different system may prevail in periodicals appearing in the same country; imported literature might follow a third set of conventions, and a favourite web site might have a fourth, while informal internet communication will allow individuals to choose their own preferences. Users can learn to switch among different systems, as required by the context.
- ✧ **Functional pluralism:** The idea should prevail that writing, especially in the present age, is there primarily in order to facilitate communication and the transfer of information, and as such it is in the first instance of functional use to individuals. Users of a written language should be allowed the flexibility to work creatively with language. This entails a free-enterprise approach to the use of language by individuals and groups, free from the control of power centres. Efficiency of communication ought to be the only sanction or reward that is associated with the choice of variants in either phonological shape, lexicon, or spelling.

One might contest that a model of linguistic pluralism along the lines suggested here is perhaps idealistic, but not feasible. I would argue that there are several factors that favour pluralism in written language in the contemporary situation – both globally, owing to the role of trans-national communication, post-modern attitudes, and new technologies; and with specific reference to the Romani experience:

Pluralism already represents the overwhelming trend on the ground, with written Romani showing regional codification with some international orientation. No unification effort will succeed in bringing dozens or even hundreds of authors and thousands of other users of written Romani under the control of one, single authority. And, conversely, no language policy that ignores or tries to bypass these pioneers of written Romani will have a chance to succeed.

A new generation of Romani intellectuals is exposed to various forms of the language, both oral and written, through encounters with other Roma at international conferences, through internships and training seminars in the NGO domain, and through regular email communication and text messaging. It is especially via the latter two media that writing, including trans-national correspondence, has acquired a new position in the daily communication patterns of individuals. This generation can accept, comprehend and make creative use of different forms and varieties of the Romani language.

These young Romani intellectuals, the future of any Romani literacy movement, belong to a global generation of creative and flexible users of written media, who are at ease in experimenting with different variants of the written word via internet chat rooms, emails, and text messages. To them, linguistic pluralism is not just a concept, but a day-to-day reality.

Arguably, linguistic pluralism is gradually having a global impact, making it the trend rather than an exceptional handicap. Even in languages where there is a firm and rigid tradition of a uniform Standard, a young generation of users is now taking the liberty to embrace more flexibility and functionality. Witness the mixture of UK and US spellings even in academic publications in English, not to mention the disappearance or otherwise random use of apostrophes in most informal writing in English. In Britain, a new method of teaching literacy – ‘Jolly Phonics’ – is gradually being adopted, which encourages pupils to experiment flexibly with writing conventions for several years in primary school in order to encourage confidence and creativity of expression and written communication; here, communicative function is placed above adher-

ence to the formal norm. Or witness the freedom with which anglicisms are being incorporated into media-language in German, or the sudden appearance of apostrophes in informal written German (including advertising), or the confusion caused by the introduction of a spelling reform in German, immediately followed by its retraction from various public domains and media.

These and similar developments suggest that a Standard must not necessarily be interpreted in the narrower modern sense – as a symbol of the acceptance of the power and control of a central authority. Rather, ‘standard’ usage in its evolving, contemporary context can be taken to mean a network of options from which users in a particular context can pick and choose in order to sustain efficient communication. Arguably, in the absence of a centralised Romani political authority, and in view of the geographical dispersion and cultural blends that make up the diverse communities of Roma across Europe and beyond, nothing but ownership of a diverse set of norms and options would meet both the moral and practical expectations of the Romani population.

In the age of new communication and information technologies, where texts can be transferred instantly from one format into another, and search engines can deliver both precise matches and approximations, where applications can correct both spelling and style, and machines can provide crude but instant translations, there is arguably less need to impose regulation on the individual who engages in written communication, and even less of a need to insist on homogeneity of formats, styles and shapes. Moreover, to the extent that regional norms remain in place and cooperation is sought at the international level, networks can be formed to produce solutions for teaching materials or media, which can then be transferred easily into the respective regional formats for ground-level distribution.

Implications for Resource Development

The latter point means firstly, that it is certainly possible and desirable to pursue international networking for the production of texts and teach-

ing materials in Romani, even if we accept the fact that operational centres of text production are regional and local; there is no contradiction between regional pluralism and international networking. Moreover, as our survey above suggests, the two go hand in hand. There is every reason to draw on a wider pool of talent, experience and expertise and pursue the development of language resources for Romani in an international context.

Next, there is a need for resources that will transmit a message of linguistic pluralism and help users of the language acquire proficiency and confidence in accessing different variants and making choices among them. The acquisition of literacy itself is best carried out in the language variety that the learner – child or adult – can call their own. But subsequent language teaching can and should incorporate strategies to acquaint learners with different forms of written Romani. Multidialectal teaching materials in Romani have already been produced and tested in Germany and the Czech Republic,¹² and have acted as catalysts for pupils to develop respect and curiosity toward other dialectal variants. A central, electronic pool of teaching resources would allow teachers to have access to a range of materials, and to choose and adapt those that may be of use to them.

Finally, there is a need to base new language resources on new technologies, and to make the maximum of what technology can offer. Even simple programming at the level of word-processor macros can enable users to convert texts from one writing system to another. By incorporating professional programmers as well as linguists into the consultation process, procedures can be developed to facilitate the adaptation of texts to different regional and local dialects and spelling conventions, thus enlarging the pool of materials. The potential for wider distribution of texts, through format and style conversion and local printing and publishing-on-demand, is likely to

create further incentives for writers to produce quality material in Romani.

Needless to say, this requires proficiency and consistency in electronic production of texts. It is vital to invest all the available resources to allow those who assume managerial and authorship roles in the production of teaching materials and other texts to undergo appropriate training in basic information technology skills, and to benefit from a pool of expert technicians and programmers. These expert technicians might be hired at one or several locations and be available for consultation by email and at occasional workshops, entrusted with the task of consulting a network of co-opted writers, authors, and publishers of Romani material.

Electronic dictionaries and other learning tools can offer users similar advantages and support flexibility and pluralism in writing conventions. This has been demonstrated already by Romlex, an international collaborative project based at the universities of Graz, Manchester, and Aarhus, with joint funding from the Open Society Institute and the Austrian Chancellery.¹³ Romlex is an online multidialectal dictionary, covering 25 varieties of Romani and up to 15 target languages. As a resource that is committed to pluralism, it is both symbolic and practical in allowing the user to choose among numerous different dialectal variants when keying in a search word in order to obtain a dictionary definition. The resource also enables the user to access separate entries for new vocabulary, and to choose his or her own preferred spelling conventions in the key-in window, while the application searches the database for approximations. Unlike conventional dictionaries, Romlex is thus a ‘bottom-up’ resource, one that is defined by user needs, rather than by a wish to impose a uniform norm on the user. Romlex also offers a pool of dialect-to-dialect as well as Romani-to-target language dictionaries which can be printed and distributed on demand.

¹² Jekh du trin ... romanes, published in Hamburg by Verlag für pädagogische Medien (1996), is a series of twelve booklets in the Lovari/Kelderash, Gurbet, and Polska Roma dialects; Co už umim, published in Prague by Fortuna publishers (1999), is a primer in East Slovak Romani, Lovari Romani, and Czech.

¹³ <http://romani.kfunigraz.ac.at/romlex/>, and soon also accessible as www.romlex.org.

Even in the short term, taking into account poor access to electronic resources in many regions where Romani is already part of the primary school curriculum, the incorporation of new technologies into a close-knit international network devoted to the production of teaching and learning materials in Romani will have great advantages: Electronically produced manuscripts can be edited at a designated location for the benefit of collaboration partners across the continent, and converted into the appropriate regional variants upon demand. This would require

- ✧ an information network through which author participants can inform other (client) participants of the existence of a manuscript or text, and share this text in electronic form; and through which client participants can file a request to adapt that text to their own local format;
- ✧ a technical support team with the task of serving the collaboration network by archiving the material that is submitted, and carrying out style and format conversions upon request;
- ✧ a network of publishers, able to produce print-on-demand copies and distribute them in the relevant regions.

Such a resource pool seems desirable in the first instance for the production of much-needed teaching and learning materials, but could in principle be extended to other kinds of texts – translations, anthologies, or periodicals.

More linguistic research is needed in order to be able to identify the most relevant dialectal and orthographic variants. The Romani Morpho-Syntax (RMS) Database at the University of Manchester already contains detailed information on over 100 different varieties of Romani, a product of international collaboration among researchers, language students and local language enthusiasts. It allows swift linguistic comparisons among dialects and offer new prospects in dialect classification, for both academic and practical purposes. The information it contains can also be used to develop a programme that will convert texts from dialect into another. Close cooperation with both

programmers and authors of teaching materials will enable to develop a benchmark for basic text compatibility. Texts that follow that benchmark – i.e., are coherent and consistent in dialectal form and choice of orthography and composed in a recognisable format, might then be converted at the push of a button.

Implications for Curriculum Design

Many issues pertaining to the Romani school curriculum are still at a very initial stage of planning and discussion. Among them are issues of principle, such as the usefulness of autonomous Romani schools, versus integration into mainstream schools. Some regard the former as an expression of cultural autonomy, while others view it as a form of segregation, and integration as a measure of success. A number of conditions apply however, regardless of the preferred education strategy:

- ✧ Romani education will continue to be bilingual, as Romani communities will continue to cherish the bilingual skills that have been an asset to them for many centuries, and as any form of education will seek to equip pupils with the skills to operate as comfortably outside of their own Romani environment as within it.
- ✧ Whatever the overall framework, teaching Romani requires a pool of trained teachers who are insiders to the Romani community, and have not only a general teaching qualification, but specific training in teaching Romani as a subject; teacher training in Romani language is therefore a top priority, and a curriculum for teacher training – at the national and possibly also international level – is an urgent necessity.
- ✧ Romani language teaching is not a uniform procedure, and so it cannot involve an unvarying curriculum. Rather, the teaching of Romani must be embedded into the relevant context of pupil profile, level, and overall teaching context and goals. Curriculum is therefore a plurality of possible activities; the challenge is to match the appropriate activities to the situation and goals.

The latter point suggests that teaching materials must be carefully designed and selected to cater for particular types of school contexts. Some of the basic questions that must be addressed when designing a Romani language curriculum are these:

- ✧ Are the pupils native speakers of Romani, who use Romani in their family and perhaps also with their peers, or do they lack any Romani language skills and are expected to acquire them entirely via the school curriculum?
- ✧ Is Romani the medium through which literacy is first acquired, that is, do the pupils speak Romani and have their first encounter with literacy in their native language, Romani? Or are the pupils already familiar with the concept of literacy when they start taking up Romani as a subject, having already learned the basic principles of reading and writing in the state language?
- ✧ Is the aim of the programme to teach the Romani language as a subject – be it a foreign language, or a native language –, or is it intended also to teach general subjects (such as Romani history or culture) in Romani?
- ✧ Are the students children or adults?

Many of the teaching materials produced so far lack a clearly-defined target audience and learning setting. Yet defining those is crucial for the design of the programme and its success. Thus, pupils who can speak Romani and who use it actively in their families and communities will require training in reading and writing the language, but not in memorising basic vocabulary or grammatical inflections. Pupils who do not speak the language (whether they are of Romani origin, or Gaje joining the Romani class) on the other hand will need extensive practising of grammar and vocabulary.

Bilingual pupils who have already learned to read and write in the state language will require an introduction to the specific sounds and spelling conventions of Romani, but not to the principle of graphemic representation and syllable building as such. On the other hand, if pupils are monolingual or virtually monolingual in Romani

at the age at which they enter school, alphabetisation (the acquisition of the basic principles of literacy) should be carried out in Romani – one cannot learn to read and write in a language that one cannot speak and understand! Forcing children to acquire literacy in an official state language of which they are merely semi-speakers is likely to be a cause for poor performance, alienation, and often subsequent segregation in separate custodial classes, creating a vicious circle of learning deprivation and social exclusion.

Teaching the Romani language is not the same as teaching various subjects in Romani, and although thematic learning widens the scope of language training, when contemplating priorities for the curriculum one must carefully select the aims of the programme, and design the materials accordingly. In this connection, it is vital that the pupils' existing spheres of knowledge be taken into appropriate consideration. One of the great advantages of native language instruction, and the reason it is considered a 'human right', is that only initial instruction in the native language allows the child who is entering school to be able to draw a positive link between his or her cognitive skills which have been acquired before entering school, and the content of the school curriculum, and use the former as a bridge to tackle the latter. The imposition of a language in which the child is not at home right at the start of a child's school career sets a demarcation line between prior knowledge and curriculum knowledge. In this respect, teaching materials aimed at children and adults must also differ in content and the skills on which they draw.

How can the concept of linguistic pluralism be integrated into the Romani language curriculum? Following the principle of native language alphabetisation, we must ensure that children have access to literacy classes in their native language – not just any form of Romani, but the variety of Romani that is closest to that spoken in the child's native environment. This of course may create practical problems, in particular in areas where several different dialects of Romani are spoken. Such areas are not, however, innumerable, and a linguistic survey of 'problem' communities, if carried out by local teachers in collaboration with

linguists, might be able to identify the principal varieties, and ensure that literacy materials are available for each.

Even in those situations where initial alphabetisation might take place in Romani, a transition to the state language will have to follow quite rapidly in order to ensure that children stay in touch with the general national curriculum. But Romani language instruction can and should continue. Given the paucity of reading materials available in Romani, some texts are likely to be selected from outside the immediate region, or even from outside the country. One advantage of an international network running a pool of recognised teaching resources is that materials could be authorised in advance by the respective education ministries, allowing teachers to select materials according to their immediate needs. Thus, gradually, the stage following the acquisition and training of literacy itself could include text samples written in other formats, in other spelling conventions, or in other dialects, representing perhaps a picture of the culture, folklore and lifestyles of Roma from other regions and even from other countries. Pupils will become accustomed to reading texts in other forms of Romani, and will become to some extent familiar with images of other Romani populations. Pluralism can, in this way, be a vehicle toward strengthening mutual interest, respect and solidarity.

The Role of Experts and External Support

In the programmatic outline that was presented in the previous sections, the key role belongs to those who are at the heart of the Romani language movement: the writers and teachers who cultivate the language and propagate its use. But outside this core of language pioneers there are also others who can offer their expertise and support. Let us first review a list of urgent items on the implementation agenda. We have identified the following needs:

- ✧ Training facilities and training curriculum for Romani language teachers.
 - ✧ Development of curriculum concepts designed to match different types of teaching situations, and development of teaching materials in individual regions.
 - ✧ Surveys of the bilingual and dialect situations in relevant regions, to support the choice of curriculum and the form of teaching materials.
 - ✧ An international pool of teaching resources, ideally authorised or partly authorised by the relevant ministries of education, to be made accessible to teachers and curriculum officers.
 - ✧ Training of teachers and those responsible for curriculum design in basic information technology skills, and networking activities to foster links and exchanges among them.
 - ✧ Sharing of electronic resources and texts, and the development of new learning and teaching resources, with adaptations for individual regions.
 - ✧ In pursuit of the latter, development of a benchmark for text compatibility, and the creation of a scientific and technical support team to facilitate exchange and adaptation of resources.
- Linguists have a role to play in a wide range of activities directly related to this agenda. First, more research is needed into differences between the dialects of Romani, in order to be able to advise on the extent to which materials can be expected to be compatible or comprehensible to particular audiences. Such research would involve both the documentation of the structures of individual dialects (sounds, grammar, lexicon), and observation about the dialect and language repertoires used in individual communities. More observations and evaluations of the codification process in individual regions and locations are needed in order to assess the impact of media, teaching, and new technologies, and in order to be able to keep language policy in touch with developments on the ground. Of particular interest and

- ✧ Official recognition of Romani language rights, and government support for curriculum design, media, translation and research;

need are first-hand observations of cross-dialectal communication, of which there are only very few studies; these can help assess the prospects and the obstacles to mutual comprehensibility. Training in basic concepts of Romani linguistics should form a part of any serious teacher-training curriculum, and linguists must contribute their part to the design of such curricula. Finally, the development of language support tools such as dictionaries and grammars, the bread-and-butter of applied and descriptive linguists, are vital to the enrichment of Romani language teaching and learning resources.

Alongside the professional expertise of linguists, backing by multilateral organisations and foundations is a crucial component in any Romani language network. Only those can offer the middle- to long-term financial and logistic support that is necessary in order to ensure continuity in the process of exchange of ideas and creative collaboration among teachers, education officials, academic and technical specialists, and only they can provide a supporting environment that is relatively free of the various pressures of local or national administrations, yet equally committed to improving resources, opportunities and participation at the local and regional levels.

Outlook

Romani is a trans-national language. For the benefit of its users, those engaged in drafting and implementing Romani-language policy must embark on a course of trans-national cooperation. They must form an organic network that will inspire and support, but not direct nor control. Their most immediate task is of a practical nature: to nourish the development and expansion of Romani literacy. In order to work in harmony with ongoing efforts and with the immense pool of talent and energy that are already involved in promoting Romani literacy, language policy-makers face a special challenge: They must disentangle language from ideological allegiances. Literacy must not be regarded as a mere rallying expression of loyalty toward a central authority, nor of the acceptance of a pre-fabricated, imposed set of norms. Rather, it must be viewed as a space that is open to negotiation between the participants in the communicative interaction; a space which the participants are able to shape according to their own needs and wishes. The goal of language education is to give users of language the skills they need in order to claim ownership over language as a means of expression and communication. Users of Romani have made a choice in favour of linguistic pluralism. It is the experts' duty to support them in pursuit of their choice.



Keeping the Criminality Myth Alive: Stigmatisation of Roma through the Italian Media

Claudia Tavani¹

THAT ROMA LIVING IN ITALY face persistent discrimination in all aspects of their lives is not news. Whether they are Italian citizens or not, immigrants or refugees, Roma do not enjoy equal rights with the rest of the people living in Italy. This becomes obvious even by simply watching television and reading newspapers, which often involuntarily – but sometimes more willingly – help to perpetuate the negative stereotypes of Roma. I myself have witnessed on a number of occasions TV programmes (news reports but also very popular shows) which in one way or another made negative comments on Roma, reinforcing the stereotypical views of the rest of the Italian society. The purpose of this article is to provide the readers with a better understanding of the climate of intolerance surrounding Roma in Italy. Before going into the details of what I have come across, I will briefly point out the main national and international legal instruments that, if applied in good faith, can have an impact on the life of Roma in Italy. I will then move on to describe a recent show I saw on the Italian TV which inspired me to write a letter to one of the most popular web-forums of the country. Further, I will give an account of the outrageous comments on my letter that I have received, illustrating the attitude of the majority of Italians towards Roma.

The Italian Legal Background

Article 10 of the Constitution of the Republic of Italy states that the Italian juridical system

“conforms to the norms of international law [...]” Italy has ratified many international instruments that aim at protecting and promoting human rights, including protection against discrimination and minority rights. On 13 October 1975, Italy ratified the International Convention on the Elimination of All Forms of Racial Discrimination; on 15 September, 1978, the International Covenant on Civil and Political Rights as well as the International Covenant on Economic Social and Cultural Rights were ratified.

At the European level, Italy has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) on 26 October 1955; the Framework Convention for the Protection of National Minorities entered into force for Italy on 3 March 1998. Italy however, has not yet ratified Protocol 12 of the ECHR and the Council of Europe Charter for Regional or Minority Languages. In addition to these instruments, Italy has also signed the Central European Initiative Minority Protection Document (19 November 1994), a non-binding document the signing of which is a symbol of the political will to improve the conditions of national minorities.

In July 2003, the Italian government has adopted a decree transposing the EU Race Equality Directive.² Following the decree, a new one (legislative decree of 9 July 2003, n. 215) was adopted to create an enforcement body within the Department for Equal Opportunities (Dipartimento per le Pari Opportunità) of the Council of Ministers. Until then, the only Italian governmental entity that addressed issues related

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² A. Simoni, “Executive Summary on Race Equality Directive: State of Play in Italy”, 17 October 2003, available at http://europa.eu.int/comm/employment_social/fundamental_rights/pdf/legisl/mracequality/italy.pdf, accessed on 4 January 2005.

to minorities and discrimination was the Directorate for Civil Rights, Citizenship and National Minorities within the department for civil liberties and immigration of the Ministry of Interior. Established in 1994, this body aims at promoting and protecting constitutional rights; however, it does not have any specific functions related to the Roma.

As a Member of the European Union Italy has also signed the Constitution of the EU on 29 October 2004, which incorporates the Charter of Fundamental Rights of the Union at Part I, Title II.

Italy is one among several European countries where Roma are often denied citizenship. The “New Norms on Citizenship” (Law n. 91 of 5 February 1992) establish precise rules for granting Italian citizenship. These include residency on the country’s territory for a period of at least 3 years and/or having been born in the country. Nevertheless, Roma who have been present in Italy for over 30 years and whose children were born in the country have not been given citizenship. In the best case, some of them are provided with permits to stay for a limited and usually short period of time.³

Article 3 of the Constitution provides for equality of treatment, by conferring equal status and equality before the law on all citizens “without distinction as to sex, race, language, religion, political opinions, and personal and social conditions.” In the Italian legal system, the main framework for the implementation of the principle of equal treatment and non-discrimination is incorporated by the statutory rules contained in chapter IV of Act n. 286 of 1998 regulating immigration and the legal condition of foreigners. Although the Act is devoted to the legal condition of foreigners, the

section concerning discrimination applies also to Italian nationals.

As of today, Italy has not recognised the Roma as a national minority. Law n. 482 of 15 December 1999, entitled “Norms concerning the protection of linguistic and historical minorities” (“Norme in materia di tutela delle minoranze linguistiche e storiche”) recognises the presence in Italy of at least 12 different minorities, but the Government has not found it appropriate to include the Roma within the scope of the law.⁴ Indeed, although Italian authorities admit the necessity of a comprehensive policy that aims at the full integration of the Romani and Sinti communities present on the Italian territory, when discussing Law n. 482, the government expressed various doubts regarding the recognition of Roma as a national minority. Officially, the main questions regarded the type of minority status to be given to Roma (some maintained that Romani groups should be included among the historic minorities, others thought that Roma are too heterogeneous to fall under a specific minority category).⁵ In reality, the problem was more of a political nature: The centre-left coalition leading the government preferred not to include Roma amongst the recognised minorities in order to avoid obstructions on the part of the right-wing parties that may have eventually lead to the rejection of the law itself. Instead, the Chamber of Deputies (the lower chamber of the Italian Parliament) decided, at its session of 17 June 1998, to introduce a separate law entitled “Norms concerning the protection of the Roma minority” (“Norme in materia di tutela della minoranza zingara”). However, as of the beginning of 2005 no such law has been introduced, nor is there discussion of introducing it in the near future.

The presence of a large body of legal instruments of which the Roma can avail themselves to

³ *Many – but not all – of the Roma living in Italy are not Italian citizens. In any case, their legal status within the country means little in terms of protection from discrimination, equality of rights and fair treatment. Whether they are citizens or not, the Roma living in Italy face everyday discrimination in most aspect of their lives.*

⁴ *In the Italian legal system the concept of minority is closely linked to that of language, as expressed by Article 6 of the Constitution which states that “the Republic shall safeguard linguistic minorities by means of special provisions.”*

⁵ *Thirteenth periodic reports of States Parties due in 2001, Addendum, Italy, n. 4 above, para. 232.*

defend their rights does not automatically translate into adequate measures to prevent and remedy discrimination against them. Furthermore, the government has not made any serious efforts to fight prejudices against Roma in society. A good starting point would be to monitor the media – the language and visual images they use – and make sure that these do not resort to stereotypical and humiliating portrayal of Roma. A good balance should be established between the right to freedom of the press and that of freedom from discrimination. The show I saw about two months ago prompted me to underline this necessity.

Le Iene Show and Its Discriminatory Allegations

While spending a short vacation in Italy in November, one night (Monday, 1 November 2004) I decided to relax in front of the TV and watch what used to be one of my favourite shows, called “Le Iene Show.” This is a very popular show, which makes political satire and investigations in economic, legal, political, social and even sports fields. The show is watched on average by over 3,000,000 people every Sunday and Monday night. That night they had a short documentary about the international traffic of stolen cars.⁶ One of the members of the team of “Le Iene” recounted how, in the previous year, the show had helped the Italian police identify a man who had robbed a woman by paying with a fake check for a luxury car he bought from her. In October 2004, the police detained a group of criminals involved in international traffic of stolen cars. A police officer interviewed during the November 1 edition of the show pointed out that members of this band were Italian citizens as well as people of Romani ethnicity. He added that a “nomad camp”⁷ (which was then shown in the documentary) had been monitored by a police patrol. The journalist then asked the viewers to notice the big new caravans in the camp. He commented that the camp looked like a luxury car dealer shop and added that it did not look

like the typical nomad camp because it was too neat and tidy. The implication was that it was impossible for places inhabited by Roma to appear so neat and clean meaning that the only Roma who can attain a decent standard of living are the ones involved in illegal activities. The police officer went on to say that the police patrol also followed a car which had just been sold and inside it there was a nomad. While the car had stopped at a car service, the police managed to fix a satellite antenna on it in order to be able to follow the car’s direction. The car went from Bari, in South Italy, to a villa in the outskirts of Brescia, in the north. The police officer made an ironic comment that the villa belonged to “persons without property,” referring in particular to the nomad who had been arrested, thereby exposing the nomad’s allegedly false claim that he was homeless. The same car was then brought to Spain and thanks to the co-operation of the Spanish police and the Interpol, the criminals involved in the traffic were arrested. The brief documentary then ended. But my thoughts did not end with it.

The Letter to Italians, the Daily Web-Forum of the Corriere Della Sera

Needless to say, I was shocked at seeing that a TV show I held in high respect showed a documentary which would negatively impact the image of Roma in the Italian society. I asked myself: If among the alleged criminals, apart from Roma, there were also Italians, what was the reason to point a finger at the Roma? If the journalists showed Romani camps, would it not have been fair to also show houses belonging to non-Roma involved in the criminal activities in question? Why was the name of the Romani suspect mentioned in the beginning of the documentary and then repeated throughout, while the names of the other suspects were not mentioned once? Was this a way of implying that the Roma was the sole and main organiser of the criminal activity? And was there any need to comment on

⁶ This can be viewed in full at <http://www.iene.it/programma/2004/11/02/puntata.shtml> and by clicking on “Truffa auto 2.” Website accessed on 4 January 2005.

⁷ In Italy, Roma are generally referred to as “nomadi” (nomads).

the fact that the nomad camp was actually clean and tidy and the caravans were nice and large rather than being just wrecks? Did Le Iene want to imply that only Roma involved in criminal activities can attain a decent standard of living while the rest is condemned to a life of grime? Did they forget about the vast majority of Roma who respect the law and wish to integrate into our society? Did they not realise that their documentary might only contribute to the perpetuation of negative stereotypes of Roma?

With these questions in mind, and hoping to find out more about other peoples' thoughts on the topic, I decided to write a letter to one of the largest online forums, called Italians, which appears every day on the Corriere della Sera⁸ web-site. Readers and participants in this forum are generally well-educated people, often living overseas, and supposedly open-minded. Knowing the attitude of the people in Italy (including the editors who select the letters for publication in the forum), I had little hope for my letter to be published. However, probably because the letter discussed a popular TV show, a few days later it was on the web.⁹ Together with the letter, which briefly reported what I had seen in the show and my questions about it, my email address was provided, to encourage a debate. And what a debate I was involved in!

My email was flooded with letters of indignant people, who made the most outrageous comments. I suppose these only minimally reflect the way Italians feel about Roma – let's not forget that the readers and participants in the forum are usually quite liberal, educated and open minded, and this is not necessarily the case for the rest of the Italian society. I worry that in reality Italians feel even worse about Roma. But it is hard to believe that people can feel any worse than this. What follows is emblematic.

The Comments on the Letter From the Forum

Most of the comments I have received were extremely racist and left little space for debate. I have translated a number of them which expressed their point in a more substantive way.¹⁰ Only one or two comments showed a very remote interest of the authors to learn more about Roma. I must also underline that I disagree with these comments, and I have tried as best as I could to respond to them but this only encouraged more racist comments in response.

For example, one person who wrote to me pointed out that a large part of the Roma – he was not sure whether it was the majority of them or not, but in any case this part was too “visible” – refuse to work because of their “culture” and indeed in their culture stealing is considered a respectable profession: When Roma get a job, they do not take this seriously, and keep sending their children to beg in the street or to steal. He went on to say that the Roma believe they have a right to be assisted, but they do not even care enough to carry documents with them. He believed that this is a well-known fact, although the authorities of the EU Member States refuse to admit it, and instead, insist that Roma are discriminated by a racist society. These – he said – only exasperate the society, which ends up hating the Roma, even those who are not actually involved in criminal activities. He concluded by saying that the Roma should make an effort to respect the law, that one cannot refuse to work because of his culture and demand assistance and then complain when he is discriminated.

Another person wrote the following equation: Italian criminal=jail; Roma criminal=poor, marginalised person-why-don't-we-help-him-get-integrated-into-our-society. He then added that this assumption is unfair. A third person said that I

⁸ *Corriere della Sera* is one of the best known Italian newspapers and one of those with the largest number of readers.

⁹ *The letter, which is in Italian, was published on 5 November 2004, and is available at: <http://www.corriere.it/solferino/severgnini/04-11-05/10.spm>, website accessed on 4 January 2005.*

¹⁰ *I have saved all the emails I have received but I prefer not to provide the names and addresses of those who wrote to me.*

should simply try to live next to a Romani camp, and promised that if I end up complaining about the unbearable situation he would understand my reasons and would not call me “racist.” A person living in Piacenza told me about the time when a Romani camp was placed near his neighbourhood, and how this fact led to a series of burglaries in the neighbourhood. He added that once he found two young Roma (aged around 15, he said), stealing from his cellar, and only because he noticed their young age he decided not to beat them up. Furthermore, according to him, just outside the city, in an area called Pittolo, a group of nomads built a huge villa, and it was well known that such buildings were built on illegal activities. He then complained that, if the residents of the area dared protest about this, there were always people like me, politically correct, to protest against such complaints.

A woman asked me if I was really that naive, if I have ever dealt with any Romani person and if I really believed that the Roma want to integrate in our society? She also said that the Roma do not belong to any human category with whom it is possible to have any dialogue, and the only thing non-Roma could do is to tolerate them and succumb to their cunning. She went on to express her disappointment with the fact that Romani children went to school dirty and full of lice, they infested the rest of the school and the school staff had to wash them because the stench they emanated was unbearable. These children, she continued, were often violent and aggressive; they appeared to be frustrated by their condition, being so different from the rest of the pupils. She emphasised how teachers felt embarrassed by the low achievement of Romani children, who did not receive any support from their parents, who rather than helping them with their studies, would drop them at traffic lights and street corners to beg. The writer then wondered if this was the way of achieving integration.

Further comments pointed out that the Roma do not integrate because they do not really care about integration; that Roma receive benefits for the poor and they do not want to give them up. Someone said that we should not care about the integration or ghettoisation of Roma and

indeed when it comes to Roma, we are never racist enough. Another said that if Le Iene did not show any of the Italian citizens arrested for the traffic in stolen cars, nor their houses, this was definitely because they had not made false claims – that is, that they did not have houses and were poor. According to this person, to say that 99% of the Roma live in the dirt means only to say the truth; the Romani culture is parasitic and there is no difference between a thief and a Romani person. The same person defined culture as “creation, debate, opening up to the world, thirst for knowledge, a walk towards new forms of expression”, and claimed that those who close in themselves do not create culture but conflict. He asked whether piles of garbage and thefts can be considered culture. If this was the case, he commented, he observed the highest manifestations of culture and should be happy to be able to enjoy multiculturalism! Furthermore, he believed that in reality stereotypes are perpetuated by those who, for the sake of being politically correct, attempt to defend what cannot be defended.

Conclusion

The emails I have received in response to my letter show that there is a long way to go before full equality will be achieved and before discrimination against Roma – by public institutions or by private citizens – will disappear. However, on 2 December 2004, six members of the Lega Nord party (called “Leghisti”) were convicted for having taken part in a campaign under the slogan “Gypsies out of our town,” which included collection of signatures, posters all over the town of Verona, press conferences and newspaper interviews which all incited racism and discrimination against Roma and Sinti. The Leghisti insisted that they had been campaigning in favour of legality, and that they wanted to expel the Roma from the town because wherever the Roma placed their camps, an increase in illegal activities had been registered.

The sentence against the Lega Nord members represents a huge victory for the Roma and Sinti in Italy, and for the democratic values in general.

It shows that people who publicly discriminate against Roma should not and will not go unpunished, and it helps to build trust in the legal system. It will help create the basis to prevent

and punish those who publicly discriminate against Roma or incite racial discrimination and violence. Of course this is only a small step, but nevertheless an important one.



SNAPSHOTS FROM AROUND EUROPE

News Roundup: Snapshots From Around Europe

The pages that follow include Roma rights news and recent developments in the following areas:

- Physical abuse and other inhuman and degrading treatment by police and other officials in **Serbia and Montenegro** and **Ukraine**;
- Racial attacks and harassment by skinheads and others in **Czech Republic, Serbia and Montenegro** and **Ukraine**;
- Death of Roma following substandard medical care in **Bulgaria**; other access to adequate medical care issues in **Hungary**; and publication of a report on health status of Gypsy/Travellers in the **United Kingdom**;
- Forced evictions, and planned evictions, in **Albania, Greece, Lithuania, Russia, Serbia and Montenegro, Slovenia** and the **United Kingdom**; ERRC complaint concerning housing rights in Italy before the Revised European Social Charter found admissible; and other issues related to the right to adequate housing and freedom of movement in **Bulgaria, Russia, Slovakia and Ukraine**;
- **Italian** Court finds right-wing political party members guilty of incitement to discriminatory acts in Sinti case; Access to justice issues in **Russia**; **Slovak** Minister challenges legality of special measures; **United Kingdom** government found to have discriminated against Czech Roma during immigration checks; and European Court of Human Rights declares Romanian Romani case admissible;
- Anti-Romani sentiment issues in **Hungary**;
- Refugee and IDP concerns in **Kosovo** and **Serbia and Montenegro**;
- **Bulgarian** government rejects fund for school desegregation; and school segregation concerns in **Denmark, Romania**;
- **Hungarian** legislators reject changes to Minorities Act;
- United Nations Committee on the Rights of the Child reviews **Croatia**;
- United Nations Committee against Torture reviews **Greece**; and
- United Nations Committee on the Elimination of Discrimination against Women reviews **Spain**.

ALBANIA

✧ **Albanian Police Forcibly Evict Egyptian Family**

According to the Albanian national daily newspaper Tema of September 23, 2004, police in the Albanian capital Tirana forcibly evicted Mr Behar Sadiku, a 44-year-old Egyptian man, his 43-year-old wife Zina and their 13-year-old son Arsi from the makeshift tent in which they had lived for one month on the property of an economics secondary school on the morning of September 20, 2004. A September 22 report of the Union of Balkan Egyptians sent to the ERRC stated that Mr Sadiku's family had one month earlier been evicted from their flat together with another five Romani families. The municipality reportedly provided the five families with social housing, however Mr Sadiku's family did not receive such assistance. Mr Sadiku was taken in

police custody and his wife and child lived on the street for some time.

On September 30, 2004, Mr Kimet Fetahu of the non-governmental organization Center for Ethnic Studies, a witness to the eviction, informed the ERRC that without any prior notice, on the morning in question police officers arrived at the location at which Mr Sadiku's family was living and informed the family that they had to leave immediately. One of the police officers reportedly stated that Tirana municipal authorities had ordered the eviction because their makeshift accommodation was an eyesore for others in the area. Mr Fetahu informed the ERRC that the police officers did not present the Sadiku family with an order authorising the eviction. When Mr Sadiku demanded to see such, he was handcuffed and six officers

pushed him towards a police vehicle and violently forced him inside the vehicle, causing him bodily injury, according to Mr Fetahu. Mr Sadiku was taken to the police station, where he was held in custody from 1:00 PM on September 20 until 11:00 AM on September 23, when he was brought before a court, charged with opposing law enforcement officials. Police officers reportedly gave testimony that Mr Sadiku had physically attacked them. The following day, Mr Fetahu gave testimony to the judge repeating allegations made the previous day by police, stating that the police had attacked Mr Sadiku without provocation. Mr Sadiku was released that day. He did not file any complaints in connection with the event. Mr Sadiku's family was staying with relatives as of the end of January 2004. (ERRC, Union of Balkan Egyptians).

BULGARIA

✧ **Bulgarian Parliament Rejects Draft Law for Desegregation Fund**

On October 7, 2004, the Bulgarian Parliament rejected the draft Law for the Establishment of a Fund for Minority Children in Education, which envisaged funding from the government and international lending institutions for education desegregation efforts in the country, according to press releases of the Bulgarian non-governmental organisations Human

Rights Project (HRP) and Romani Baht Foundation (RBF). In justifying their opposition to the law, Members of Parliament stated that a fund targeting children from minority groups constituted discrimination against ethnic Bulgarian children, not withstanding domestic and international law provisions making clear that that is not the case. Bulgarian and international non-governmental organisations expressed dismay that the Bulgarian government had failed to secure its school desegregation

policies with a monetary instrument. (ERRC, HRP, RBF)

✧ **Ethnic Bulgarians Refuse to Accept Romani Neighbours**

According to a September 23, 2004 press release of the Bulgarian non-governmental organisation Romani Baht Foundation (RBF), the Bulgarian Ministry of Defence announced its intention to donate military barracks to the Municipality of Sofia to

be placed in the nearby village of Chelopetchene, apparently to house a number of Romani inhabitants from several districts in the city. The move is reportedly in reaction to constant complaints by ethnic Bulgarians living in the vicinity of the Romani neighbourhoods. However, the announcement also caused dissatisfaction amongst residents of Chelopetchene, who, according to the RBF have threatened to block the highway if Sofia authorities attempt to move the Roma into their community. Following protests by the residents of Chelopetchene, Sofia authorities decided against the relocation. As of February 25, 2005, RBF informed the ERRC that some of the Roma who were to be relocated were living in makeshift shacks by a highway while others had moved in with family. (RBF)

✧ **Two Bulgarian Romani Women Die After Delivery Due to Alleged Inadequate Medical Treatment**

On October 30, 2004, Mr Plamen Tsankov testified to the ERRC that his sister-in-law, Ms Rusan-

ka Mateva, a Romani woman from the southern Bulgarian city of Pazardzhik, died on October 17, 2004, in the Pazardzhik Regional Hospital, after giving birth. The death was apparently due to loss of blood. At the beginning of October, Ms Mateva's health insurance coverage was reportedly terminated as a result of unpaid dues. Mr Tsankov reported that Ms Mateva was admitted to the emergency ward of the hospital to deliver her baby and, following the delivery, doctors left her without any medical supervision for several hours. Mr Tsankov also informed the ERRC of his belief that Ms Mateva's ethnicity also factored into her inadequate medical treatment. Several days after Ms Mateva's death, her family filed a complaint with the local court. As of February 4, 2005, no further information on the case was available.

A day earlier, according to a report by the Romani newspaper Drom Dromendar, Ms Maria Atanasova, a 22-year-old Romani woman from the Southern Bulgarian city Plovdiv's Stolipinovo Romani neighbourhood, and her baby, died in hospital during delivery. Drom Dromendar report-

ed that Ms Atanasova's husband Petar brought her to the hospital at 8:00 AM on the day in question and waited. At 1:00 PM, a Dr Iliiev came out of the delivery room and reportedly stated to Mr Atanasov, "Give me 150 leva [approximately 80 Euro] and you'll have a baby". Mr Atanasov reportedly paid the money because Ms Atanasova's state provided health insurance had been terminated due to unpaid fees. After a short while Dr Iliiev returned and demanded the same amount again, which Mr Atanasov again paid. At this time, according to Drom Dromendar, an ethnic Bulgarian woman entered the hospital to deliver a child. Mr Atanasov was quoted as having stated that all of the doctors left Ms Atanasova, whom he could hear crying and shouting, to assist the other woman. At 5:00 PM, Dr Iliiev informed Mr Atanasov that Ms Atanasova and their baby were dead. Dr Iliiev reportedly stated that Ms Atanasova's death was a result of heart problems, though Drom Dromendar reported that her family disputed this, stating that she did not have such medical problems. As of February 4, 2005, no further information was available. (Drom Dromendar, ERRC)

CROATIA

✧ **Committee on the Rights of the Child Reviews Croatia**

On October 1, 2004, the United Nations Committee on the Rights of the Child (CRC) issued its Concluding Observations on Croatia, following consideration of the State Party report during its 37th session. In its Concluding Observations, the CRC noted the need for disaggregated statistical

data on the situation of children, including Romani children and recommended that the government of Croatia "take effective measures to ensure the availability of reliable data regarding persons below 18 years old collected by age, gender, ethnic origin, and to the identification of appropriate disaggregated indicators with a view to addressing all areas of the Convention and all

groups of children in society, to evaluate progress achieved and difficulties hampering the realization of children's rights." In addition, the CRC made several observations and recommendations to the government of Croatia specific to the situation of Romani children, including:

23. In accordance with article 2 of the Convention, the

Committee recommends that the State party carefully and regularly evaluate existing disparities in the enjoyment by children of their rights and undertake on the basis of that evaluation the necessary steps to prevent and combat discriminatory disparities. It also recommends that the State party strengthen its administrative and judicial measures to prevent and eliminate de facto discrimination against children belonging to minorities especially Roma and foreign children. [...]

52. The Committee recommends that the State Party undertake all necessary measures to ensure that all children enjoy equally the same access and quality of health services, with special attention to children from ethnic and minority groups, especially Roma children. [...]

57. While noting the efforts made by the State Party with regard to education - e.g. the 2001

Law on the Changes and Amendments of the Primary Education Law, it remains concerned about the different access to education of children belonging to minority and most vulnerable groups, including Roma children, children living in poverty, children with disabilities and foreign children which hampers the full enjoyment of a system of education adequate to their values and identity. [...]

58. The Committee recommends that the State party [...] (b) ensure the implementation of the National Programme for Roma, providing it with adequate human and financial resources and with periodic evaluation of its progress [...]

70. The Committee [...] is also concerned about continuing problems of ethnic discrimination and intolerance, particularly concerning the Roma and other minority groups – e.g. Serbs, Bosniaks and other groups.

71. The Committee reiterates its recommendation that the State party take effective measures to encourage the protection of the rights of children belonging to minority groups and eliminating the atmosphere of impunity among those that harass these groups. It also recommends the State party to undertake special measures to stimulate a process of reconciliation and confidence-building, including wide-ranging educative and awareness-raising campaigns.

In the run-up to the CRC's review of Croatia, the ERRC submitted written comments on the situation of Romani children with respect to education, noting in particular concerns relating to racial segregation in schools. The full text of the CRC's concluding Observations on Croatia can be found on the Internet at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/150f4d6ebc51e89cc1256f2000561962?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/150f4d6ebc51e89cc1256f2000561962?Opendocument). (ERRC)

CZECH REPUBLIC

✧ Continuing Violence against Czech Roma

According to the Czech daily newspaper *Českobudějovické listy* of September 10, 2004, a 20-year-old man assaulted a 21-year-old Romani woman on a bus between the southwestern Czech towns of Písek and Vodňany on the afternoon of September 8. Ms Hana Moltašová, the spokesperson for the Písek District Police Department, was quoted as having stated that the woman tried to sit in an empty seat but the man, who was sitting

in the next seat told her to go away and called her a “black bastard”. The man then reportedly hit the Romani woman on the back and punched her on the left side of her face in front of the other passengers on the bus. On September 15, Ms Moltašová informed the ERRC, working in partnership with the Brno-based Association of Roma in Moravia that the Romani woman had been treated at hospital for bruises to her face. Písek police were investigating the incident, though the perpetrator had not yet been charged. Ms Moltašová stat-

ed that she could not reveal the names of either the Romani woman or the suspected perpetrator, but that the man faced charges of rowdiness and defamation of a nation, race or conviction, in accordance with Articles 202 and 198 of the Czech Criminal Code, respectively. As of January 11, 2005, no further information in the case was available. Further information on the human rights situation of Roma in Czech Republic is available on the ERRC website at <http://www.errc.org/> (Association of Roma in Moravia, *Českobudějovické listy*, ERRC)

DENMARK**✧ Danish Ministry of Education Says No Segregated Romani Classes**

According to Danish national daily newspaper Jyllandsposten of December 2, 2004, Denmark's Minister of Education, Ms Ulla Tørnæs, refused Helsingør Municipality's request to keep open several segregated Romani classes. In announcing her decision, Ms Tørnæs stated, "I must point out that on September 13, 2004, the State County Board of control made a decision relating to the special classes for Romani students and I am not able to change this decision or give an exemption." The State Coun-

ty Board of Control's decision to end the so-called "Romani classes" followed a complaint submitted in December 2002 by the Danish Romani organisation Romano, Mr Johannes Busk Laursen and Mr Henrik von Bülow, activists working on Romani issues in Denmark. The municipality was given until September 27 to terminate the illegal classes, but decided to apply to the Ministry of Education for permission to keep several of the classes open. Jyllandsposten quoted Helsingør's mayor, Mr Per Tærsebøl, as having stated earlier that Roma have to learn to calculate and write instead of being criminals.

On December 10, Jyllandsposten reported that Helsingør municipal authorities had again asked the Ministry of Education for an exemption. On December 17, 2004, after receiving confirmation from Mr Bjarne Petersen, Director of Helsingør Municipality's Department of Children and Juveniles, that one of the illegal segregated Romani classes remained open, the ERRC sent a letter to Mayor Tærsebøl requesting that the illegal class be closed immediately and that the affected Romani pupils be given all support necessary for their easy and successful transition into regular class environments. (ERRC).

GREECE**✧ Another Forced Eviction of Albanian Roma in Greece**

According to ERRC research, conducted in partnership with the Athens-based non-governmental organisation Greek Helsinki Monitor (GHM), the homes of eight legally registered migrant Romani families from Albania were demolished in the Greek city of Patras on October 30, 2004. ERRC/GHM research revealed that, without any official notice, representatives of the Municipality of Patras and local police arrived at the settlements of Makrigiani and Glafkos with excavating equipment and forced Romani residents to dismantle their makeshift homes. Officials destroyed the homes of residents

who refused to do so, with the exception of one home, which was saved by a young Romani man who refused to move from between his home and the excavating machine.

Municipal authorities two months earlier razed to the ground the homes of the same, and twenty-seven other, Romani families. On November 4, Patras municipal authorities issued a statement denying that the eviction targeted Albanian Roma. However, according to ERRC/GHM research, the homes of thirteen Greek Romani families, who were affected by the previous eviction, were spared. The families, whom municipal authorities rendered homeless following the eviction, have set up makeshift shacks in the same area.

Systemic violations of the rights of Roma to adequate housing in Greece is the subject of an ERRC collective complaint against Greece under the European Social Charter. The complaint was filed in April 2003 and was pending decision as of February 25, 2005. At a public hearing concerning the complaint in October 2004, attended by representatives of the ERRC, the GHM and the Geneva-based Centre on Housing Rights and Evictions (COHRE), committee members posed detailed questions to Greek officials regarding, amongst others, the issue of forced evictions to which the Greek officials failed to provide satisfactory answers. The ERRC, supported by the GHM and COHRE, recommended that the Committee find

the Greek government in violation of the European Social Charter because of wide-spread practices of forced evictions of Roma; the existence and enforcement of discriminatory legislation; and failure to ensure the improvement of inadequate housing conditions for Roma. For further information on the human rights situation of Roma in Greece, visit the ERRC's Internet website at http://www.errc.org/Archivum_index.php, enter "Greece" into the "country" box of the search engine and click "enter". Information can also be found on the GHM's Internet website at: <http://www.greekhelsinki.gr/special-issues-roma.html>. (ERRC, GHM)

✧ **United Nations Committee against Torture Reviews Greece**

On November 26, 2004, the United Nations Committee against Torture (CAT) issued its Conclusions and Recommendations on Greece, following consideration of the State Party re-

port during its 33rd session. In its Conclusions and Recommendations, the CAT expressed concern at "occurrences of ill-treatment of the Roma by public officials in situations of forced evictions or relocation. The fact that these may be carried out pursuant to judicial orders cannot serve as a justification for the numerous allegations reported by national and international bodies alike." The CAT recommended that the Greek government "ensure that all actions of public officials, in particular where the actions affect the Roma (such as evictions and relocations) or other marginalized groups, be conducted in a non-discriminatory fashion and that all officials be reminded that any racist or discriminatory attitudes will not be permitted or tolerated."

In the run-up to the Committee's review, six non-governmental organizations – the Centre for Research and Action on Peace (KEDE), Coordinated Organizations and Communities for Roma Human Rights

in Greece (SOKADRE), Greek Helsinki Monitor (GHM), Minority Rights Group – Greece (MRG-G), Support Center for Children and Family-Social & Education Action, and the World Organisation Against Torture (OMCT) – submitted reports highlighting several important issues. The ERRC provided the Committee with detailed information on the human rights situation of Roma in Greece, by forwarding to Committee members the joint ERRC/Greek Helsinki Monitor 2003 Country Report *Cleaning Operations: Excluding Roma in Greece*. The report is available on the ERRC website at: <http://www.errc.org/cikk.php?cikk=115>. Amongst the issues raised by the organizations were domestic violence, violence against children, violence against minorities, trafficking of human beings, impunity and violence against Roma. The full text of the Committee's Conclusions and Recommendations is available on the Internet at: <http://www.ohchr.org/tbru/cat/Greece.pdf>. (ERRC, GHM)

HUNGARY

✧ **Proposed Changes to Hungarian Minority Act Scrapped by Opposition**

The Hungarian opposition party Alliance of Young Democrats ("FIDESZ") dismissed a proposal by the Hungarian government for changes to the 1993 Act on National and Ethnic Minorities which would have introduced a register for voters and for those who should stand for election as minority representatives, according

to the Hungarian national daily newspaper *Népszabadság* of October 14, 2004. The action by FIDESZ means that the required two thirds of parliamentary votes cannot be secured and the proposed amendments cannot be passed. The proposed amendments to the Minorities Act were introduced following voting irregularities during minority self-government elections in 2002, in which members of the majority Hungarian population were elected by

ethnic Hungarian voters to represent minority groups – particularly Roma – at the local level. "Minority self-governments" are advisory bodies to local and national governments. The thirteen official minorities in Hungary – including Roma – may establish such bodies under certain conditions. Previous articles appearing in *Roma Rights on Hungary's controversial minority rights system and its impact on Roma* can be accessed at: <http://www.errc.org/>

[cikk.php?cikk=1302](http://www.errc.org/cikk.php?cikk=1302) and <http://www.errc.org/cikk.php?cikk=1255>. (ERRC, Népszabadság)

✧ **Hungarian Publishing House Publishes Discriminatory Textbook**

According to a September 22, 2004 report by the Budapest-based Roma Press Center (RSK), the Apáczai Csere János publishing company published a textbook called Etika for use in Hungarian schools, which contains racist stereotypes about Roma. Etika, which is intended for 13- and 14-year-old students, refers to Roma as people who can hardly resist committing crimes and who burden society by living on social assistance. The RSK quot-

ed Mr Tamás Szabados of Hungary's Ministry of Education as having stated that some 25,000 copies of the textbook have been distributed to schools despite the Ministry's finding that it is degrading for Roma. (RSK)

✧ **Hungarian Romani Woman Gives Birth in Hospital Toilet**

On September 8, 2004, Ms Ildiko Lakátos, a Hungarian Romani woman, gave birth to her daughter in the toilet of the hospital in the central Hungarian town of Karcag, according to the Hungarian national daily newspaper Népszabadság of September 21, 2004. Népszabadság reported that Ms Lakátos was left alone in the hospi-

tal during two and a half hours of contractions. At this time, Ms Lakátos went to the toilet and, in response to the pain, began to push and gave birth to her daughter. When she returned to her room, according to Népszabadság, the doctor laughed at her. Ms Lakátos filed a complaint with Mr József Zsembeli, the hospital's director, against the doctor, claiming that she believed she had not been given proper treatment as a result of discrimination. On October 12, 2004, the Hungarian national daily newspaper Magyar Hírlap reported that Mr Zsembeli found the medical staff to have acted in accordance with their duties and therefore had dismissed Ms Lakátos's complaint. (Magyar Hírlap, Népszabadság)

ITALY

✧ **Italian Sinti Win Lawsuit Against Racist Political Party**

On December 2, 2004, in a case brought in 2001 involving six Italian Sinti men and women and the non-governmental organisation Opera Nomadi acting as plaintiffs, the Civil and Penal Court of Verona found six members of the right wing political party Lega Nord guilty of incitement to commit discriminatory acts on the basis of race or ethnicity, in accordance with Law 205/93 "Legge Mancino", according to Mr Lorenzo Monasta, an activist involved in Roma and Sinti issues in Italy. Mr Monasta informed the ERRC that six Lega Nord members – Flavio Tosi, regional and municipal council-

lor, Matteo Bragantini, provincial councillor responsible for the provincial cultural department, Luca Coletto, provincial councillor responsible for the provincial roads department, Enrico Corsi, provincial councillor and president of Verona's 8th Borough Council, Maurizio Filippi, councillor of Verona's 4th Borough Council and Barbara Tosi, councillor of Verona's 6th Borough Council – received sentences of 6-months imprisonment and 3-years prohibition from participation in political and administrative electoral campaigns, all suspended. The Lega Nord members were additionally ordered to pay legal expenses amounting to 12,000 Euro and trial costs for the plaintiffs, plus compensation of 5,000 Euro to

each Sinti plaintiff and 10,000 Euro to Opera Nomadi.

The case was filed by the non-governmental organisations Osservatorio Veronese sulle Discriminazioni and Cesar K. following a racist public campaign to expel Roma and Sinti from Verona conducted by the Lega Nord entitled "For the Security of the Citizens – Expel the Gypsies from our Home". The presiding judge was to publish the decision within ninety days. As of February 24, 2005, the Lega Nord members had not appealed the decision. For further information on the human rights situation of Roma and Sinti in Italy, visit the ERRC's Internet website at http://www.errc.org/Archivum_index.php, enter

“Italy” into the “country” box of the search engine and click “enter”. (ERRC)

✧ **ERRC Housing Complaint against Italy Declared Admissible by International Body**

On December 6, 2004, the European Committee of Social Rights declared admissible a collective complaint against Italy, lodged in June by the European Roma Rights Center, contending that by policy and practice, Italy racially segregates Roma in the field of housing. ERRC documentation in Italy reveals that housing arrangements for Roma in Italy aim at separating Roma from the mainstream of Italian society and holding them in artificial exclusion. In a number

of Romani settlements in Italy, very extremely inadequate housing conditions prevail. In addition, Italian authorities regularly and systematically subject Roma to forced evictions from housing, calling seriously into question Italy’s compliance with a number of international laws. During eviction raids, authorities arbitrarily destroy property belonging to Roma, use abusive language, and otherwise humiliate evictees. In many cases, persons expelled from housing have been rendered homeless as a result of actions by police and local authorities. In some instances, in the course of such evictions, Roma have been collectively expelled from Italy. A very significant part of Italy’s Romani population lives under constant threat of forced eviction. In 2005, the

Committee will proceed to review Italian housing policies as they relate to Roma in order to determine whether they comply with Italy’s obligations under the Revised European Social Charter. The ERRC’s collective complaint is the result of six years of documentation work undertaken by the ERRC and local partners into the human rights situation of Roma in Italy. Complete documentation pertaining to the complaint can be accessed at: http://www.errc.org/Advocacy_index.php. The full text of the Committee’s decision can be accessed at: http://www.coe.int/T/E/Human_Rights/Esc/4_Collective_complaints/List_of_collective_complaints/RC27_admiss.asp#TopOfPage. (ERRC)

KOSOVO

✧ **Kosovo Authorities House Romani Families in Toxic Area**

According to information provided to the ERRC by Mr Paul Polansky of the Kosovo Roma Refugee Foundation (KRRF), one hundred and twelve Romani families, living in camps for Internally Displaced Persons (IDPs) in Mitrovica/Mitrovicë (North Mitrovica Romani camp) and Zvečan/Zvečan (Zitkovac Romani camp), were earlier this year found, by the World Health Organization (WHO), to have high blood lead levels (“BLLs”). The camps were built in 1999 by the UNCHR very near a toxic waste site, despite protests by Mr Polansky, who was at the time an advisor to UNHCR on Romani issues.

WHO documentation dated July 11, 2004, on file with the ERRC, reveals extremely harmful BLLs in Romani residents of the North Mitrovica and Zitkovac IDP camps. The US Center for Disease Control recommends that special attention be given to BLLs higher than 10 µg/dl. WHO testing of 18 Romani persons indicates that all have BLLs above 10 µg/dl, six of whom tested between 45 and 64.99 µg/dl BLL and six of whom tested above 65 µg/dl BLL. The BLLs are reportedly highest among young children, with twelve children between 2 and 3 years of age experiencing such high BLLs that they require anti-convulsive medication. High BLLs are reported to cause serious harm to children and pregnant women in particular, and can cause damage

to the central nervous system, brain and kidney damage and possible miscarriages by pregnant women.

The WHO recommended in July 2004 that children and pregnant women be moved from the area until confirmation of the routes of exposure were identified, that municipal authorities end all smelting activities in the camps, and that fresh water be provided in the camps. Mr Polansky informed the ERRC that the UNHCR and UNMIK and Zvečan/Zvečan municipal authorities’ that now administer the camps, have been unwilling to move the affected Romani families.

On November 26, 2004, the ERRC sent a letter of concern to

the UNHCR, UNMIK and the responsible Zvečan/Zveçan municipal authorities, expressing alarm that despite being aware of the extreme health concerns posed by the location of the camps, UNHCR, UNMIK and local government officials had failed to take actions to ensure the safe-

ty of the affected families. The ERRC demanded that the UNHCR, UNMIK and Zvečan/Zveçan municipal authorities take immediate actions to move the Romani families from the IDP camps to a safe and adequate living area and arrange for the provision of all necessary medical treatment

for all affected persons. The full text of the letter can be found on the ERRC's Internet website at: <http://www.errc.org/cikk.php?cikk=2056>. As of February 25, 2005, no action had been taken to move the affected Romani families. (ERRC, KRRF)

LITHUANIA

✦ **Lithuanian Authorities Forcibly Evict Five Romani Families in Winter**

On December 3, 2004, Ms Egle Kucinskaitė, an activist working on Romani issues in Lithuania, informed the ERRC that on December 2 and 3, Vilnius municipal authorities and approximately thirty police entered the Kirtimai Romani neighbourhood and destroyed six unregistered homes. Vilnius officials reportedly portrayed the forced evictions and destruction of homes as measures to combat the selling of narcotics in the media. One Romani woman, Ms N.S., and her two young sons were reportedly inside their home when the demolition began; Mr Saulius Berzinis, a documentary filmmaker who was present at the time of the eviction, informed the ERRC that one of the boys required medical treatment for shock. About fifteen residents, including infants and elderly persons, were living in tents in the settlement or with family members as no alternative accommodation was provided. Mr Berzinis and Ms Kucinskaitė also informed the ERRC that two women who resisted the destruction of homes, Ms M.C. and Ms Z.B., were

placed under arrest. The demolitions were reportedly only halted when Ombudsperson Rimantė Šalaševičiūtė of the Seimas Ombudsmen's Office pointed out that, according to a directive issued by the Lithuanian Environmental Ministry, no illegal homes may be destroyed without a court order, which municipal authorities had not procured. The ERRC was been informed that the Vilnius Mayor's Office intends to obtain permission to destroy further homes.

Ms Kucinskaitė also reported that Vilnius municipal authorities organised a meeting on December 11 at which no residents of the Kirtimai Romani neighbourhood were present. An agreement was reportedly reached whereby residents would be given the opportunity to apply for social housing but that this would take a long time because a large number of people already await such housing, therefore providing no immediate assistance to the affected families. Mayor Arturas Zuokas also reportedly refused to deny in Lithuanian media that he would engage in further forced evictions if residents were not willing to move of their own accord.

On December 15, 2004, the ERRC sent a letter to Mayor Zuokas, copies of which were also sent to Ombudsperson Šalaševičiūtė, the General Prosecutor's Office and the Department of Ethnic Minorities and Lithuanians Living Abroad of the Government of the Republic of Lithuania, expressing concern at the destruction of private property by municipal authorities and the forced eviction and subsequent homelessness of the Romani individuals concerned. The ERRC urged Mayor Zuokas to ensure the provision of adequate alternative accommodation for the Roma concerned and the provision of adequate compensation for the private property destroyed and requested that municipal authorities refrain for any further forced evictions in the absence of adequate alternative solutions in line with the international standards to which Lithuania is committed. On January 5, 2005, the Vilnius City District Prosecutor's Office sent a letter to the ERRC, stating that it had decided not to open a pre-trial investigation in the case. As this issue of Roma Rights went to press, the ERRC was considering further measures in connection with the case. (ERRC)

ROMANIA

✧ **European Court of Human Rights Declares Romanian Romani Case Admissible**

In a decision issued on September 21, 2004, the European Court of Human Rights declared admissible the case *Viorel Carabulea v Romania*, filed in 1998 by Mr Carabulea whose brother, Mr Gabriel Carabulea, a 26-year-old Romani man, died in police custody under suspicious circumstances.

On April 13, 1996, officers from Bucharest's 14th District Police Department detained 26-year-old Gabriel Carabulea and later the same day he was transferred to the 9th District Police Department. Mr Carabulea remained in police custody until his death in the Fundeni Hospital in Bucharest on the morning of May 3, 1996. The death certificate lists the cause of death to be acute cardio-respiratory insufficiency and bronchial pneumonia. Photographs of Mr Carabulea's dead body, however, taken by a photographer at the request of the victim's family before the burial, reveal massive bruising on his genitals, chest and head. Mr Carabulea reportedly told his wife that he had been brutally mistreated by the police. An investigation into the incident,

conducted by the Bucharest Military Prosecutor's Office under case file No. 527/P/1996, concluded on August 20, 1996, that Mr Carabulea's death was "non-violent and due to organic causes," and that the investigation should be closed. A second investigation opened in February 1997 by the Military Section of the General Prosecutor's Office confirmed the initial decision not to pursue the case in a final non-indictment decision on March 4, 1998.

Having exhausted domestic remedies, on December 22, 1998, with the assistance of the ERRC and local council Monica Macovei, Mr V. Carabulea filed an application with the European Court of Human Rights alleging violations of Article 2 (right to life), 3 (prohibition of torture), 6.1 (right to a fair trial by an independent tribunal) and 14 (prohibition of discrimination) of the European Convention for the Protection of Human Right and Fundamental Freedoms.

Comprehensive information on the human rights situation of Roma in Romania, including on matters concerning the systemic failure of Romanian authorities to provide adequate remedy to Roma when they fall victim of serious human rights abuses,

is included in the ERRC Country Report State of Impunity: Human Rights Abuse of Roma in Romania, available on the Internet at: <http://www.errc.org/cikk.php?cikk=115>. (ERRC)

✧ **Romanian School Officials Refuse Enrolment of Romani Children**

On November 5, 2004, the Romanian Romani organization *Asociatia "Thumende" Valea Jiului* (Thumende) reported that two 4-year-old Romani children were denied entrance to Bucharest's Kindergarten No. 269 on October 14. The director of the kindergarten, Ms Victoria Gavniuc, reportedly stated, "If these kids are Romani, I have to tell you that I spoke with the Inspector of Kindergartens and we do not want problems [...] it is better for these children to go [to] Kindergarten No. 34 because that is where children with special needs go." Thumende reported that the two children did not have special needs. Following interventions by Mr Cristian Jura, State Secretary at the Department of Interethnic Relations and State Sub-secretary Ilie Dinca, the Inspector of Kindergartens allowed the Romani children to attend Kindergarten No. 269 and apologised for the incident. (Thumende)

RUSSIA

✧ **Russian Authorities Threaten Romani Families with Forced Eviction**

According to information provided to the ERRC by the St Petersburg-based non-govern-

mental organisation Northwest Center of Social and Legal Protection of Roma (Center), sixteen Romani families, comprising about one hundred people including small children, face forced eviction from their infor-

mal shacks in the northwestern Russian city of Arkhangelsk.

According to the Center, the families arrived in Arkhangelsk and requested land from local authorities on which to build

houses. Order No 739/1 dated February 7, 2004, issued by Mr Kalinin, first assistant to Arkhangelsk's mayor, indicates the preliminary co-ordination of a plot on which to construct houses and assigns the postal address Tarasov Street 37. The Center informed the ERRC that approximately two months later, an investigation by the City Planning Commission revealed that the construction of houses had already begun, though no permits had been issued. At this point, the Arkhangelsk Mayor's Office applied for a court order for the destruction of the buildings. The hearing of the complaint was scheduled for November 23, 2004, before the Lomonosov District Court of Arkhangelsk. According to the Center, the constructions are temporary in nature and were built by the Romani families to provide some protection from impending harmful winter weather. If evicted, the families have nowhere to go and will effectively become homeless during the harsh weather northern Russian experiences in the wintertime.

On November 19, 2004, the ERRC and its partner organisation Moscow Helsinki Group (MHG) sent a letter to the chairman of the Lomonosov District Court of Arkhangelsk, copied to the Mayor of Arkhangelsk, Mr Nilov, noting that the destruction of the homes would breach numerous domestic and international human rights standards related to housing and forced evictions and asking that the order requested by the Arkhangelsk Mayor's Office not be issued.

On December 7, 2004, Mayor Nilov responded to the ERRC/

MHG stating that the Mayor's Office does not condone discrimination against Roma as presented in the media. On December 13, 2004, Ms Marina Nosova, a lawyer of the Center informed the ERRC that the affected Roma proposed to destroy the temporary buildings immediately upon receipt of official permission to build houses on the land during the pre-trial hearing on November 22, 2004. A representative of the Mayor's office rejected the proposed settlement. On December 17, 2004, the Lomonosov District Court of Arkhangelsk found the temporary structures unwarranted and ordered the Roma to demolish them. On January 11, 2005, the Roma filed an appeal against the decision with the Arkhangelsk Regional Court. The Court scheduled a hearing for March 14, 2005.

Comprehensive information on the human rights situation of Roma in Russia available in a written submission by the ERRC on Roma rights in Russia, provided to the US Helsinki Commission in Washington DC, a body comprised of esteemed US Congresspersons engaged on human rights in US foreign policy. The submission summarises the main conclusions of ERRC monitoring in Russia, which has revealed alarming patterns of abuse of Roma and other people perceived as "Gypsies". The document was presented in advance of a hearing before the US Helsinki Commission, taking place on September 23, in which ERRC staff and other Roma rights activists testified before US congresspersons. Issues documented in the course of ongoing ERRC research in Russia include:

- Torture and Ill Treatment of Roma by Law Enforcement Officials
- Arbitrary Police Raids on Romani Settlements
- Abduction and Extortion of Money by the Police
- Racial Profiling by Police and Other Officials
- Discrimination against Roma in the Criminal Justice System
- Denial of Fair Trial in Cases in which Roma are Accused of Crimes
- Denial of Access to Justice
- Hate Speech against Roma in Russian Media
- Lack of Personal Documents
- Obstructed Access to Social and Economic Rights
- Blocked Access to Education
- Denial of Access to Adequate Housing
- Violence by state officials, paramilitary and nationalist-extremist groups, and discriminatory treatment of Roma in the exercise of their civil, social and economic rights are aggravated by the complete absence of governmental action to address these problems.

The full text of the written submission on the human rights situation of Roma in Russia, provided to the US Helsinki Commission, is available at: <http://www.errc.org/cikk.php?cikk=2018> (ERRC, Northwest Center for Social and Legal Protection of Roma)

✧ **Russian Court Finds Skinheads Guilty of Killing a Young Romani Girl in Russia**

According to a November 23, 2004, report by Radio Free

Europe/Radio Liberty (RFE/RL), seven confessed skinheads were found guilty of premeditated homicide on November 22 in connection with the September 21, 2003, death of Nilufar Sangboeva, a 6-year-old Romani girl. According to St Petersburg-based non-governmental organisation Northwest Center of Social and Legal Protection of Roma, the court recognized the racial motivation of the crime. On December 8, the court sentenced seven minors to 2- to 10-years imprisonment. On September 21, 2003, a large group of men armed with clubs and other weapons attacked a Romani camp near a train station in St Petersburg, killing Ms Sangboeva and seriously injuring two other young girls (background information can be found on the ERRC's internet website at: http://lists.errc.org/rr_nr4_2003/snap29.shtml). RFE/RL reported that sentencing was

scheduled for early December 2004. (RFE/RL, Northwest Center of Social and Legal Protection of Roma)

✧ **Russian City Officials Threaten to Expel Romani Residents and Set Their Homes on Fire**

During a discussion on measures to combat the drug trade, members of the Yaroslavl City Commission for Law and Order called for the expulsion of Roma who sell drugs from the city, according to a Radio Free Europe/Radio Liberty (RFE/RL) report of November 18, 2004. Referring to several other cities that had reportedly taken similar measures, Deputy Mayor Yevgenii Ur lashov claimed, "Why hasn't this been done in Yaroslavl? Wouldn't this be a lot more effective than propaganda or social advertising?" Munici-

pal legislator Sergei Krivnyuk was quoted as having stated, "In my electoral district, there are many Gypsy families, and the police regularly arrest their children and pregnant women for selling drugs. Residents are ready to start setting the Gypsies' houses on fire, and I want to lead this process."

Substantial research undertaken by the ERRC in Russia in recent years has revealed disturbing patterns of police abuse of Roma including fabrication of evidence of drug dealing followed by extortion of money from Romani individuals. Failure to produce the requested sum often results in arrests on drug charges. For further information about Roma rights in Russia, see the ERRC's submission to the US Congress on the Internet at: <http://www.errc.org/cikk.php?cikk=2019>. (ERRC, RFE/RL)

SERBIA AND MONTENEGRO

✧ **Threatened Eviction of Roma in Serbia and Montenegro**

According to *ERRC* research, conducted in partnership with the Belgrade-based non-governmental organisation *Minority Rights Center (MRC)*, ninety-eight Romani families, including displaced Roma from Kosovo, living in Belgrade's Blok 28 and Tosin Bunar settlements, were presented with eviction orders. The local government and the Ministry of Human and Minority Rights stated that the evictions would be postponed. Accord-

ing to *ERRC/MRC* research, the eviction order presented to the Romani inhabitants of the Tosin Bunar settlement were ordered to dismantle the settlement themselves and restore the area to its original form because they had built their homes on private property without permission. The area is owned by a private company, which tried to evict the Romani families several times in two years. As of the end of January 2005, several homes in the Blok 28 settlement had been destroyed and the residents had moved to another area in the same settlement,

according to *ERRC/MRC* research. No evictions had yet taken place in the Tosin Bunar settlement. For further information on the human rights situation of Roma in Serbia and Montenegro, see "The Protection of Roma Rights in Serbia and Montenegro", a memorandum prepared by the *ERRC* in association with the UN Office of the High Commissioner for Human Rights, Human Rights Field Operation in Serbia and Montenegro (UN OHCHR), available on the Internet at: <http://www.errc.org/cikk.php?cikk=333&archiv=1>. (*ERRC, MRC*)

✧ **Roma Violently Attacked in Serbia and Montenegro**

At around 11:00 PM on August 30, 2004, a group of approximately fifteen ethnic Serbian men attacked the family of Mr Ivan Konovalov, a 25-year-old Romani man from the central Serbian town of Jagodina, according to Mr Konovalov's testimony to the ERRC and its partner organisation Minority Rights Center (MRC). According to Mr Konovalov, on the evening in question, Mr Konovalov and his father, Mr Dejan Konovalov, went outside after hearing shouting. Mr Konovalov and his father were confronted by two men, one of whom was holding a metal tool used to loosen car wheels, who angrily demanded that musicians, who rent part of their house, play for them then threatened to kill everyone and smash their property. Dejan Konovalov said that the musicians were not there and would not play and told the men not to threaten them. The two men then reportedly left the area, warning that they would soon return to kill everyone. Mr Konovalov told the ERRC/MRC that soon thereafter, approximately fifteen men arrived in four cars and blocked the entrance to their street. The attackers reportedly began beating everyone present, including Mr Konovalov, women and children and damaged Mr Konovalov's house, breaking windows and a metal fence. Ms Miljana Konovalov, Mr Konovalov's sister, testified that she was visiting her mother-in-law down the street when she heard screaming. She reportedly ran home and saw several men throwing stones and bricks at her two daughters, who were home at the time, and

trying to hit them with baseball bats. Ms Konovalov stated that one of her daughters was hit with a baseball bat and when she tried to protect her, she was hit as well. Her daughter sustained slight bodily injuries. Ms Konovalov also reported that the attackers pushed her cousin, Ms Darinka Pavlović, to the ground and proceeded to kick her. Mr Desanko Ristić, a witness to the event, informed the ERRC/MRC that Ms Pavlović lost consciousness while being beaten and was taken to hospital for treatment. Mr Ristić also stated that police officers, who arrived at the scene after being called, watched part of the incident, then left after the attackers left. According to ERRC/MRC research, a police investigation into the incident had concluded as of November 2004 and seven perpetrators had been charged with disturbing the peace and public order, in accordance with Article 6(4) of the Criminal Code of Serbia and Montenegro. The family had not filed complaints against the perpetrators out of fear of reprisal. (ERRC, MRC)

✧ **Romani Refugees Denied Access to Health Care in Serbia and Montenegro**

On October 18, 2004, Ms Seljveti Ramadani, a Romani refugee from Kosovo, testified to the ERRC, working in partnership with the Belgrade-based Minority Rights Center (MRC) in Belgrade, that employees of a hospital in Novi Beograd refused to treat her 3-month-old daughter on September 2, 2004. According to Ms Ramadani, on the day in question she brought her daughter, who was experiencing an ear-

ache, to the hospital in Block 45 and presented her refugee card to the nurse at the reception. The nurse reportedly asked to see the child's card, to which Ms Ramadani responded that the child did not have one. Ms Ramadani stated that the nurse then insisted that she pay 250 Serbian dinars (approximately 3 Euro) before a doctor would see her daughter. Ms Ramadani paid the fee.

During the same week, Ms Suzana Dugani, a Romani refugee from Kosovo, testified to the ERRC/MRC that her son had also been denied medical treatment at a hospital in Belgrade's Karaburma area. Ms Dugani stated that when she took her son, who had a cold, to the hospital, and showed her refugee card, a nurse told her, "Without documents, go home", because she did not have a document for the child.

Article 23 of the United Nations Convention relating to the Status of Refugees states, "The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals." Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) guarantees that all people the right to enjoy equally a range of fundamental rights, including access to public health and medical care. (ERRC, MRC)

✧ **Romani Youth Abused by Police and Teachers in Serbia and Montenegro**

According to ERRC research, conducted in partnership with

the Belgrade-based Minority Rights Center (MRC) six Romani youth were beaten by police officers and a boarding school teacher in Belgrade. Nadica Jovanović, a 16-year-old Romani girl, testified to the ERRC/MRC that police accused her and five other youths – Djeljana Zorijani, Ljiliana Stankovic, Emma Sefedinovic, Egzon Zorijani and Andrijana Kostic – of theft and brought them to the “29 Novembar” Police Station on October 9, 2004. According to Miss Jovanović, at the station police officers threatened to beat her with a baseball bat if she did not confess to the theft. Miss Jovanović, however, refused to admit responsibility for the theft. Miss Sefedinovic informed the ERRC/MRC that at the police station, while interrogating her about the alleged theft, one of the officers cursed her ethnic origin and shouted, “You’d better admit or I’ll hit you with this truncheon!” Miss Sefedinovic reportedly denied having committed the theft and the officer started to hit Ljiljana Stankovic and herself with a rubber truncheon. The police later returned the six Romani girls to the “Vasa Stajic” boarding school.

After being held there for three days, on October 12 Miss Jovanović asked a teacher at the school, Mr Sloba Jovanović, if she could leave the building but was refused. Miss Jovanović stated that she returned to her room and attempted to break the grates on the windows but was caught by Mr Jovanović, who proceeded to beat her with a rubber bat. Mr Jovanović re-

portedly also beat other children present, including 14-year-old Emina Sefedinović and 12-year-old Djeljana Zorijani. Miss Jovanović informed the ERRC/MRC that she fell unconscious as a result of the beating. An ambulance was called and Miss Jovanović was taken to hospital where she was x-rayed and her hand was placed in a cast. At the hospital, police investigators informed that she could file a lawsuit against Mr Jovanović then returned her to the boarding school. While Ms Jovanović was in the hospital, Miss D. Zorijani, Miss Stanković, Miss Sefedinović and Miss E. Zorijani ran away from the boarding school around 12:00 AM that night out of fear that they would be beaten again. From this point, the girls were lived on Kralja Milutina Street with other children.

On October 22, the ERRC/MRC brought Miss D. Zorijani and Miss Sefedinović, who had visible injuries from the attack, to the Medical Institute for Mother and Child. Dr Maja Milinković checked the girls and found slight bodily injuries on both. Dr Milinković called the police and two officers arrived at the Institute who proceeded to call two police inspectors – Mira Lučić and Goran Nikolić. At the end of the examination, the police inspectors returned the girls to the boarding school and took their medical certificates to the police station, telling the ERRC/MRC to pick them up the following day. When the ERRC/MRC representative arrived at the police station the following day, the in-

spectors from whom he was to receive the certificates were not present and the next day Inspector Lučić informed the ERRC/MRC that the medical certificates had been given to the boarding school. No charges had been brought against the officers or Mr Jovanović. On November 11, 2004, the MRC filed criminal complaints with the I and V Municipal Court against Mr Jovanović and the officers who had beaten the girls while they were in police custody. As of February 3, 2005, the complaint was pending before the court. (ERRC, MRC)

✧ **Police Verbally Abuse Roma in Serbia and Montenegro**

On October 9, 2004, Ms Bahtija Beriša, a Romani woman, testified to the ERRC, working in partnership with the Belgrade-based Minority Rights Center (MRC) that earlier that day she had been verbally abused by police officers while collecting raw materials in Belgrade. At around 1:00 PM Ms Beriša was passing under a bridge pushing a handcart for the collection of raw materials when she came across two young police officers standing beneath the bridge. One of the officers went to move a gate, which was blocking the sidewalk, but the other reportedly cursed Ms Beriša, stating, “You Gypsy Albanian. Go to Kosovo. There are many streets which you can use!” Ms Beriša turned back the way she had come and went home. Ms Beriša did not pursue legal action. (ERRC, MRC)

SLOVAKIA**✧ Slovak Minister of Justice Challenges Special Measures in Constitutional Court**

According to the Slovak English newspaper *The Slovak Spectator* of September 20, 2004, Mr Daniel Lipšic filed a complaint with the Slovak Constitutional Court against the new Act on Equal Treatment in Certain Areas and Protection against Discrimination, asking the Court to declare unconstitutional provisions in the law making possible special measures aimed at reversing inequalities resulting from past discrimination. Mr Lipšic was quoted as having stated that quotas designed to assist disadvantaged groups access jobs and education “infringed on human dignity” and “strengthen the stereotypes that some groups cannot achieve success without special protection”. In November 2004, the *ERRC* submitted an *amicus curiae* brief to the Court, addressing the legality of special measures under international law.

The European Council’s Directive EC/2000/43 on “implementing the principle of equal treatment between persons irre-

spective of racial or ethnic origin” which provided the basis for the Slovak law provides at Article 5 that the principle of equal treatment does not prevent governments from maintaining or adopting special measures. Numerous international laws, including the Council of Europe’s Framework Convention for the Protection of National Minorities and the International Convention for the Elimination of All Forms of Discrimination declare that special measures are not considered discrimination, provided that they are temporary in nature and end once equality in fact has been achieved. For further information on the human rights situation of Roma in Slovakia, visit the *ERRC*’s Internet website at http://www.errc.org/Archivum_index.php, enter “Slovakia” into the “country” box of the search engine and click “enter”. (*ERRC, The Slovak Spectator*)

✧ Slovak Municipal Authorities Propose Referendum to End Housing Project for Roma

According to the Bratislava-based non-governmental or-

ganisation Milan Šimečka Foundation (MSF), in September 2004, the municipal council of the eastern Slovak town of Hermanovce decided to hold a referendum on October 1 as to whether to cancel a tender to apply for funding under the EU’s PHARE programme for the provision of infrastructure in the town’s Romani settlement. The infrastructure project was a prerequisite for the construction of social housing, to be commenced within three months of the completion of the infrastructure project, for Romani inhabitants of the town currently living in informal slum housing. Eighty percent of the infrastructure project was to be financed within the auspices of the EU PHARE programme.

According to the MSF, the referendum took place, but was invalid as not enough voters turned out. However, in the end, the tender sent to companies to bid on was deemed invalid because the companies had reportedly received differing information. It is expected that a new tender will be opened. (MSF)

SLOVENIA

✧ **Romani Families Face Winter-Time Forced Evictions in Slovenia**

In December 2004, Mr Rajko Sajnović, a Romani activist from the town of Novo Mesto in Slovenia's Dolenjsko region, informed the ERRC that at least three Romani families in Novo Mesto had been served eviction orders. According to the eviction orders, by December 30 the families of Milica and Darko Tudiija, Robi and Nataša Petruša and Rudi and Zorica Brajgić were to demolish their homes at their own expense and leave the plot of land on which their homes were located. The families had been living lived at the location for about three years. The eviction orders allegedly stated that the families had built their houses without author-

isation from the municipality and without observing construction regulations. According to the information received by the ERRC, the families faced homeless in the middle of winter as the municipality had not offered alternative accommodation. According to Mr Sajnović, about ten other Romani families were threatened with forced evictions by municipal authorities. Romani families from the settlements in Senkieneci and Skocijan also faced forced eviction from the municipally owned land they occupied without proper authorization; reportedly, municipal authorities had not offered alternative accommodation to the families.

On December 8, 2004, the ERRC sent a letter to the Slovene Minister of Labour, Family and

Social Affairs, the Minister of Environment and Spatial Planning and the Mayor of Novo Mesto, requesting that Slovene authorities stop the impending evictions and consult with the affected Romani families to reach a durable solution. On January 26, 2005, Mr Sajnović informed the ERRC that the evictions had not yet been executed and that the families were seeking a legal solution to their housing situation. During an ERRC field mission at the beginning of February 2005 it was revealed that the evictions had been postponed. For further information on the human rights situation of Roma in Slovenia, visit the ERRC's Internet website at http://www.errc.org/Archivum_index.php, enter "Slovenia" into the "country" box of the search engine and click "enter". (ERRC)

SPAIN

✧ **United Nations Committee on the Elimination of Discrimination against Women Reviews Spain**

Following its 37th session, on July 26, 2004, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) issued its Concluding Comments on Spain after consideration of the State party's report. The Committee raised several concerns with respect to Romani women and issued recommendations for action by the Spanish government, including:

"29. The Committee is concerned that Roma women remain in a vulnerable and marginalized situation, especially

with regard to education, employment, housing and health.

30. The Committee recommends that the State party promote and protect the human rights of Roma women, in particular with regard to their access to education, employment, housing and health.

31. Despite the progress made in education in recent years, the Committee remains concerned about discrimination in this area, in particular about early drop out rates from school of Roma girls.

32. The Committee recommends that the State party intensify its efforts to promote the access of Roma girls to education and their retention in the system. It recommends that the State party conduct re-

search into the subject and, on the basis of its findings, provide incentives to Roma parents to ensure that their daughters attend school."

In the run-up to the Session, the ERRC submitted written comments on the situation of Romani women in Spain, highlighting issues specifically related to the overrepresentation of Romani women in Spanish prisons, education, employment, health and the failure of Spanish government policies to deal effectively with human rights issues as experienced by Romani women. The submission is available on the ERRC's Internet website at: <http://www.errc.org/cikk.php?cikk=1931&archiv=1>.

UKRAINE**✧ Taxi Driver Assaults Elderly Romani Woman in Ukraine**

According to the Uzhgorod-based Romani organization Romani Yag, just before 9:00 PM on October 8, 2004, a taxi driver with the company Citi Taxi physically assaulted Ms Latsko, 78-year-old Romani woman from Uzhgorod. On the evening in question, Ms Latsko ordered a taxi to drive her to her brother's house in the neighboring village of Storozhnitsa. On the way to Storozhnitsa, the driver asked Ms Latsko if she had money to pay for the trip. Ms Latsko reportedly responded that she would get money from her brother to pay upon arrival at his house. The driver reportedly began to swear at Ms Latsko and she told him to stop. Romani Yag informed the ERRC that the driver then punched Ms Latsko in the face, knocking out one of her teeth. He stopped the car, violently pulled Ms Latsko out of the vehicle and left her lying on the ground where he kicked her hard, then drove off.

Ms Latsko reportedly walked home and went to the hospital in an ambulance the following day. Doctors at the hospital called the police who took Ms Latsko's testimony. Following the incident, a complaint was filed by Mr Vasilij Didychyn, a local lawyer engaged by a Romani organisation Romani Yag on behalf of Ms Latsko with the prosecutor's office in Uzhgorod. The prosecutor's office redirected the complaint to the local police office for investi-

gation of the alleged abuse. The police office sent a letter to Romani Yag in mid-January 2005 notifying Mr Didychyn and Romani Yag about the rejection of the grounds for criminal or civil procedure. On February 24, 2005, Mr Didychyn filed a criminal complaint on behalf of the victim with the Uzhgorod city court. For further information on the human rights situation of Roma in Ukraine, visit the ERRC's Internet website at http://www.errc.org/Archivum_index.php, enter "Ukraine" into the "country" box of the search engine and click "enter". (ERRC, Romani Yag)

✧ Discrimination against Roma in Access to Housing in Ukraine

According to information provided the ERRC by Kremenchug-based Romani organisation Amaro Deves, Kremenchug train station authorities have refused to provide employee Ms E.M. Kutsenko, a Romani woman, and her family with adequate accommodation, on the basis that "all Gypsies should live in Gypsy caravans and tents. She [Ms Kutsenko] is the only one who capriciously demands a separate apartment with all conveniences." It is common in Ukraine that publicly-owned companies provide accommodation for their employees.

Mr Mishcherjakov, head of Amaro Deves, informed the ERRC that in 1985 Ms Kutsenko, who has two children, registered for basic accommo-

dation provision. Ms Kutsenko currently lives in a one-room wooden barrack lacking basic services provided by her employer. The ERRC is engaging a local lawyer to file a civil complaint on behalf of Ms Kutsenko. (ERRC)

✧ Roma Subjected to Abuse of Power by Ukrainian Police Officers

According to documentation undertaken by the Zolotonosha-based Romani organisation Ame Roma, within in a project by the ERRC and the Uzhgorod-based Romani Yag, on July 24, 2004, at approximately 4:00 PM, in the eastern Ukrainian village of Helmyaziv, 51-year-old Mr Vasyl Romanenko and his 19-year-old nephew Georgij Romanenko were physically abused by a police officer. Officer M.R. and an unknown man approached the men as they were walking on the village's main street and without explanation Officer M.R. began to physically assault the two men. According to Ame Roma, while Officer M.R. beat the two men all over their bodies, the other man threatened them with a pistol. Officer M.R. and his accomplice forced the Romani men to lie down on the ground where he continued to kick all parts of their bodies. While assaulting the Romani men, Officer M.R. repeatedly demanded that they return the icons, without explaining which icons. After some time the police officer stopped the physical abuse and together with his accomplice left.

Following the assault, Mr Romanenko's health deteriorated and at 3:45 PM the next day he was taken to the central hospital in Zolotonosha, approximately 50 kilometres from Helmyaziv, where he was diagnosed with an acute stomach ulcer. After being operated upon, Mr Romanenko spent 21 days in intensive care. The same day Mr Romanenko was admitted to hospital, his wife, Ms Olexandra Romanenko, went to find Officer M.R. first at the police station and then at his home. As Officer M.R. was not home, Ms Romanenko requested that his wife pay for the costs of Mr Romanenko's operation, as she believed that the ulcer was a result of the assault. Officer M.R.'s wife refused to give Ms Romanenko any money and instead was very offensive and chased her away.

On July 26, between 4:00 and 5:00 PM, Officer M.R. and five other police officers visited Ms Romanenko's sister, Ms Svitlana Kislichenko, in Helmyaziv. The six officers entered Ms Kislichenko's home and, in a rude, offensive manner demanded various documents from her, shouted at and were offensive with other Roma who were present, and threatened to handcuff Ms Kislichenko, take her minor children to the police station and set her house on fire. Ms Kislichenko testified to Ame Roma that she believed the officers had threatened her in order to discourage her family from filing any complaints related to the assault that took place on July 24.

According to Romani individuals interviewed by Ame

Roma, Officer M.R. regularly assaults or threatens them. However, none of the Romani individuals interviewed have ever filed complaints against Officer M.R.'s behaviour for fear of persecution.

Earlier in the month, Mr Petro Sandulenko, Mr Josip Sandulenko and Mr Vladimir Markovskij were subjected to abusive behaviour by military officers in Ukraine, according to a testimony provided by the victims to a Korosten-based Romani organisation Romano Kham, within a project by the ERRC and the Uzhgorod-based Romani Yag. On July 9, four police officers stopped Mr Sandulenko and Mr Markovskij, who were on their way to weigh their seven horses – before selling them – at the outskirts of the village of Ivanika, Zhitomyr county, northern Ukraine. The officers impounded the vehicle holding the horses on suspicion that the horses were stolen and drove to the District Police Station despite protests by Mr Sandulenko and Mr Markovskij that they legally owned the horses.

According to Romano Kham, Mr Sandulenko, Mr Markovskij and Mr Markovskij's 27-year-old son Ruslan brought their ownership papers to the District Police Department later that day but none of the officers paid them any attention. Instead, Mr Markovskij and his son were detained for twenty-four hours without charge or even an explanation. All this time the horses were in the car in the yard of District Police Station. The next day, while they were still in custody, officers informed Mr Markovskij and Mr Sand-

ulenko, who was present at the station, that a woman had filed a complaint that two of her horses had been stolen. After being released from custody, Mr Markovskij reportedly returned to the District Police Station with the person from whom he had bought the horses to corroborate his and Mr Sandulenko's assertion. On July 11, officers reportedly instructed Mr Sandulenko to pay 7,000 Ukrainian hryvnya (approximately 1,000 Euro) in order to get the horses back. The men managed to gather 4,000 Ukrainian hryvnya (approximately 600 Euro), which they paid as a "voluntary contribution" to the police department. Romano Kham reported that Mr Markovskij then went to pick up the horses but officers again insisted that two of the horses had been stolen and told Mr Markovskij to make an additional voluntarily contribution of 350 Ukrainian hryvnya (approximately 50 Euro) to a senior officer at the station. Only on July 12 were the horses finally returned to Mr Sandulenko and Mr Markovskij. According to Romano Kham, during their impoundment, the horses were given neither food nor water. The ERRC and Romani Yag, together with lawyer Alexandr Movchan, are pursuing legal action against the officers involved in the case. (Ame Roma, ERRC, Romano Kham, Romani Yag)

✧ **Ukrainian Police Fingerprint Roma**

According to the Uzhgorod-based Romani organisation Romani Yag, on January 20, 2005, at approximately 6:00 AM, (**how many?**) police of-

ficers, accompanied by members of the special police force “Berkut” wearing masks and carrying rubber, and reportedly some wooden truncheons, broke into the homes of nearly all Romani families in the Radvanka and Telmana Street Romani neighbourhoods in the western Ukrainian city of Uzhgorod in order to round up the men and take their fingerprints. During interviews with Romani Yag, many Roma reported that they were sleeping when the officers started banging on their doors and windows. The officers reportedly broke forcefully into the homes if doors were not opened immediately. Upon entering the homes, police officers and members of “Berkut” ordered all adult Romani men – including elderly and ill – and teenage boys to get quickly dressed and get on the bus which was waiting outside.

One of the victims of the early morning raid, Mr Tiberij Tyrpak informed Romani Yag that three persons in camouflage clothes and masks entered his home and demanded his documents. When Mr Tyrpak produced his identity card, the persons had a look at them and ordered him to immediately get dressed and follow them. When Mr Tyrpak asked for an explanation, the answer was: “If you fail to get dressed before I count up to three, you will get what you deserve for not complying.” Mr Tyrpak did not manage to get dressed in the allotted time and sustained strong blows to his left ear and on his back. The masked men then reportedly tore the vest he was wearing then took him to the bus. Mr Tyrpak stated, “There were al-



Mr Tiberij Tyrpak sustained heavy bruises on his back during a police raid on January 20, 2005, in Uzhgorod, western Ukraine.

PHOTO: ROMANI YAG

ready about ten men, some were crying with pain.” As they were forcefully entering the home of another Romani family, police officers tore the door off of its hinges. When he requested information as to the reason for the raid, the leader of the Telmana community was informed by one of the officers that, “This raid is for ‘processing’ Gypsies”. A tape recorder was reportedly confiscated from one of the homes.

Most of the Roma forced onto the waiting bus were reported-

ly not given any explanation as to the cause of the action, nor did many of them have time to put on warm clothes despite the cold winter weather. One of the Romani men forced onto the bus, Mr Ivan Surmai, told Romani Yag that he was handcuffed to the bus seat and officers continued to beat him and members of “Berkut” reportedly threatened to “beat his kidney off”. Approximately forty Romani men were taken to the Uzhgorod City Police Station. The victims testified to Romani Yag that they were forced to en-

ter the building through a corridor of police officers with their hands on their heads. The officers forming the corridor reportedly beat the men with rubber truncheons on their heads and legs as they walked through. At the police station, the Romani men called one by one into Room No. 6, where they were finger- and hand-printed. Some of the individuals with whom Romani Yag spoke also reported that the officers looked into their mouths and checked their teeth.

On January 20, Romani Yag visited the chief of the Uzhgorod City Police Station and wrote a letter expressing its concern to Mr I. Poroshkovskij, head of Transcarpathian County Police, copies of which were sent to the chief of Uzhgorod City Police, the Uzhgorod City Prosecutor and the Romani human rights association "Chachipe". The head of Transcarpathian County Police responded, promising to bring those responsible for abuse of power in the raid to justice and agreeing to a meet-

ing on February 8 to discuss ways of avoiding similar incidents in the future. On February 17, 2005, Romani Yag received a letter from Mr I. Poroshkovskij in which the head of the Transcarpathian County Police notified Romani Yag about the results of the internal investigation which found all actions of police in the raid on January 20 lawful. On the date of publication the ERRC was planning legal action in the matter. (Romani Yag)

UNITED KINGDOM

❖ **Victory in ERRC "Prague Airport" Lawsuit against the UK Government**

On December 9, 2004, the UK House of Lords found the UK government to have discriminated on racial grounds against Czech Roma in preventing them from travelling to the UK in order to stop them from claiming asylum upon arrival, in a case brought by the ERRC and six Czech Roma. In July 2001, the Czech government allowed the UK government to station immigration officers at Prague's Ruzyně Airport to screen all passengers travelling to the UK. The aim was to detect people who wanted to claim asylum in the UK and prevent them from travelling. The overwhelming number of passengers who were refused permission to enter the UK under this operation were Romani, regardless of whether or not an individual Czech Romani citizen actually intended to claim asylum in the UK. Statistics showed that Roma were four hundred times more

likely to be refused entry to the UK than non-Roma.

The Court of Appeal decided that the practice almost inevitably discriminated against Roma, but that that discrimination was effectively justified because Roma were more likely than non-Roma to seek asylum. The House of Lords described the practice as "inherently and systematically discriminatory" against Roma and decided that the practice was unlawful not only under UK's domestic race discrimination law, but also under international conventions, including the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights. Significantly, the decision highlighted that States in general do not enjoy unfettered discretion in terms their border policies, legislation and/or practices. The London-based organisation Liberty provided legal representation for the six Czech Roma and the ERRC. (ERRC)

❖ **Gypsy/Travellers Face Continuing Threats of Eviction in UK**

On November 2, 2004 the BBC reported that the Taunton Deane Borough Council announced its intention to apply for a court injunction to remove sixteen Traveller families from their site at Somerset in North Curry. The families owned the land but had reportedly begun building homes on the site without having obtained planning permission. On October 29, the council issued a notice to the families that they must cease building and directed them to restore the land to its former agricultural use. The council reportedly delayed injunction plans because there were "human rights issues to be considered".

Also according to the BBC of November 2, the High Court issued a temporary injunction preventing the eviction of Travellers living without permission on twenty-two plots at the Smithy Fen Traveller site at Cottenham

in South Cambridgeshire. The injunction prohibits the South Cambridgeshire District Council from evicting the affected persons until a hearing on the issue takes place. The injunction follows an earlier injunction granted the District Council by appeal court judges on September 17, 2004, against "persons unknown" in connection with an ongoing dispute over the size of the Smithy Fen Travellers' site, according to a BBC report of the same day (background information is available at: <http://www.errc.org/cikk.php?cikk=2113> and <http://www.errc.org/cikk.php?cikk=1985>). The injunction permitted the Council to remove any persons living on the site without permission and a deadline of November 1 midnight had been set for the eviction.

In other news, according to a September 27, 2004 notice by the National Association of Gypsy Women (NAGW), the Oxfordshire County Council in southern England decided to hand management of six Gypsy/Traveller sites over to police. Following protests by Gypsy/Traveller organisations in the UK and Ireland, no evictions took place and the Oxfordshire County Council agreed to devise new license agreements that would satisfy all parties, according to information provided to the ERRC by the NAGW on October 21, 2004.

Earlier, on September 9, 2004, the BBC reported that the Gloucestershire County Council served formal eviction notice on a group of Travellers living on National Trust land near Sherbourne leased to the Council, which they have occu-

piated since November 2003. The Travellers were told they should move voluntarily or face legal action. Councillor Colin Hay was quoted as having stated that the move followed a "significant number of complaints" to the Council, the National Trust and the police.

As a result of major accommodation problems facing Gypsy/Travellers in the UK, proposed amendments to the Housing Bill drafted by the Commission for Racial Equality and tabled by Lord Avebury and Baroness Whitaker were debated in Parliament in September 2004. The amendments called for a statutory duty on local councils to provide, or facilitate the provision, of an adequate number of sites, and for improved security of tenure on sites run by local authorities. On November 7, 2004, the BBC reported that the Office of the Deputy Prime Minister (ODPM) stated that no decision had been made and indicated that it was unlikely to force councils to act because making councils provide sites was "not necessarily appropriate", "a duty has been tried before and often did not produce sufficient or appropriate provision" and "a duty which relates solely to the Gypsy and Traveller community reinforces the view that they should be dealt with outside the mainstream housing system." (BBC, ERRC, NAGW)

✧ **Report on Health Status of Gypsy/Travellers Published in UK**

In October 2004, the University of Sheffield School of Health

and Related Research issued its report, "The Health Status of Gypsies & Travellers in England". The following is a summary of the research results, as published in the report:

“Results: Health status survey
 “Results of the quantitative survey show that Gypsy Travellers have significantly poorer health status and significantly more self-reported symptoms of ill-health than other UK-resident, English-speaking ethnic minorities and economically disadvantaged white UK residents. Using standardised measures (EQ5D, HADS anxiety and depression) as indicators of health, Gypsy Travellers have poorer health than that of their age sex matched comparators. Self reported chest pain, respiratory problems, and arthritis were also more prevalent in the Traveller group. For Gypsy Travellers, living in a house is associated with long term illness, poorer health state and anxiety. Those who rarely travel have the poorest health.

“There was some evidence of an inverse relationship between health needs and use of health and related services in Gypsy Travellers, with fewer services and therapies used by a community with demonstrated greater health needs.

“From these results, and from comparison with UK normative data, it is clear that the scale of health inequality between the study population and the UK general population is large, with reported health problems between twice and five times more prevalent. [...]

Table 5:
Numbers of Gypsy Travellers and age-sex matched comparators reporting specific illnesses and problems

Illness or Health Problem	Gypsy/Travellers N= 260	Comparators N=260	Age-Sex Matched (p)	% difference (95% CI)
<i>Illnesses/problems reported after prompting</i>				
Nerves	73	10		
Arthritis	57	25		
Asthma	56	14		
Eye/vision problems	28	9		
Bronchitis/emphysema	27	5		
Heart disease including angina	20	9		
Hearing problems	16	8		
Rheumatics	15	3		
Diabetes	11	9		
Stroke	3	2		
Cancer	2	6		
<i>Illnesses/problems identified from specific question(s)</i>				
Chest pain/discomfort	88	57	0.002	12 (4, 20)
Possible angina	78	51	0.008	10 (3, 18)
Chronic cough	127	43	<0.001	32 (25,40)
Chronic sputum	119	38	<0.001	31 (24, 39)
Bronchitis	107	26	<0.001	31 (24, 38)
Asthma	168	105	<0.001	24 (16, 33)
Anxiety	100	33	<0.001	26 (19, 33)
Depression	55	20	<0.001	14 (8, 20)

“Results: Qualitative study
 “[...] Accommodation was the overriding factor, mentioned by every respondent, in the context of health effects. These effects are seen to be far reaching and not exclusively concerned with actual living conditions, although these are clearly seen as crucial.

“Other issues include security of tenure, access to services and ability to register with a GP,

support and security of being close to extended family, a non-hazardous environment and the notion of freedom for the children. There are also other factors aside from health considerations that come into play such as availability of work and access to education. For most respondents the ability to choose their style of accommodation and to decide for themselves whether, or how, they continue to live a

traditional travelling lifestyle is of fundamental importance and crucial to their sense of independence and autonomy. The lack of choice or the intolerable conditions, mentioned by the majority of respondents, are an indication to them of the negative way in which they are viewed by the non-Traveller society. It is this feeling of injustice and persecution that is often forcibly expressed as much

as concern about the adverse effects of the conditions *per se*.

“In relation to Gypsy Travellers’ experiences in accessing health care and the cultural appropriateness of services provided, we found widespread communication difficulties between health workers and Gypsy Travellers, with defensive expectation of racism and prejudice. Barriers to health care access were experienced, with several contributory causes, including reluctance of GPs to register Travellers or visit sites, practical problems of access whilst travelling, mismatch of expectations between Travellers and health staff, and attitudinal barriers. However, there were also positive experiences of those GPs and health visitors who were perceived to be culturally well-informed and sympathetic, and such professionals were highly valued.

“Other results

“Fewer than half of the Primary Care Trusts, Strategic

Health Authorities and Public Health Observatories responding to our survey had knowledge of the numbers or location of Gypsy Travellers locally. Information on Gypsy Travellers’ use of services was more rarely available and only a fifth had any specific service provision. Only one in ten had any policy statement or planning intentions that specifically referred to Gypsy Travellers.

“Our findings confirm and extend the practice-based evidence on poorer health in Gypsy Traveller populations. There is now little doubt that health inequality between the observed Gypsy Traveller population in England and their non-Gypsy counterparts is striking, even when compared with other socially deprived or excluded groups and with other ethnic minorities.

“The impact of smoking, education and access to GP service is important. The ed-

ucational disadvantage of the Travellers was extremely striking, and the single most marked difference between Gypsy Travellers and other socially deprived and ethnic minority populations. However, these factors do not account for all the observed health inequalities. The roles played by environmental hardship, social exclusion and cultural attitudes emerge from the qualitative study, and are consistent with the finding there is a health impact of being a Gypsy Traveller over and above other socio-demographic variables.” (See table on p. 74)

A team of researchers from the University of Sheffield undertook research for the report, with the assistance of Gypsy/Traveller activists, health visitors and members of Primary Care Teams. The full text of the report is available on the Internet at: <http://www.shef.ac.uk/scharr/about/publications/travellers.html>. (ERRC)



ERRC ACTION

Legal Practice under the Bulgarian Protection against Discrimination Act

Daniela Mihaylova¹

THE PROTECTION AGAINST Discrimination Act (PADA), adopted by the Bulgarian Parliament in September 2003, entered into force on January 1, 2004. Drafted with the active participation of experts from non-governmental organisations, the Act is among the most advanced national instruments in Europe for combating discrimination on various grounds. It was met with appreciation from the European institutions. The Act ensures effective protection for the victims of discrimination and responds to requirements of the relevant EU Directives. Some of the Act's provisions were called "revolutionary" for the Bulgarian legal system – such as for example the provision on the reversal of the burden of proof in cases of discrimination. Another innovative provision allows non-profit public interest organisations to litigate on their own behalf when the rights of many are breached.

Since the entry into force of the PADA, anti-discrimination litigation has become a priority for the legal defense program of the Romani Baht Foundation (RBF). In cooperation with the European Roma Rights Centre (ERRC), the RBF has

initiated a number of court cases against schools and other educational institutions which deny equal access to education to Romani children or practice other types of discrimination; against employers who discriminate against Romani applicants for jobs on the basis of their ethnic origin; and against legal entities which deny access to public services to Romani clients or offer lower quality public services to them.

The subjects of the claims in the area of education have been the following:

- ✧ denial of enrolment to Romani children by municipal schools;
- ✧ segregation and inferior education provided for the Romani children in the all-Romani schools ("Gypsy schools");²
- ✧ segregation of the Romani students in "all-Romani classes" within the municipal schools following alleged threats by ethnic Bulgarian parents to move their children to other schools;
- ✧ classroom racism;³
- ✧ overrepresentation of Romani children in the special schools for children with light develop-

¹ Daniela Mihaylova is legal consultant of the Sofia-based Romani non-governmental organization Romani Baht. She represented Romani plaintiffs in a number of cases filed under the Protection against Discrimination Act.

² On May 21, 2003, a lawsuit was filed before the Sofia District Court on behalf of 28 Romani school children against the Ministry of Education, the Municipality of Sofia, and the 75th Todor Kableshkov School. The lawsuit alleges violations of Bulgarian and international law arising from the racial segregation of and discrimination against Romani students forced to attend poor-quality, all-Roma schools in Romani settlements in Sofia. Such actions violate constitutional guarantees of equality and the right to education, as well as international treaties to which Bulgaria is a party. For further details see ERRC press release "ERRC School Desegregation Lawsuit in Bulgaria" dated May 20, 2003.

³ In one case, on June 11, 2003, 38 Romani children from the Professional Secondary School of Electrotechnics in Sofia accompanied by the deputy director of the school were denied access to the building by non-Romani students from the same school who yelled at them: "This is a school for white people. The dirty Gypsies smell like soap". The non-Romani students from the Professional school had swastikas and portraits of Hitler. The Romani students were physically attacked and beaten.

mental disabilities – many Romani children are sent to those schools because their parents are misinformed and the schools are advertised as social institutions for poor children. The court cases have been initiated by the ERRC and the RBF on their own behalf because the Romani parents were afraid of possible victimisation of their children.

All cases challenging discrimination in education are currently pending before Bulgarian courts.

In health care, the main subject of the anti-discrimination cases initiated so far involve denial of services and unequal treatment based on the patients' ethnic origin. Already before the passing of the anti-discrimination act, the ERRC in cooperation with local organisations had initiated court cases challenging denial of urgent medical assistance in one case of spontaneous pregnancy termination; segregation of Romani mothers and babies in the so-called "Gypsy rooms" in maternity wards, or their placement in the corridors of the hospitals when there was no space in the "Gypsy rooms".

A number of cases were filed against employers who refused to appoint Romani applicants as well as against owners of public accommodations who denied access to Roma. The following cases with respect to these violations have been successfully solved:

One of the first cases in which the Sofia District Court rendered a positive decision challenged the refusal of Kenar Ltd. to admit a Romani person to a job interview, where the refusal was explicitly based on the candidate's ethnic origin. Mr. Angel Assenov, a Romani man from Sofia, wanted to apply for a job with the company but was not even admitted to the job interview with the explanation that the company does not employ Roma. The refusal was given over the phone by an employee of Kenar. In the course of the conversation, the company's employee described the requirements for the

candidates: "Men, under the age of 30, holding secondary school diploma". Mr. Assenov then asked whether his Romani origin would be an obstacle, to which he was answered: "Yes, it is a 100 percent problem, we do not employ Roma, this is the firm's policy". The conversation between the applicant and the Kenar employee was witnessed by two staff members of the RBF's, who testified during the trial. The Sofia District Court ruled that the case involved direct discrimination, based on the plaintiff's ethnic origin.⁴ The court also obliged the respondent not to discriminate against the plaintiff in the future and sentenced Kenar Ltd. to pay compensation to Mr. Assenov for non-pecuniary damages. The court stated within the decision that under the Protection Against Discrimination Act the respondent was obliged to create such organisation of its operational activities that will exclude any possibility for a discriminatory treatment – which the respondent failed to do. The court also found that the respondent failed to prove that the plaintiff was not treated less favorably where the plaintiff established facts from which the court was able to presume that there has been discrimination.

The second positive court decision was in the case of Ms. Sevda Nanova v. Vali Ltd. The case challenged the refusal of the firm to sell goods to Ms. Nanova because of her ethnic origin. She has been verbally assaulted by the firm's servant on the basis of her ethnic origin and physically pushed out of the shop. Following the incident, the RBF organised a second visit to the shop, ensuring witnesses. Ms. Nanova was denied access once again, she was verbally assaulted and sent away.

The RBF in cooperation with the ERRC filed a claim on behalf of Ms Nanova for direct discrimination based on ethnic origin.⁵ The court found that the respondent had violated the provision of Article 4(1) of the Protection Against Discrimination Act, which prohibits both direct and indirect discrimination based inter alia on ethnic origin. The court also found the respondent in breach of Article 37 stipulating that everyone is entitled

⁴ *Sofia District Court decision dated August 8, 2004, on civil case No 2164/2004. Document on file with the author.*

⁵ *The plaintiff has been represented by Ms Margarita Ilieva, ERRC Legal Monitor based in Bulgaria.*

to public services and goods of equal quality, in connection with Article 4(1).⁶ The respondent's objection that not the firm but rather the firm's employee should be responsible for discrimination was rejected by the Court which stated that every legal entity shall be responsible for the unlawful acts of its employees. The court ordered the respondent not to discriminate against the plaintiff in the future and sentenced Vali Ltd. to pay compensation to Ms. Nanova for non-pecuniary damages.

In both cases Bulgarian courts issued well-grounded decisions based on the requirements of the Protection Against Discrimination Act. The decisions received broad media attention.

As regards access to public services, one of the most popular cases solved by the first instance court is the case against the Sofia Electricity Company challenging discriminatory treatment of Romani clients. In January 2004, a massive break down of the electricity system in Fakulteta Romani district in Sofia left more than 300 Romani families without electricity. Some of the consumers had debts to the company, while others were regular payers. The Sofia Electricity Company, however, refused to repair the electricity grid until at least 70 percent of the bills from the whole neighborhood were paid. As a result, at least 30 Romani families – who did not have any debts to the Company, were cut out from electricity supply for two and a half months during the winter. RBF's investigations indicate that this type of collective punishment on all customers in a neighbourhood triggered by the failure of some customers to pay their electricity bills has been enforced only with respect to Romani neighbourhoods. As a principle, the Electricity Companies treats their Romani clients less favorably and always as a collective entity rather than as individual clients. In the case at issue,

the Romani regular payers were treated less favorably compared to the ethnic Bulgarian regular payers who live in Bulgarian neighborhoods. The RBF and the Bulgarian Helsinki Committee filed a case against the Electricity Company in their own right. The ERRC joined the action as the law allows the plaintiffs to advertise the court action and invite other persons/entities to join as plaintiffs. In this case the court found indirect discrimination against the Romani regular payers from the Fakulteta neighbourhood.⁷ The court found that the plaintiffs established facts from which it may be presumed that discrimination has occurred and the respondent failed to prove the opposite.

Another court case against the Sofia Electricity Company initiated in cooperation with the ERRC, challenged the discriminatory practice of the Company to install the electric meters in the Romani neighborhoods at unusually high levels – from 6 to 12 meters. This practice, which effectively prevents the clients from controlling their electricity meters, violates the contractual terms set up by the Electricity Company itself. The court found discrimination based on the client's ethnic origin and ordered the Company to place the electric meters at a level which is accessible for the clients.⁸

The first Bulgarian court decisions under the Protection Against Discrimination Act (PADA) indicate that the new law is an effective tool for victims of discrimination to protect their right to equal treatment and non-discrimination. The court decisions demonstrate substantial knowledge of the philosophy of anti-discrimination law – both of the Bulgarian legislation and of the international standards (for example, all decisions refer to the EU Race Equality Directive and the European Convention on Human Rights and Fundamental Freedoms as foundation for

⁶ *Sofia District Court decision dated July 9, 2004, civil case No 1969/2004. Document on file with the author.*

⁷ *Sofia District Court decision dated August 19, 2004, civil case No 1262/2004. Document on file with the author.*

⁸ *Sofia District Court decision of July 12, 2004, civil case No 1184/2004. Document on file with the author. For more details on the case see also "Strategic Litigation Undertaken by the ERRC and Local Partners Prompt Bulgarian Courts to Sanction Racial Discrimination against Roma". In Roma Rights 3-4/2004, at: <http://www.errc.org/cikk.php?cikk=2070>.*

the Protection Against Discrimination Act). It is still difficult to draw general conclusions on how Bulgarian courts will interpret the provisions and the principles of the anti-discrimination legislation as we have only a few court decisions issued by first instance courts. Bulgarian experts will have to wait for the higher instances to rule on the appeals of the respondents. Within the Bulgarian legal system it is only the rulings of the Supreme Court of Cassation which constitute compulsory guidelines for the lower instance courts. The Supreme Court of Cassation would possibly issue such ruling when at least a small group of cases reaches cassation stage. It could take at least few years taking into consideration the slowness of the civil procedure in Bulgaria.

However, the decisions under the PADA issued so far provide good examples of elaboration on the principles of the Act. In *Assenov v. Kenar Ltd.* the court affirmed that the PADA further elaborated the anti-discrimination norm of the Bulgarian Constitution.⁹ The motives of the decision provide that, “According to Article 6(1) of the Bulgarian Constitution, all people shall have equal opportunities to participate in social life. This Constitutional principle obliges everyone who makes a public offer to an unlimited number of people to ensure equality of opportunity to those who wish to take advantage of the offer. The special Protection Against Discrimination Act details that right and defines the procedure for the protection of that right”.¹⁰

In the same decision, the court ruled that the PADA should be interpreted as imposing a general obligation on individuals who are legally entitled to manage the activities of a legal entity, to organise the activities of that entity in such a

way as to preclude the possibility of any form of discrimination. On this ground the court affirmed that the factual connection between the person who violated the law and the legal entity on which behalf that person acted is a necessary and sufficient condition to incur the responsibility of the respective legal entity. The fact that a legal entity had failed to organise its operations in such a way as to exclude illegal action on the part of its employees breached the equal treatment provision. The court further stated that because the right to labour guarantees equal opportunity for everyone to prove their capabilities, the policy of the Company unlawfully restricted the plaintiff’s access to employment.

In *Nanova v. Vali Ltd.*, the court also discussed the issue of the responsibility of the legal entities. It stated that the provisions of the Act should be seen as *lex specialis* in relation to the Contracts and Obligations Act, which stipulates a general obligation to restrain from causing damages.¹¹ The Protection against Discrimination Act is a *lex specialis* in defining the unlawful action – i.e. direct or indirect discrimination. According to the court, the violation of Article 4 of the Act (i.e. the prohibition of less favourable treatment) could lead to unlawful damages based on a violation of the special anti-discrimination norms. To define the damage, the court should identify the following elements, taken together: the action, the unlawfulness of the action, the damage, and the connection between the action and the damage. The unlawful action could be both active and passive. The uniqueness of the Protection Against Discrimination Act as seen by the court, is that when this Act is violated there is no need for the plaintiff to prove that the respondent has acted deliberately, being aware of the consequences of his/her actions.

⁹ Article 6 of the Bulgarian Constitution stipulates: “(1) All persons are born free and equal in dignity and rights. (2) All citizens shall be equal before the law. There shall be no privileges or restriction of rights on the grounds of race, nationality, ethnic self-identity, sex, origin, religion, education, opinion, political affiliation, personal or social status or property status. Unofficial translation by the ERRC.

¹⁰ Sofia District Court decision dated August 8, 2004, on civil case No 2164/2004. Document on file with the author.

¹¹ Sofia District Court decision dated July 9, 2004, civil case No 1969/2004. Document on file with the author.

In both *Assenov v. Kenar Ltd* and *Nanova v. Vali Ltd.* the court elaborated on the issue of the reversal of the burden of proof. Although this particular provision has been met with strong resistance by some legal professionals in Bulgaria, thus far, the courts have systematically applied the provision ruling in favor of the plaintiffs where respondents had failed to prove they had not discriminated against the plaintiffs. In particular, the court found (*Assenov v. Kenar Ltd.*) that it is not sufficient for the respondent to prove negative facts such as “there is no official policy to discriminate” in order to receive a ruling in their favor.

It is now crucial for rights groups to continue working for the establishment of good court practices under the anti-discrimination law and make sure that the law would not remain a piece of paper.

This is a great responsibility because the PADA is a challenge to Bulgarian legal practice. At this stage, individuals and legal entities implicated in discriminatory actions against Roma often do not even try to conceal the fact that they treat Roma less favorably than non-Roma. However, now that the first court decisions found discrimination against Roma, actual and potential violators of the equal treatment principle would be aware of the possibility to become respondents in discrimination cases and would probably resort to more sophisticated discriminatory practices, which would be more difficult to prove. Consistent efforts are needed both on the part of the government and civil society organisations to educate Bulgarian society and Bulgarian courts to respect the norms of the Protection Against Discrimination Act and to recognise the right to equal treatment of the minority groups protected under the law.



ERRC Continues Cooperation with the Swedish Ombudsman against Ethnic Discrimination for Human Rights Training of Roma in Sweden

Larry Olomoofe¹

IN NOVEMBER 2004, the ERRC travelled to Sweden on a five-day programme of initiatives that involved a presentation on Roma rights and the ERRC work at the University of Uppsala, a presentation on testing as a method to prove racial/ethnic discrimination for lawyers at the Office of the Swedish Ombudsman against Ethnic Discrimination, and a two-and-a-half day training on Roma Rights and Advocacy for a diverse group of Romani activists at the Roma Cultural Centre in Stockholm. This was part of an earlier arrangement between the ERRC and the Ombudsman's office that saw members of the ERRC staff conducting a similar initiative in September 2003.² The 2004 programme was well received and appreciated by the various audiences and groups that attended and the ERRC and the Ombudsman's office are currently developing similar programmes to be implemented in 2005.

University of Uppsala

This part of the programme presented the genesis of the European Roma Rights Centre and the evolution of the Roma rights discourse since the organisation's inception in 1996. Mr Claude Cahn, ERRC Programmes Director, provided a historical account of the place of the Romani issue within the international human rights discourse before the launch of the ERRC, explaining that despite a number of activities focusing on Roma undertaken at the time, there was a need for i) a public interest

litigation organisation defending the rights of Roma similar to the Legal Defense Fund of the National Association for the Advancement of Coloured People (NAACP) in the United States and ii) coherent and substantive research on the situation of Roma in various fields. He also used the opportunity to stress that in the course of time the ERRC has broadened its mandate of a legal defence organisation, evolving into a multi-dimensional organisation that conducts training, produces publications, conducts research, and provides policy reviews and recommendations for/to various governments and international institutions. All of this, he concluded, suggests that the ERRC is the foremost authority on Romani issues in Europe and continues to play an important role in constructing the Roma rights discourse and in advocating Roma rights in Europe.

Mr Larry Olomoofe made an overview of the organisation's training initiatives and the important role initiatives such as the one being conducted at the time played in the ERRC's outreach agenda and contact with grassroots, community-based non-governmental organisations and activists. He reiterated Mr Cahn's earlier point that the ERRC had evolved from being an organisation primarily concerned with litigation on behalf of Roma in Europe, into a multifaceted, diverse (and at times complex) integrated organisation that participates in a number of social, political, and cultural fields promoting the primacy and importance of Roma rights, internationally and locally.

¹ Larry Olomoofe is ERRC Human Rights Trainer.

² A direct outcome of this workshop was an exponential and unprecedented increase in the number of cases brought before the Ombudsman's office. That year, the Ombudsman against ethnic Discrimination ("DO") indicated that Roma had brought approximately 140 claims for discrimination to that office, and attributed the reason for this increase to the training held in Stockholm by the ERRC.

Office of the Swedish Ombudsman against Ethnic Discrimination (D.O.)

Mr Claude Cahn conducted a comprehensive presentation on the merits of Testing as a method for substantiating discrimination claims by Roma before lawyers working at the D.O.'s office. His presentation covered the methodology involved in this kind of action. He explained the need for coherence and consistency regarding the details of specific cases that are tested. For example, in cases of perceived discrimination in employment, it was important to replicate the circumstances and factors of the case, leaving the ethnic background as the sole feature differentiating the two compared individuals/groups in order to draw a conclusion based on the merits of the situation. So, if a Romani person with no qualifications had been allegedly discriminated against, the testers would have to present a comparator of a similar profile as the original victim with only their ethnicity being the one characteristic that was different, ensuring consistency with the original scenario. Mr Cahn provided a litany of examples drawn from the ERRC's case files (especially the Prague airport case³) to highlight the usefulness of testing as a method. This anecdotal material proved useful for the participants allowing them to comprehend exactly how this method could be applied in the Swedish context.

Training Programme at the Roma Cultural Centre

This was the final, but most substantive, part of the five day trip by the ERRC staff members that involved providing an introduction to the rights-based approach to Romani issues adopted by the ERRC. Broadly speaking, the programme in Sweden was premised upon the successful methodology devised and implemented by the ERRC during their annual Roma Rights Summer workshop. The aims and objectives of the Swedish programme were similar to those of the summer workshop and were as follows:

- ✧ To analyse issues and situations affecting Roma in Sweden based on internationally accepted human rights values and principles;
- ✧ To develop skills in using domestic mechanisms (such as national legislation) and international human rights instruments (i.e., United Nations Treaties, the European Convention on Human Rights and Fundamental Freedoms, etc.) to protect and promote the rights of Roma;
- ✧ To strengthen skills in monitoring and reporting human rights violations and racial discrimination as well as advocacy skills;
- ✧ To increase the trainees' capacity to apply their learning within their organisations and their communities;
- ✧ To explore opportunities for networking and developing partnerships with NGOs and government officials to further advance the cause of Roma rights in Sweden and throughout Europe.

The sessions were attended by 25 participants comprising local Romani activists in Sweden, the Deputy Ombudsman, and two lawyers from the D.O.'s office. The programme began with an introduction of ERRC activities, moving into a broad discussion of international, regional and national human rights standards. The ERRC human rights education staff had developed an integrative manual specifically for the three-day programme in Sweden that was used by the participants to allow a more detailed engagement by the group in the topics covered and that the participants could use as a resource when/if conducting similar initiatives locally within their communities. The training programme was planned by the organisers so that each day's activity was the basis for the following day's activity thereby allowing for an incremental development of material and knowledge by the participants.

³ For details on the case, see the ERRC press release "European Roma Rights Centre and Six Czech Romani Plaintiffs Win Landmark Racial Discrimination Case against UK Government", at: <http://www.errc.org/cikk.php?cikk=2058>.

After the general introduction to the programme and the various human rights standards, the programme progressed to a topic by topic engagement of the issues focussing on cultural rights, rights violations within Romani communities, differences between a rights-based approach and a needs-based approach, examination of various patterns of discrimination and the Swedish anti-discrimination legislation, testing, and the various dimensions of successful advocacy approaches to anti-discrimination. Perhaps the most evocative topic discussed over the three-day training was the issue of traditional practices within the Romani communities that contravene universal human rights norms. This particular topic was an extremely sensitive issue to discuss in an open forum and credit must be given to the participants for embarking upon such a discussion.

The main issue that aroused passionate reactions amongst the group was that of the cultural practice of early marriages and whether it constituted a violation of the rights of the child (as defined by the United Nations Convention on the Rights of the Child). This was rejected by some, but the majority of the participants saw this practice as inherently wrong and when viewed from the perspective of the human rights framework, paradoxical to the basic tenets underpinning the human rights standards. It was also interesting

to observe that the disagreements on this issue amongst the participants occurred along generational lines with the older participants proclaiming the practice an integral part of Romani culture and resisting criticism against it, and the younger participants voicing opposition to the practice and insisting that it must be ended, especially if Romani communities wanted to pursue the full enjoyment of their rights.

The training ended with an evaluation of the workshop by the participants and the ERRC staff. This was a useful exercise since it allowed the group to assess the topics covered during the period and reflect on the expected outcome of the programme. Many expressed the desire to continue their engagement with the Roma Rights/human rights paradigm suggesting that they would like to conduct similar trainings within their own communities. Lars Lindgren, Commissioner of the office of the Ombudsman on Ethnic Discrimination and the ERRC's primary interlocutor at that institution, expressed his wish to continue the collaboration with the ERRC and hoped that the current workshop would have a similar impact as the previous workshop in 2003. The workshop was closed with the collective expression of goodwill and the hope that the participants and the ERRC would convene again to continue the good work carried out there.

My Life as a Refugee, 1999-2004

Džavit Berisa

BEFORE THE WAR IN 1999, Kosovo was home to several ethnic groups: Albanians, Ashkali, Bosniaks, Gorani, Egyptians, Roma, Serbs, and Turks. Serbs, Gorani and Bosniaks speak dialects of the Serbian language; Albanians and Egyptians speak Albanian, Turks speak Turkish; and Ashkali and Roma speak Romani.

The exact number of Roma, Ashkali and Egyptians who lived in Kosovo until 1999 cannot be determined but estimates indicate between 120,000-150,000 people. In the 1991 Yugoslav census, which was boycotted by the Kosovo Albanians and parts of other communities, 42,806 persons declared themselves Romani. After the last wave of violence in Kosovo in March 2004, there are no more than 10,000-12,000 Roma, Ashkali and Egyptians left in the province.

On March 24, 1999, at around 8:15 pm, the bombing of Kosovo by NATO forces began. The first bomb was dropped on the Marshal Tito Base of the Yugoslav Army. During the bombing, those of us who had Albanian names were threatened and abused by Serbs. Lack of trust in Roma and Egyptians on the part of the Serbs saved us from recruitment in the paramilitary forces.

One day during the bombing, my mother walked from our village Subotić to Priština to do some shopping. On the way she was beaten by Serbian police because she was Egyptian. Men of our community did not dare to go out because there was a risk for their lives. During the NATO bombing, I was mobilised in the work place and

I had to work 12 hours per day. Every night my family and I waited for the NATO bombs to fall on us.

On June 10, we rejoiced because the UN Security Council Resolution 1244 was adopted and the Kumanovo military technical agreement with the Yugoslav army was signed. Everybody celebrated thinking that it was a “White Day”. Later on, it turned out to be a “Black Day” for minorities in Kosovo.



In the following weeks, my family was subjected to threats and verbal harassment by Albanians; some Albanians threatened us with raping our women.

The Albanians who returned to Subotić were arrogant and behaved as if they were untouchable. They told us that if any man in our family created problems, they would ask the Kosovo Liberation Army (KLA) to come and “take care” of us. This harassment continued for more than two weeks. Finally, on June 28 at around noon, my family was forced to leave our home in Subotić by Albanians in the village (some of them we knew, others were unknown to us), and KLA soldiers in uniform came to enforce this order. We were told that we had to leave Kosovo and go to Serbia, and this territory is now “Greater Albania”.

After we left the house, we went to the Kosovo Forces (KFOR) to ask for protection and for about seven hours between 12:00-7:00 pm we didn’t receive any answer from KFOR. At around 7:00, pm we took a train and went to the Ace Marovic school in Kosovo Polje, where we joined another 4,000 displaced Roma, Ashkali

and Egyptians. The school had 3 bathrooms for 4,000 people. Some of us were very sick and all of us were extremely traumatised.

After three weeks, I was informed that my house in Subotić had been burned down.

On July 20, Ms Paola Gedinì from the UNHCR came to the Ace Marović school and informed us that there would be another shelter for internally displaced persons (IDP's) in Krusevc/Obilić.

A few days after our arrival in the Krusevc/Obilić camp, a 3-year-old child was wounded by Kosovo Albanians with a rock in front of KFOR soldiers. The child was then taken for medical care by a British soldier. After this incident, the IDPs were very upset and insisted that they be returned to the Aca Marović school. But this request was not respected.

Seven days after our transfer to the Krusevc/Obilić camp, one morning we woke up to discover that the KFOR was not there any more. After a couple of hours, the UNHCR came and informed the IDP's that UNMIK police were coming to provide protection. We were frightened and we did not believe the UNMIK can protect us because we knew that they were not armed.

The conditions in the camp were very bad. We slept in tents for three months, there was no security, no medicine. Two persons died in the camp – one three-month-old baby and an elderly man. After this tragedy we called a meeting with the manager of the camp Mr Marco Donati, representative of the Italian humanitarian organisation Consorzio Italiano Solidariet (ICS). We requested him to ensure adequate security measures, medicine and better living conditions in the camp. His answer was: "This is what we can provide. If you want to stay, you can stay, if not, you can leave the camp."

Since we realised that nobody from the international organisations would pay any attention to us, we decided to leave the camp and to walk on foot to Macedonia. On September 20, at about 10 am, about 700 people set off to Macedonia. About 5 km on the way, we were attacked by

Albanians and one of us was injured. Despite the attack, we made a decision to continue to walk for another 25 km. Among us there were newborn babies, sick and traumatised people. In the evening, we stopped near the petrol station in Lapna Selo (Serbian village) to spend the night. On the following day at 8 am we continued our way. The UNHCR tried to send us back to the camp but we refused. Then the UNHCR told us to wait for the buses because it was dangerous to walk through the towns of Ferizaj/Uroševac and Kačanik/Kacanik.

From Lapna Selo we were transported to Blace – the border town between Kosovo and Macedonia. At the border, the Macedonian police told us to go back to Kosovo. A police officer hit one refugee. When asked by a KFOR soldier why he hit the man, the policeman replied that the refugees should leave the place and go back to Kosovo. The KFOR soldier then said that the refugees should stay in Macedonia. The two of them almost got into a fight, with the KFOR soldier insisting that the refugees should stay in Macedonia because there was no safety for them in Kosovo and the police officer replying "if there is no safety in Kosovo for them what are you doing there". In Blace we spent nine days waiting for the Macedonian government's agreement to accept us. Finally, the UNHCR and the Macedonian government reached an agreement and we were transferred to the refugee camp Stenkovec II in Macedonia. After we arrived in the camp, my wife, who was three months pregnant lost the baby.

From Stenkovec II we were transferred to another collective center in Struga, Macedonia, where we spent about 7 months.

In July 2000, the UNHCR built a refugee camp in Šuto Orizari, Macedonia, where all of us were accommodated.

On April 4, 2001, I applied for voluntary repatriation. This was granted, and upon my return to Kosovo, I was employed as an interpreter by the USA KFOR in Kosovo. My supervisor was an American citizen. While he was in this position, I had no problems with ethnic Albanians. Six months later, however, my supervisor was

replaced by an American Albanian. In the meantime, some of my Albanian colleagues discovered that I had been a refugee in Macedonia. A year later I was fired. I believe my dismissal was racially-motivated.

On May 20, 2002, I was violently assaulted by Albanian extremists. On June 1, 2002, I and my wife went to Macedonia for the second time. On June 19, 2002, we were told by the Macedonian authorities that we cannot have Temporary Status and we have to apply for asylum even though Asylum Law did not exist in Macedonia.

Three months after I filed an asylum claim, I was rejected. After several appeals, the Supreme Court of Macedonia finally confirmed the rejection. On May 29, 2003, we were notified that we must leave Macedonia within 30 days or face forcible expulsion. The UNHCR in Macedonia was informed about the decision in my case and they tried to stop the Ministry of Interior of Macedonia from deporting us, presenting them with a document from the UNHCR office in Priština which stated that there was no security for us to go back to Kosovo. When I received the Supreme Court decision, the Kosovo refugees in Macedonia were trying to go to Greece and seek asylum there. Macedonian authorities then told them to stay in Macedonia and apply for asylum. The refugees told the UNHCR that they did not believe they would be given asylum knowing that I had already been rejected by the Macedonian courts.

On September 15, 2003, I and my wife were detained in the street and taken to the police station in the town of Bitola, southern Macedonia. We were not allowed to call our lawyer and at around 6 pm, after we had been sentenced for illegally trying to cross the border with Greece, we were put in a car and forcibly expelled from Macedonia. I and my wife did try to cross the border with Greece when we were informed that the Macedonian police were looking for us. If Macedonia refused to give us asylum, we did not have any other solution but to seek asylum elsewhere, in another country. We could not

agree to go back to Kosovo because we knew that it was not safe for us there. This was a case of “forced migration” provoked by the Macedonian authorities.

After 10 hours spent in detention, we were told that the police would deport us back to the Serbian border and not to Kosovo. When we arrived at the Macedonian/Serbian border the Macedonian police told us that the Serbian authorities did not want to accept us in Serbia. After some discussion, the Serbs agreed to accept us but only on condition that we go back to Kosovo. The Serbian police told the taxi driver who took us that if he drove us to Serbia he would have problems with the police. The taxi driver told me that he could leave me at the Kosovo border. I didn't have any other solution so I had to accept. From the border I called my cousin who drove us to my wife's family in Lipijan/Liplian. Two days after our arrival, two Albanians came and asked my father-in-law whether I was in Kosovo. My father-in-law denied that I was there. Then the Albanians told him that if they found out that he was lying to them, they would punish his family.

After this incident, I and my wife decided to seek asylum in Hungary. On October 1, 2003, we arrived in Budapest and after that we went to the refugee camp in Debrecen. On December 17, 2003 we were granted asylum. Since I had the status of refugee I could take my daughter back from Macedonia, where she had stayed with my relatives in the refugee camp. On August 11, 2004, after one year, my daughter joined me and my wife in Hungary with the support of Ministry of Interior, the UNHCR and the Hungarian Helsinki Committee.

With the support of European Roma Rights Centre, I have filed a case against Macedonia with the European Court of Human Rights for exposing me and other members of my family to inhuman and degrading treatment by refusing to provide international protection to us.

God Bless the people who helped me to win back my freedom!



ROMANI LANGUAGE PUBLICATIONS

Koncepto Thaj Praksa Afirmative Akciako

Arakhipe/Prevenca Katar Diskriminacia Thaj brakhipe/Protekcia e Minoroteturengi

Romani language translation of "Concept and Practice of Affirmative Action", a report by the UN Special Rapporteur on the Prevention of Discrimination and Protection of Indigenous Peoples and Minorities

Anglunimasko/Progresosko raporto kerdino/dindo katar rajo Bossuyt, Specialo Raporteri, ande relacia Sub-Komisiake rezoluciasa 1998/5

Angluno Vakaripe

1. Ande rezolucia 1998/5, Sub-Komisia kerda decizji, sar si o subjekto but vasno thaj trubul te lel pes sama, te alosarel pes o rajo Marc Bossuyt sar Specialo Raporteri kasko ares si te kerel studia vaš koncepto afirmative akciako, thaj alavarda les (kerda leski nominacia) te rodel katar Jekhethaneske Naciengo Baro Komesari vaš Manušikane Xakaja te bičhalel jekh pučimaskio lil e Governonge, maškarmutne organizaciengne thaj na-governoske organizaciengne ande savo ka rodel te savore bičhalen leske lachi nacionalo dokumentacia vaš afirmativo akcia.
2. Ande godo decizji 1999/106 Sub-Komisia nevljarda e autorizacia pala Specialo Raporteri te kerel pučimaske lila. O pučimaskoi lil si bičhaldino e Governonge, maškarmutne organizaciengne sar vi na-governoske organizaciengne.
3. Sikadino raporto si dindo ande relacia Sub-Komisiake decizjasa 2000/104, ande savo e Sub-Komisia akharel pes pe Ekonomikano thaj Socialo Konzilosko Decizji 1999/253 ande savo naisarel pes Speciale Raporteroske pala lesko preliminaro raporto (E/CN.4/Sub.2/2000/11) thaj kerda pes decizji te rodel pes katar Generalo Sekretari te serol Governuren, maškarmutne organizacien thaj na-governoske organizacien save astarde pučimaskio lil te ramon les thaj te traden les palpale Sub-komisiake. Ande relacia kadalesa o Specialo Raporteri but naisarel Governonge andar e Bolivia, Kolumbia, Grecia, Gvatemala, Izrael, Libia, Arabiaki Džamahirija, Pakistan, Paragvaj,

Republika Slovakia, Espania, Tailand, Trinidad thaj Tobago, Tanzania, sar vi Maškarmutne Butjarimaske/Labour Ofisose thaj Univerzale Poštake Uniake pala lengo žutipe. Trubul te phenel pes kaj ande avutni vrama o Specialo raporteri kamel te astarel maj but irisardine pučimaske lila arelimasa te lesko nevo raporto avel bazirime pe maj but informacie. Godolese/vaš odi vov kamel te del zor Governonge, maškarmutne organizaciengne thaj na-governoske organizaciengne save či irisarde pučimaskio lil te godo keren. O pučimaskio lil šaj dikhen khetane kadale raportosa.

4. Ande angluno preliminaro raporto duj granice (limitura) kerdine katar maškarmutno zakono ando respekto pala afirmativo akcia sesa sikadine: (a) afirmativo akcia či indjarel ande diskriminacia (b) trubul te džanel pes vrama dži kaj kerel pes afirmativo akcia.
5. Kava progresosko raporto kamel te dikhel ko ka astarel lačhipa katar afirmativo akcia, sostar kerel pes afirmativo akcia thaj save forme afirmative akciake trubun te keren pes.

I. Drom (Koncepto) Afirmative Akciako

6. "Afirmativo akcia" si termino savo but utilizil pes, vaj pe bibaxt či xatjarel pes sajekh lače. Kana phenel pes "afirmativo akcia" vareko gindil kaj si godo "pozitivo diskriminacia", but si vasno te džanel pes kaj si maškar kadala duj terminura bari diferencia. Ande relacia adivesutne praksasa pala utilizacia terminoski "diskriminacia" termino "pozitivo diskriminacia" si *contradictio in terminis*: vaš odi kaj

te si vareso diskriminacia našti avel pozitivno vaj te si vareso pozitivno našti avel “diskriminacia”. Pe aver rig termino “pozitivno akcia”, savo but utilizil pes ande Anglia si ekvivalento pala termino “afirmativo akcia”. Ande but aver thema, gasavi akcia si pindžardi sar “prioriteto politika”, “rezervacia”, “kompenzaciako vaj distributivo čači”, “prioriteto tretmano”, etc.

7. Sar legalo koncepto, “afirmativo akcia” šaj arakhel pes vi ande maškarmutno vi ande nacionalo zakono. Šaj phenel pes kaj si kava koncepto kaske naj dindo generalo legalo definicia. Svako čači diskusia pala koncepto afirmative akciako rodel butjarimaski definicia:

“Afirmativo akcia si koherente aktivitetura save keren pes pe jekh vrama kasko ares si te kerel maj lačo than (pozicia) dženengi/mebrurengi andar jekh grupa ando jekh vaj maj but aspektura sociale dživdimasko areslimasa te astarel pes efektivo egaliteto.”

8. Politika afirmative akciako šaj avel kerdini katar averčhande (diferente) aktora andar publiko sektori sar federalo Governo vaj them thaj thanesko (lokalno) Governo vaj katar privato sektori sar butjarne vaj edukaciake/sitjuvimaske institucie.
9. Ande varesave thema, gasave afirmative akciake politike keren pes bi pokinimasko (sar volontera) thaj gasave akciengne del pes zor; ande aver thema von musaj te keren pes (traden pes e thema) thaj te varesavo them či kamel te kerel kava atoska/atunči keren pes sankcie mamuj/kontra lende. E politike naj limitirime po arakhipe butjarimaske thanesko thaj edukacia: von šaj aven buxljardine vi po urbanizmo, transporto.

II. Vasne Grupe (Target Groups): Teme Opral Thaj Telal e Participacia

10. Afirmativo akcia sajekh si andi relacia varesave grupasa savi si kerdeini katar manuša (individualcura). Kadale manuša si phandine/egalutne so kerel len te aven khetane ande bilači pozicia. Butivar kava egalutnipe (khetane karakteristike) pašljol (si bazirime) po kolori lenge mortjako, po nacionaliteto, si von murša vaj džuvlja, si von religiako vaj čhibako minor-

iteto vaj pe aver rig varekana kava egalutnipe si bazirime pe vareso aver. E Afirmative akciake programura vi maj anglal vi akana keren pes te žutin džuvljange, kale manušenge, našalde manušenge (imigrantura), čorre manušenge, manušenge save si invalidura, manušenge save avile andar varesavo baro maripe (veterans), manušenge save si ande varesavi specialo pozicia, minoriteturengne, etc.

11. Maj baro pučipe savo ka kerel bare problema, pharipa si sar te kerel pes deciziji save grupe si ande bilači pozicia thaj trubul lenge te žutil pes vaj varekaske avereske. Varesave maškarmutne instrumentura sar e Maškarmutni Konvencia Pala Phagavipe/Eliminacia Svakone Formako Rasistikane Diskriminaciako sar vi Konvencia Pala/Vaš Phagavipe Svakone Formako E Diskriminaciako Mamuj Džuvlja si but lače po drom te kerel pes lačo deciziji, butivar e nacionalo legislacia vazdel opre kaske trubul te ažutil pes.¹
12. Afirmativo akcia butivar avel katar duj faktora save si phangline jekh averesa: (i) kana sajekh vazdel pes statuso pala na-egaliteto, savo naj sajekh pindžardino sar gasavo thaj (ii) efektivo artikulacia legale xakajengo/čačipengo katar reprezentantura grupengo save si andei bilači pozicia.² Butivar e grupen si pharipe/problemo vaš odi kaj naj len politikani zor thaj žutipe po drom te žutin korkore pese.³ Kadale rezultatura si telal inkluzia afirmative akciake programurengo.
13. Šaj keren pes vi kontra situacie. E grupe šaj aven klasifikuime sar čore, sar kaj si ande bilači situacia vi te von či kamen te aven kade klasifikuime vaš odi kaj si len dar katar stigmatizacia vaj vaš odi kaj či kamen te kerel vareko pe lende afirmativo akcia. Vaš odi (godolese) but si vasio te e membrura varesave grupako kamen, te kerel pes pe lende afirmativo akcia.
14. Nacionalo legislacia butivar teljarel (startuil) afirmative akciake politikasa savi užes kamel te phagavel problemura varesave čorre grupako. Maj palal gasavi politika buxljarel pes vi pe aver grupe. Kava vazdel e tema pala opruni inkluzia, vaš odi kaj varekana te si varesavo manuš membro varesave grupako sar: jekh rasa, egalutno etnikano palutnipe (background), si o manuš murš vaj džuvlja

vazdel opre pharipa thaj problemura. Čačipe ande relacia maškar afirmativo akcia thaj kompenzacia pala palutni vrama vaj societatiski diskriminacia si ande relacia pala kodo savi rasa, etnikano palutnipe (background), si o manuš murš vaj džuvli vaj vareso aver so si indikatori pala socialo džungalipe savo o programo pala afirmativo akcia kamel te phagavel. Varekana si vi situacie kana e afirmativo akcia žutil e manušenge save naj minoritetura vaj save či peren ande grupa e manušengi savenge trubul žutipe.⁴ Speciale ande USA, kava trada e manušen te keren diskusie.⁵ Sar e afirmativo akciako ares (golo) sasa te phagavel problemura/pharipa Amerikane Afrikancurengo kadale aktivitetura pe aver rig sikade na-egaliteto ande relacia avere grupenca, pal maj but e imigranturenca.⁶ Pučipe savo vazda pes sar but vasno sasa kaske trubul protekcia/brakhipe, imigranturenge save korko-vojasa avile ande USA vaj Afrikane Amerikan- curenge save maj anglal sesa robura (slaver).⁷ No kodo so šaj dikhel pes si kaj ande USA brakhime (protektuime) grupe si individualcura saven si legalo fundo(baza) te roden katar o them žutipe sar: imigrantura, manuše save si bijandine ande USA maj anglal deso si kerdini Amerika sar vi e robura (slaves).

15. Aver pučipe si ko čačes astarel lačhipa katar prioritatoski politika? Sikavel pes kaj katar afirmativo akcia maj lače nakhen e grupe save maj but šaj našen katar afirmative akciake prioritatura. Sar egzemplo, katar afirmativo akcia maj lače ka nakhen e parne džuvlja anda e maškarni klasa deso teluni klasa e džuvjengi katar aver etniciteto. Vaj, kana afirmativo akcia astarel buxli kategoria sar Hispancura vaj Amerikancura andar e Azia, varesave etnikane grupe maškar kadale kategorie ka astren varesave lačhipa deso aver, vaš odi kaj si von po maj učo levelo (rango) ande relacia pala ekonomikano, edukaciako thaj profesionalo statuso. Šaj phenel pes kodola save len afirmative akciake programura šaj aven maj barvale thaj maj cerra čorre membrura e grupaki.
16. Kadi duj-klasaki teoria šaj maj palal kerel inke (vadži) jekh “diskriminacia” godo si diskriminacia mamuj minoriteto andar o majoriteto. Afirmative akciake programura keren

neve čorrikane grupe. Majoritetoske membrura saven naj sociale lačhipa sar konsekvencia afirmative preferancengi programurengi aven telal katar parni muršikani distribucia, pal pe aver rig minoritetonge membrura save astaren lačhipa katar gasave afirmative akciake programura aven andar opruni kategoria vaj džuvljikani distribucia.⁸ Vaš odi afirmative akciake prioritatura musaj te pharuven pes katar jekh pe aver grupa.

17. Varekana si but phares te dikhel pes užes, si vareko andar e grupa pe savi kerel pes afirmativo akcia. Sar egzemplo, sar vareko “kalo” trubul te avel kvalifikuime sar “kalo” po drom te dikhel pes šaj vov vaj na astarel lačhipa katar afirmative akciake programura. Ande relacia e imigranturenca naj inke (vadži) užes save manuša si kvalifikuime (šaj dikhen pes) sar imigrantura pal save na, te si von 2-to, 3-to vaj 4-to generacia imigranturengi? So trubul te kerel pes e čhavorrenca save si andar xamime prandipa (o dad jekh etniciteto e dej dujto)? Maj dur vi akana si kazura pala manuša vaj saste grupe save keren korkore piri redefinica areslimasa te astaren lačhipa (beneficie) katar afirmative akciake programura.⁹
18. Varesave thema kerde nevo zakono pala personalo etnikano thaj rasako statuso te dikhen užes ko trubul te astarel lačhipa (beneficie) pal ko na. Aver thema phende kaj si maj vasne korko-percepcia e grupengi thaj percepcia buxle komunitetongo kaj e grupe dživdin. Kadi percepcia šaj pharuvel pes maškar e vrama. Ande kava konteksto, Generalo rekomodacia VIII e Komitetoski pala Phagavipe (Eliminacia) Rasake Diskriminaciako si but interesante.¹⁰ Kana kerda pes analiza e informaciengi andar raporto katar e riga saven si intereso ande relacia pala godo sar trubun e manuša (individualcura) te identifikuin pes sar membrura varesave rasake vaj etnikane grupe, o Komiteto phenda kaj gasavi identifikacia trubul, te na arakhla pes aver drom, te avel bazirime pe korko-identifikacia savi ka keren individualcura svako pala peste.
19. Akana džanel pes kaj si šerutno problemo alosaripe thaj arakhipe ko si pal ko na grupa pala afirmativo akciake programura. Kava sikavel sode si vasno te na baziril pes sa, pe godo ko si andar savi grupa thaj kaj trubul

te lel pes sama vi pe aver faktora sar socio-ekonomikane faktora po drom te dikhel pes pe kaste te keren pes afirmative akciake programura. Kava trubul te xatjarel pes kade kaj trubun te keren pes maj bare individuale aktivitetura ande direkcia afirmative akciake, trubul te dikhel pes kas si save individuale trubulipa (kase so trubul) maj but deso te dikhel pes so si trubulipa jekhe grupaki.¹¹

III. Estimacia/Sode si Vasno Affirmativo Akcia

20. Kana sikavel afirmativo akciake politika o them ka probil te kerel džastifikacia maškar vis-f-vis publiko gindipe. Fundo (baza) dindi pala džastifikacia ka avel ande relacia pala specifiko socialo konteksto kodole themesko. Varesave vasne džastifikaciake pučipa ka aven diskutuime pe rig sar vi pučipa save si mamuj afirmativo akcia.¹²

A. Te sastarel pes vaj te kerel pes korekcia pala historikano na-xakaj/bangipe

21. Ares si te kerel pes kompenzacia pala uže gindoski vaj specifiko diskriminacia ande dumutani vrama savi mukel vi adadives pala peste pharipa (reprekusie). Pe varesave čorre grupe si kerdini diskriminacia ande dumutani vrama, so vi lenge čhavre šuvel ande phari pozicia vaš odi kaj si len, sar egzemplo, čorrikani edukacia thaj treningo. O rajo Chibundu phenel kaj afirmativo akcia ande kava kazo šaj avel korektivo, restauracia e grupaki pe pozicia ka sastarel godu so sasa maj anglal. Vov džal maj dur thaj phenel kaj phares šaj užes kauzalo relacia avel konkluzivo sikadini maškar vareso so sasa banges ande dumutani vrama thaj vareso so si akana.¹³ Vi paša kava, kana varesavo levelo kauzale relaciako maškar bange-keripasko thaj akanutne telal-rezentaciako šaj avel sikadino, afirmativo akcia šaj avel sikadini, afirmativo akcia šaj avel aplicirime, vaj direkte thaj speciale lačhipa (beneficie) trubun te aven egalutne pala viktimo e diskriminaciako savi sasa kerdini maj anglal.¹⁴

22. Kadi džastifikacia sasa maj but kerdini ande USA te žutil publiko politika kasko areslipe sasa te “phagavel akanutne efektura katar nakhli rasistikani diskriminacia” mamuj Afrikancura save akan bešen ande Amerika. Amerikake afirmative akciake programura kerdine sar egzekutivo dokumento 10925 savo somnisarda o prezidento John F. Kennedy ande 1961-to berš thaj Egzekutivo dokumento 11426 somnisardo katar prezidento Lyndon Johnson ande 1965-to berš.¹⁵ Kade, Amerikaki Komisia pala Civile xakaja/čačipa injarda te na xasarel pes: “Afirmativo akcia savi intjarel ande peste sa e aktivitetura, maškar semplo/uži terminacia diskriminaciake praksako, savi si lindi (adoptuime) te sastarel/kerel korekcia vaj kompenzacia pala godu so sasa ande dumutani vramaki vaj ande akanutni vramaki kompenzacia vaj te kerel prevencia pala diskriminacia te na iril pes ande avutni vrama”.¹⁶ Gasavi eksplanacia si lindi/utilizime vi katar Australiako Governo ande lengi afirmativo akciake politika save kerde pala Australiake Aboridžanura.

23. Sar vi sajekh, si vi manuša save averčhande gindin thaj save phenen kaj si baro či-xatjaripe maškar godu si problemo pala disadventacia jekh katar akanutni diskriminacia vaj efekto katar dumutani diskriminacia savo intjarel pes. But si interesanto te gindil pes kaj adivesutne pharipa e grupengi pe save sesa kerdine bangipa ande historia si ande relacia kadale bangipenca, o Sowell patjal kaj kava so si phendino but vakarel pala o moralo e manušengo. Vov na phandel (či kerel konekcia) maškar adivesutni socio-ekonomikani pozicia e grupengi ande jekh societato thaj bangipa/na-čačipa save si kerdine pe lende ande historia/dumutani vrama.¹⁷ Našti našel pes katar o fakto kaj ka avel but phares pala afirmative akciake programura te dikhen kauzaciako proksimiteto thaj sode pharipa ka vazden pes opre ande relacia kadalesa.¹⁸ Kava ka avel maj phares ando legalo sistemo savo dikhel po bangipe sar individualo maj but deso kolektivo so kerel maj dur phares te sikavel pes amalipe (konekcia) maškar kerdine bilačhipa ande dumutani vrama thaj akanutni situacia. Maj dur baro pučipe si ko ka kerel deciziji so si lači thaj čači kompenzacia?

Thaj sode dur ande dumutani vrama trubul vareko te džal po drom te vareso arakhel? Sa kadala pučipa sikaven so si problema pala politika savi šaj akharel pes dikhipe ande dumutani vrama.

24. Vadži o Chibundu džangla o fakto kaj e konekcija maškar bangipa ande dumutani vrama thaj adivesutne trubulipa našti aven lokhes kerdine argumentura na mamuj afirmativo akcija vaj mamuj laki džastifikacija. Maj dur dikhimaski džastifikacija-jekh savi vazden opre Afrikane Amerikancura phenel kaj redistributivo xakaj/čačipe na pala dumutani vrama vaj pala pragmatikane trubulipa, ande akanutni vrama thaj aspiracija pala avutni vrama si lačno drom savo šaj avel maj lačno pala xatjaripe afirmative akciako.¹⁹

B. Te sastarel pes/kerel pes socialo/strukturalo diskriminacija

25. Fakto kaj vi akana kerel pes baro dispariteto ando edukacionalo, socialo, ekonomikano sar vi ande aver statusura, sikavel kaj dinipe egalitetosko pala savore anglal o zakono kerel numaj formalo egaliteto numaj naj dosta te phagaven pes čače pharipa ande praksa ando jekh societato savo džal po drom strukturalo diskriminaciako. Godo so trubul te džanel pes si kaj strukturalo diskriminacija intjarel ande peste sa aktivitetura, procerdure, akcie vaj legale paragrafura save si neutrale ande relacija e rasasa, si o manuš murš vaj džuvlji, etnicitetosa, etc., vaj save kontra sikaven pes pe čorrikane grupe bi varesave objektivne džastifikaciasa. Kadi forma e diskriminaciaki šaj kerel pes pe duj droma: jekh šaj gavel pes uže gindosa palal objektivne kriterija pal aver si kana vareko phenel kaj naj naj tut talentura pala godi buti. Vi jekto vi dujto drom si indirekto vaj učhardini diskriminacija. Sar egzemplo kana e manuša save den buti roden te e džuvli avel uči/bari kodo ka kerel problemo e džuvljange andar e Azia, thaj godo šaj avel jekh katar propozicie save naj čače thaj naj objektivno trubulipe pala kodi propozicia. Varekana keren pes vi fizikane vaj ramosaripaske testura vi kana godo či trubul. Tradicionalo koncepto pala na-diskriminaciake principura numaj lel neutralo gindipe, sar egzemplo:

phenel pes kaj de facto egaliteto sikavel numaj kamipa vaj direkto diskriminacija.²⁰

26. Na-amala (oponentura) pušen si kava strukturalo diskriminacija vaj kombinacija/xamipe avere fakturengo. Kana si socialo problemo baro našti žutin ni na-diskriminaciake principura ni afirmative akciake programura po drom te kerel pes integracija čorre grupengi. Sar egzemplo, bari na-egalutni skala pala astaripe lačne kvalitetoski edukaciako šaj ispidel/vazdel opre na-šaipe varesave manušengo, save aven andar čorre grupe te astaren lačno butjako than. Vareasave komplementare intervencije sar, programura mamuj (kontra) čorripe, trubun te keren pes po drom te phagaven pes sociale programura. Atoska (atunči) o them tradel zorasa te kerel pes redistribucia kapaciteturengi pala linipe juristikane thaj aver intervenciengi po drom te vazdel pes opre astaripe (akseso) pala lačni edukacija.
27. Sar gindin kodola save kamen kadi strategija, kava distributivo čačipasko argumento si vi korkore pala peste afirmativo akcija, vaš odi kaj kadale kapacitetura ka keren lačhipa pala varesave grupe kade kaj ka den sekuritato kaj kadi grupa ka astarel egaliteto averenca. Atoska (atunči) e redistribucia si politikano aranžmano savo kerel lačhipa čorre grupenge. Maj dur našti phenel pes kaj vareko kamel te kerel diskriminacija vaš odi kaj si ekonomikane pharipa redistribuciake kapaciteturengi ande relacija e situacija ando societato.

C. Keripe diferencijalno vaj proporcionalno grupake reprezentaciako

28. Na dumut, krtičara pala e rasa ande Amerika thaj aver sikavne manuša kerde aver teoretikani baza pala afirmativo akcija thaj phende kaj akanutno rasako thaj etnikano diverzitetu/averčhandipe ando fremo akademiako vaj butjake thanesko si lačni komponenta pala societato.²¹ Von phende kaj e rasako thaj etnikano diverzitetosko trujalipe kerel refleksia pala maj buxlo societato thaj kerel promocija pala maj lačno thaj maj barvalo komuniteto. “Pozitivo diverzitetu/avrčhandipe” si sar von gindin maj lačni strategija te kerel

pes kompenzaciako čačipe pala rasake thaj etnikane minoriteta, thaj von godolese phenen kaj diverzitetu/avrčhandipe sar jekh racionalo strategija trubul te avel ulavdino katar afirmativo akcia.

29. Termino pala divezitetu sar džastifikacia pala rasako prioriteto ando konteksto maj bare edukaciako maj anglal sasa sikadino ande DeFunis v. Odegaard (416 U.S. 312, 1974).²² Rajo Justice Douglas ramosarda kaj šaj dikhel pes kaj o Maj baro themesko krisi užes phenda kaj si mamuj rasake prioriteta ande relacia juristikane draburenca (remedy) dži kaj si “kulturake standardura averčhande thaj homogene societaso vareso so si maj vasno”. Kava diverzitetu sasa racionalo utilizime ande Regents of the University v. Bakke (483 U.S. 265, 1978). O rajo Justice Powell, kana ramosarda pala majoriteto, phenda kaj e rasa šaj avel utilizime (lel pes) sar jekh katar but faktora kana keren pes maj palune decizija. Areslipe (golo) sasa univerzitetosko interesu pala diverzitetosko/xamime studenturengo organo. Akademikani sloboda či šuvda andre čačipe te alosaren pes studentura pal e diferente studentura šaj anen diferente palutnipe (backgrounds) pala jekh univerzitetu thaj kadi edukaciaki ekspirianca šaj barvarel svakones.²³
30. Australiako Civile Servisosko Reformengo Dokumentu/lil andar 1978-to berš sikada kaj si šerutno areslipe lenge butjako “buti savi si reflektivo nacionalitetoske diverzitetosa”, so šaj xatjarel pes sar proporcionalo reprezentacia jekhe grupaki.²⁴

D. Sociale utilizitetoske argumentura²⁵

31. Kodola save kamen afirmativo akcia butivar vazden opre e faktura pala but sociale golura (areslipa) savenge gasavi politika šaj žutil. Lače kerdini politika pala afirmativo akcia šaj žutil but manušenge te maj lače train (dživdinen).
32. Afirmativo akcia šaj kerel maj lačo servisu pala čorre grupe, kade kaj e profesionalura andar čorre grupe maj lače xatjaren thaj džanen e problemura saven si len. Maj dur, kana e membrura anda čorre grupe astaren e thana (pozicije) katar šaj keren ko-ordinacia o interesu čorre grupengo ka avel maj

lače sikadino thaj brakhime (protektuime). Prezentacia savi šaj užes dikhel pes thaj savi si lači andi relacia butjarimasa, edukacija, šaj del maj lačo efektiviteto.

33. Aver argumento si kaj e afirmativo akcia šaj del čorengi grupege komuniteturengi, šaj sikavel lače modelura savo e manušen andar o komunitetu šaj ispidel opre po lačo drom. Maj dur, so maj but e membrurengi andar čorre grupe len than ande averčhande sociale trujalipa ka mudarel bilače stereotipura save vadži dživdinen/train ande but societatura.
34. Pe aver rig sar vi sajekh si vi kontra argumentura. Paša but teoretikane pučipa, sar te kerel pes definicia pala socialo lačo-dživdipe si vi praktikane pučipa. But manuša phenen kaj gasavi afirmativo akcia anel pesa vi rizikura pala o kvaliteto. Dinipe prioriteturengo e manušenge save naj kade lače kvalifikuime, kerel riziko te palapale vazden pes opre e stereotipura andothan (instead) te astarel pes kontra golo vaš odi kaj, sar egzemplo, xarnjardi eficientia ande industria thaj edukacija šaj ciknjarel e kvalifikaciake standardura.

E. Sociale pharipa

35. Našti bistarel pes kaj afirmative akciake programura intjaren ande peste vi speciale programura pala (vaš) čorre regionura. Kadale programura intjaren ande peste vi gender prioritetoske programura Europake Uniake. Ande India thaj Nigeria kadale programura, sesa but utilizime te keren promovacia pala interesura napravilguime membrurengo e societaso thaj te keren balanso pala internalo na-egaliteto vaš ekonimikani thaj politikani zor, gindosa te oprin sociale problemura.²⁶
36. Po 1960-to berš ande USA sesa varesave ristikane pharipa so but manuša andar kava them či patjarde kaj šaj avel. Kadale opharipa sesa na numaj ande oprune (north) forura vaj vi vaš odi kaj sa akava avilo kana sasa kerdino Civile Čačimasko Lil/Dokumentu thaj kana sasa vazdino opre Alosarimasko xakaj/čačipe ande 1964 thaj 1965-to berš. Maj palal sas oprime te kerel pes varesavi distinkcia ande relacia pala e rasa ande Amerikako societatu thaj kale komunitetoske sasa dindo čačipe (xakaj) te del piro politikano glaso; vaj kava

naj sasa dosta pala but militante kale lidera/šerutne manuša. Sar sasa baro rasistikano maripe ando foro Watts po 1965-to berš, e političara dikhle kaj kava šaj avel but baro problemo pala Amerika thaj ande deciziji te keren akcia areslimasa te kava ačhaven. Liduj prezidentura vi o John Kennedy vi o Lyndon Johnson phende kaj si rasistikane problemura ande Amerika but bare. Po drom te sa akava ačhavel pes kerdine si programura mamuj čorripe sar sasa e prezidentosko Johnson-esko programo savo akharda pes “Maripe mamuj čorripe”, kasko areslipe sasa te phagavel pes thaj te ciknjarel pes butjarimasko problemo maškar kale manuša kade kaj ka keren pes zurale afirmative akciake programura. Sar phenda o prezidento Johnson: “te des šaipe kadale manušenge te keren buti von či ka keren revolucia vaš odi kaj dži kodo momento khonik či dia len šaipe te butjaren. Te kerena buti von či ka čhuden bombe pe tumare khera thaj pe vulica. De len te butjaren thaj či ka avel len vrama te phabaren tumare vurdona.”²⁷

37. O rajo, Sowell phenda kaj patjavipe kaj e distribucia e grupengi perdal sektora e ekonomiake kamen te keren redukcija/te ciknjaren si socialo fikcia thaj thaj či-kamipe. Vov phenel kaj e xistoria del kontra drom thaj kaj gasave politike šaj keren riziko te aven kontraproduktive.²⁸ Gasavo egzemplo šaj arakhel pes ande Malezia.
38. Ando 1969-to berš, sasa klaro ande Malezia, kaj numaj cikne grupe andar barvali elita astarde beneficije/lačhipa katar afirmativo akcia dži kaj e ekonomikani pozicia ande Malezia sasa but bilači. But phare rasistikane problemura sesa kerdine, o parlamento sasa mudardino (kerdini si leski suspenzia) thaj e Malezia sasa ko-ordinirime katar Nacionalo Konzilo dži kaj 1971-to berš. Ande 1971-to berš Amandmanosko Documento andar maj baro zakono nakhlo. Kava sajekh ispida katar legalo publiko debata varesave “senzitive/xatjarimaske” teme, sar e čhib, themutnipe thaj specialo pozicia e manušengi andar e Malezia, kade kaj sikada kadi tema ande artiklura ando maj baro zakono thaj kade kaj kerda amandmanura 1948 tradipe pe agitacia dokumento so maj dur kerda problemura vi ando Parlamento. Sasa baro problemo vi te kerel pes diskusia pala artiklo 153 andar maj

baro zakono (dikh paragrafo 41 tele) thaj afirmative akciake pragafura save si ande relacia e Maleziasa. Sa kadale amandmanura, save vadži utilizin pes katar o krizi, sesa kerdine po drom te “našel pes katar e politizacia savi lia than ande rasistikane pharipa”.²⁹

F. Maj baro efektiviteto socio-ekonomikane sistemsko

39. Varesave manuša save keren buti ande ekonomia phenen kaj phagavipe diskriminaciako mamuj čorre grupe šaj žutil pala efektiviteto thaj pala xakaj socio-ekonomikane sistemski. Buti butjarimaske marketoski šaj avel optimizuime te akanutne pharipa kerdine katar iracionale stereotipura aven sastardine/korektuime.³⁰ Ande Amerika e Afirmativo akcia si promovišime/sikadini sar “lačhipe pala buti (business)” thaj varesave kompanie kerde “egalutno šaipe” “objektivo buti (business)”.³¹ Sar vi sajekh, či trubul te bistarel pes o fakto kaj finansiake lokharipa (beneficije), sar taksengi redukcija, kompenzacia vaj govornonge kontraktura, si butivar dinde e kompanienge vaj institucienge save keren afirmative akciaki politika; vaj, pe aver rig, keren pes sankcie e kompanienge vaj insitucienge save či keren kadale aktivitetura.³²

G. Sar kerel pes nacia

40. Ares svakone neve themesko si te kerel egalutno societato thaj nacionaliteto savo ka del zor pala lengo suvereniteto. But egzampura pala gasave aktivitetura sesa dinde katar e thema save lie te aven inpedante palal lungu vrama telal kolonizacia. Kadale thema sesa pharadine (ulavdine) ando etnikano maripe (konflikto).
41. Ande 1957-to berš, Komisi pala Maj baro themesko zakono dikhla sar si bilači pozicia e Maleziancurengi deso si e Kinezurengi, Indiancurengi save dživdinen ande kava them vaš odi kaj len sasa maj bari ekonomikani zor. Sar o rajo Philips dikhla kava si lači ilustracia e situaciaki kaj si afirmativo akcia utilizime te kerel pes kompenzacia pala buxljaripe deso te utilizil pes sar drabo pala diskriminacia.³³ Maj bare themeski zakoneski komisija

- turvinjisarda (dia sugestia) tekaj si (vaš odi kaj si gasavi situacia) but vasno te džal pes maj dur afirmative akciake aktiviteturenca: “E Maleziancuren šaj avel but problemura ande relacia avere komuniteturenca te von numaj cirden pes. Vaj te kerela pes integracia averčhande (diferente) komuniteturengi ando jekh nacionaliteto, ande savo patjas (and e savo si amen patja) šaj barol vi trubulipe te kadala prioriteta mudaren pes”. Maj bare themseki zakoneski komisija kerda piro modeli pala sugestie pe afirmativo akciake paragrafura Indikane Maj bare themeske zakoneski, save šaj arakhen pes ando artiklo 153 Maleziake Federale Maj bare themeske zakonesko. Kadale paragrafura si ande relacia pala dinipe dromengo pala muklipa vaj licence sar šaj kerel pes kin-bikinipe vaj butja (business) e maleziancure vaj na-maleziancure save bešen ande kava them andar regionura Sabah thaj Sarawak thaj rezervacia pala na-Maleziake manuša pe univerzitetura, škole vaj aver edukaciake institucie.
42. O rajo Philips kerel eksplanacia (sikavel) piro gindipe sostar e na-Maleziancure astarde introdukcia artikloski 153. Godo sasa jekh na-formalo vakaripe (diskusia) maškar trin šerutne politikane partie. “Lidera kadale trine partiengi phangle vorba (vakaripe) kaj e Maleziancure, sar rasa savi si maj purani ande kava them, trubun te dikhen pes sar primus inter pares thaj sar gasave, trubun te astaren te avel len šerutni politikani kontrola. Vaš odi kaj astarde kava šaipe von die sovlji kaj či ka keren na-Maleziancurengi pharipe te keren ekonomikane aktivitetura. Maj dur e Maleziancure die sovlji na-Maleziancurengi kaj ka den len paragrafura ande themutnipaski regulacia savo ka intjarel vi grantu (daro) pala jus soli ande Federacia kana astarela pes independancia (independence).” Sasa phanglino kaj “speciale čačimaske/xakajenge” paragrafura katar artiklo 153 trubun te ačhen po than ande 15 beršeski vrama katar o djes kana astarela pes e korko-šerutnipe (independence). Sar vi sajkeh, kodo so maj dur sasa, specialo rasistikane maripa ande 1969-to berš, trada te ispidel pes pe rig 15 beršengo vramako limito. Artiklo 153 si akana permanento karakteristika maj bare themeske zakonesko (Constitution).
43. Nigeriako maj baro themesko zakono andar 1979-to berš kerel obligacia te aktivo del pes zor pala nacionalo integracia katar maj but deso 100 averčhande (diferente) etnikane grupengo. Po drom te kerel pes sekuriteto kaj varesave grupe či ka aven dominante ande relacia avere grupenca e kvotako sistemo del šaipe te ulaven pes manuša save keren buti ande governmento kade te manuša andar 21 republika andar federacia šaj astaren than gothe. Sar misal (egzemplo), o Kabineto, musaj te avel kerdino katar manuša save, svako lendar, trubun te aven andar averšhande/diferente republike thaj kade trubul te avel vi ande armia. Kadale 21 republike či korespondirin e averčhande etnikane grupenca, sar o ares sasa te etnikano lojaliteto pharuvel pes regionale lojaliteta thaj politikano lojaliteto bazirime pe lokalo/thanutni zorako jekhipa.³⁴
44. Katar e vrama sar sesa historikane politikane alosaripa po 1994-to berš, Governmento Telune (South) Afrikako lia te marel pes but bare problemurenca. Sar phenel o rajo Andrews, “Nevo telune Afrikako Governmento dikhla kaj euforia/bari baxt politikane transformaciao šaj rumul ekonomikano status quo savo naj sasa nevljardino. Politikane čačipa/xakaja keren lači ekonomia pala maj baro numbri e populaciako savo kamla te e nevi demokratia trail. Sar palutno šudro maripasko politikano čačipe (realiteto) pokinda pala svako socialistikani aspiracia, numaj varesave limitirime opcie sesa reale te (keren pes) realizuin pes. Jekh katar gasave opcie sasa vi afirmativo akcia.”³⁵ Afirmativo akcia ande Teluni Afrika sasa kerdini (utilizime) averčhande deso ande aver societatura, vaš odi (godolese) kaj ande Afrika afirmativo akcia sasa dikhindi sar mehanizmo te sasatrel pes e situacia e minoriteturenca. Sar akava te kerel pes (utilizil pes) atunči/atoska ande relacia e minoriteturenca?³⁶
45. O apartheid pala peste mukla but bilačhipa so kerda te e akumulacia pala manuškano kapitali, ande Teluni Afrika, avel lačo šaipe (prekondicia) pala lačo ekonomikano barvalipe so sasa maj anglal ispidino (tradino) pe rig. Vaš odi socialo ekonomikane čačipa/xakaja či trubun te aven ignorišime/čhudine pe rig ande nevo Maj Baro Themesko Zakono thaj trubun te aven šerutno kotor e čačipengo/xakajengo.

Andar kava šaj dikhel pes kaj si e afirmativo akcia dikhindi sar transformaciako aktiviteto. Vi kaj si ande zakonura sikadino maripe mamuj (kontra) rasizmo, ande sekcia 9 trubulipe pala afirmativo akcia sar vasio elemento po drom te kerel pes politikani thaj ekonomikani rekonstrukcia e societatosko si pindžardino. Vi ande konstitucionale direktive vi ande Rekonstrukcia thaj Buxljarimasko programo (RDP), afirmativo akcia si integralo kotor transformaciake projektosko, vi ande relacia pala politikano status quo vi ande relacia pala socio-ekonomikano buxljaripe. Rekonstrukciako thaj Buxljarimaske programosko (RDP) areslipe si te kerel transformacia pala ekonomia thaj societato.³⁷

IV. Afirmative Akciake Forme

46. Maj baro problemo afirmative akciako ka avel transformacia opre sikadine areslipengo/golurengo ande legale fremura. Afirmativo akcia si butivar globalo dikhindi pal afirmative akciake aktivitetura si uniforme. E studie save kerde e raja Hodges-Aeberhard thaj Raskin sikaven kaj ando čačipe e metode savenca kadale areslipa si kerdine šaj pharun pes: respekto pala afirmativo akciaki legislacia šaj sikavel pes implementaciasa e politikengo save si buxljardine te džan po jekh drom e kontekstosa.³⁸ Varesave forme afirmative akciake kaj aven maj lače pala promocia e egalitetoski deso aver, thaj kava si ande relacia pala konteksto thaj politikani voja savi si kerdini. Sar si sikadino ande preliminaro (maj angluno) raporto afirmative akciake aktivitetura trubun te aven ande relacia principonencia pala na-diskriminacia.

1. Afirmativo mobilizacia

47. Maškar afirmativo regrutacia, target grupenge (targeted groups) del pes zor te kerel aplikacia pala sociale lačhipa, sar buti vaj than ande edukaciake institucie.³⁹ Gasavi situacia šaj avel kana keren pes publike akharipa (announcements) vaj perdal aver regrutaciake aktivitetura, kaj džanel pes kaj von astarde čačes e target grupe. Jekh egzemplo šaj avel

keripe butjarimaske treningoske programurengo pala e manuša save si andar minoriturenge grupe thaj kade te del pes lenge šaipe te astaren lače butjarimaske thana. Kodo so si čačipe, so si realo si kaj egaliteto (jekh-sar-averipe) našti kerel pes te e diskriminaciake efektura lie šaipe katar gasave manuša te astaren džanglipa thaj treningura savenca šaj aven konkurencia e manušenge save si majoriteto.⁴⁰ Afirmativo regrutacia šaj maškar juristikane intervencie sar butjarimasko treningo, dinipe zorake programura vaj aver treningura, del šaipe e manušenge save si andar minoriturenge grupe te astaren varesavi buti. Šaj keren pes vi aktivitetura save vazden opre džanglimasko gindo maškar džene (membrura) varesave grupengo (disadvantaged groups) te džanen sar save šaipe si len po drom te avel lenge dindio kher vaj sociale lačhipa (beneficie).

2. Afirmativo pakiv (fairness)

48. Afirmativo pakiv trubul te xatjarel pes sar jekh rodipe savo trubul te sikavel kaj e manuša andar target grupa si dikhinde sar vi aver manuša save trubun te astaren socialo žutipe, sociale lačhipa, disnipe ande edukaciake institucie, astaripe butjarimaske thanesko vaj promocia. Ares kadale procesosko si te dikhel pes si vaj naj o rasizmo thaj seksizmo faktori ando evaluaciako proceso? Kava šaj džanel pes thaj dikhel kerimasa lače thaj efektive rovimaske lilesa(grievance) po drom te sikavel pes e diskriminacia, te palpale keren pes procedure te duj var dikhen pes personale akcie thaj te dikhel pes e praksa po drom te phagavel pes na kamipaski (na intencionalo) diskriminaciaki praksa. Sa kava kerel pes areslimasa te si e kriteria save si utilizime pala linipe vaj promocia lače thaj ande relacia e butjasa vaj si sa akava utilizime numaj sar maska pala rasaki vaj gender diskriminacia. Kana dikhel pes sar si e manuša promovišime, keripe e decizjako trubul te avel lači, so maj dur trubul te xatjarel pes kaj von trubun te dikhen pes pe baza lenge individuale telenaturengi pal na pe baza lenge naciaki.

49. Afirmativo mobilizacia thaj afirmativo pakiv roden te keren pes aktivitetura thaj kade te

phagaven pes sociale problemura ande target gupe, vaj kadale aktivitetura či keren diskriminacia mamuj manuša save naj membrura kodole grupaki. Kadale aktivitetura šaj xatjaren pes po sasto societato thaj varekana či džanen kas ka astaren, numaj kana si pučipe pala motivacia kadale aktiviturengi vaj lenge strategiake planirimasko vaj kana si pučipe pala o monitoringo e strategia si ande relacia e rasasa. Vaš odi, maškar aver, afirmativo regrutacia thaj afirmativo pakiv si lače akceptime.

3. Afirmativo prioriteto/preferanca

50. Afirmativo prioriteto si kana varesavo manuš vaš odi kaj si andar aver rasa maj anglal šaj astarel sociale lačhipa. Afirmative prioritetoske aktivitetura šaj xatjaren pes sar duj butja.
51. Jekto, kana duj egalutno kvalifikuime manuša pala varesavi buti kamen te astaren butjako than, promocia, granto/daro, etc., prioriteto ka del pes manušeske andar sikadini(somnisardi) grupa so si lačhipe thaj kvaliteto afirmative akciake aktiviturengo.
52. Dujto, von šaj keren vi maj bare thaj radikale aktivitetura.⁴¹ Šaj kerel pes forma pala nadinipe dženege (membrurenge) save naj andar specifiko grupa/target group te keren aplikacia pala varesavo šaipe. Membrura katar kadale specifike grupe (target groups) šaj astaren maj bare prioritatura pe kompetitive egzamura save akharen pes “race-norming”. Teluno standardo šaj len sar prioriteto kana kerel pes evaluacia lenge aplikaciengo pala univerzitetura vaj pala astaripe butjarimaske thanesko. Na-formale procentura, golura, kvote vaj rezervacie šaj len pes sar prioriteto kana astaren pes sociale lačhipa/ social goods save opre sikadine grupe trubun te astaren.⁴²
53. Afirmative preference si maj kontraverzalo forma afirmative akciako. Kodola save si mamuj gasave formako phenen kaj e konsekvence gasave afirmative akciako si peripe profesionale standardurengo thaj kava butivar maj dur kerel stigmatizacia. Kava sikavel juristikane drabura pala e grupa, sar maj lačo drom te zurarel pes e situacia ande relacia target (kamade) grupasa. Kadi grupa vazdel opre rezistencia savi si buxljardini. Dinipe beneficiengo lokhes vazdel opre inke jekhvar

o problemo savo dživdinel, specio ande liberale demokratikane partije, pala individuale versus grupake čačipa/xakaja.⁴³

54. Sar o rajo Glazer phenel, “te sasto koncepto legale čačipengo/xakajengo sasa buxljardino te žutile manušese, sar te das čačipe (xakaj) pala grupa? Thaj te das čačipe pala e grupa – šaj te phenas, kvota savi dikhel/kerel determinacia sode butja trubun te keren e manuša andar e grupe-amen thas/šivas e manušen andar aver grupe ande bilači pozicia vaš odi kaj či šivas len ande kodi diskriminišime grupa so či trubul te avel ande relacia e grupake karakteristikenca?”⁴⁴ Vov vi patjal kaj gasavi afirmativo akcia šaj sajekh pharavel pe duj riga e nacia pe baza grupake džanutnipasko (membership) thaj identifikaciako. Te kerel čingar/konfrontacia formalo aranžmano individuale čačipaske režimosa kade kaj ka šuvel juristikane drabura ande grupaki kategoria atoska ka phagavel pes individualo egaliteto.
55. But manuša dikhen kaj gasavo tipo afirmative akciako kerel diskriminacia vaš odi kaj dikhel pe manuša sar džene (membrura) andar e grupa vaj kategorie bi dikhimasko pe lenge individuale kvalitetura.⁴⁵ Vi kaj e manuša pheren e kriteria von kava či ka keren pal godo si lengi obligacia. Diskriminacia kerel pes perdal dinipe sociale lačhipengo, thaj, kava trubul te xatjarel pes sar kaj varesave dženege/membrurenge andar aver grupe či den pes sociale lačhipa save si akana limitirime. Gasavi afirmativo akcia kerel but pharipa specifike individualcurenge. Gasavi afirmativo akcia kerel dukh pala džene (membrura) e grupaki A, po drom te promovišil socialo žutipe e dženege andar e grupa B.
56. Godo kerel problemo ande relacia manušikane čašimaske zakonosa, (a) vaš odi kaj gasave doša maj but keren pes ande dživdimaske aktivitetura sar si o sastipe, butjaripe, politikani participacia (lethanipe) save si oprime speciale artiklurenca ande maškarthemutne krisura ande relacia manušikane čačimasa (b) vaš odi kaj e kriteria pala tradipe pe doš (baza pala klasifikacia e manušengi sar A vaj B) džan but pe baza thaj oprime si telal na-diskriminaciake paragrafura. Vaš odi ka avel but phares te šuven pes po jekh drom kamipa pala legalo strategia save si senzitive

- pe problemura jekhe grupake e kontradiktore kamipenca individuale čačipaski.
57. Ando 1997-to berš Raporto pala Saste Lumaki Socialo Situacia, phendino si kaj e governura trubun te traden/keren presia te keren pes kvote vaj aver phare prioritetura bi keripasko konsensusosko pala thanutne/civilura save xasarde pire čačipa te aven averenca telal egalutne kondicie. Bi konsensusosko e kvote šaj keren bare problemura. O raporto bangarel e governuren vaš odi kaj arakhle phare prioritetura save si atraktive thaj gasave von či roden te vazden pes opre e takse vaj dinipe bare lovengo. Maj lokhes si te keren pes e kvote, pala godu te phagaven pes e problemura save inkljen avri sar o de fakto na-egaliteto maškar grupe, khetane e diskriminaciasa, čorripasa, bilače edukaciasa, geografikane phanglipasa, perdal redistribucia e lovengi (income).⁴⁶
58. Varesave elementura pala averčhandipe/diferenca ando tretmano si pindžardine ando maškarthemutno zakono thaj lenge si dindo baro than. Gasavo than si dindo pala šaj avutni diskriminacia ande relacia rasasa, dal si o manuš murš vaj džuvlji, vaj religia.⁴⁷
59. Kade o krisari Tanaka phenda ande Afrikake kazura: “Amen gindis kaj e norma pala na-diskriminacia vaj na-ulavipe/separacia pe baza e rasaki sa maj but si praksa ande maškarthemutno zakono.”⁴⁸ Ande piro gindipe andar 1971-to berš pala Namibiako kazo, Maškar themutno čačimasko krisi: “Keripe thaj tradipe te keren pes diferencie, cirdipa, restrikcija thaj limitura save si bazirime pe rasa, kolori, nacionalo vaj etnikani bučim (origin) so kerel te našel pes katar fundamentale manuškane čačipa si bari violencia e principonengi andar o Čarteri.”⁴⁹
60. Po egalutno/jekhsaraver drom, Europaki Komisia pala Manušikane Čačipa/Xakaja arakhla Stungo Lumake Rigake Afrikane Aziancuren mamuj Anglia: “E Komisia serol kaj, sar si generalo pindžardino, si but vasno te lel pes sama pe diskriminacia savi kerel pes vaš odi kaj varesavo manuš si aver rasa deso aver; te šuvel pes pe rig grupa e manušengi vaš averčhando tretmano pe baza e rasaki šaj kerel degradacia e tretmanoski kana averčhandmo tretmano pe varesavi aver baza šaj vazdel opre gasavo pučipe.”⁵⁰
61. Ande relacia kadalesa našti bistarel pes pe Šrutne Amerikake Krisesko Zakono vaš kazo.⁵¹ Vaš odi kaj si varesave legale či-xatjharipa save pharaven afirmativo akcia sar vi čingar maškar afirmativo akciaki politika thaj Maj Bare zakoneske paragrafura save astaren jekh korri(bi-jakhengi) strategija Maj Baro Themesko Krisi buxljarda nevo zakono pala kazo. O kazo Plessy mamuj Ferguson trada te kerel pes kava nevo drom(163 U.S. 537), vaš odi kaj ando 1896-to berš, Maj Baro Themesko krisi vazda opre jekh nevo sitjipe/doktrina. Kava sasa reakcia pala kazo Brown mamuj. Bordo pala Edukacia (374 U.S. 483) trujal 60 berš maj palal kana ande 1954-to berš, Maj Baro Themesko Krisi kerda deciziji kaj e avrčhande(diferente) škole keren te varesave studentura xatjaren pes maj bilače deso aver(kerda pe inferioriteto). Ando 1944-to berš Maj Baro Themesko Krisi kerda deciziji ando kazo Korematsu mamuj Amerika te sa legale restrikcije save phagaven legale čačipa varesave grupako trubun te činen pes thaj te krisin pes.
62. Ande 1974-to berš, Maj Baro Themesko Krisi trubusarda te kerel maj angluno drom afirmative akciake aktivitetura ande relacia vaš muklipe po univerzitetu ando kazo De-Funis mamuj Odegaard (416 U.S. 312). Sar vi sajkeh, o parno studento naj sasa muklino po univezitetu vaj sar sasa les numaj duj trin kurke te agoril pire studie o kazo naj sasa kerdino dži ko agor. Ando 1978-to berš xakaj sasa bares ulavdino ando kazo, Regentura Kaliforniake Univerzitetoski mamuj Bakke (438 U.S. 265): glasonenca pandž mamuj štar (5:4) kerdino si deciziji te vi kana kerel pes Afirmativo Akciako programo trubul te lel pes sama thaj lače te dikhel pes po drom te na kerel pes varesavi doš. E argumentura kerdine pala afirmative akciake programura trubun te dikhen pes kade te džanel pes kaj sa so kerel pes, kerel pes po drom te astaren pes bare testura.
63. Ande berša save maj palal avile o Majbaro Themesko Krisi kerda decizija pala but kazura kaj sasa lindi (akceptuime) e afirmativo akcia. Sar egzemplo: Steelworkers mamuj. Weber (443 U.S. 193 (1979)); Fullilove mamuj. Klutznick (448 U.S. 448 (1980-to berš)); Manuša

- save keren buti sastresa/metalosa mamuj EEOC (478 U.S. 421 (1986-to berš)); Amerika mamuj. Paradise (480 U.S. 149 (1987)); Johnson mamuj Santa Clara County (480 U.S. 1442 (1987)); Metro Broadcasting Inc. mamuj FCC (497 U.S. 547 (1990-to berš)).
64. Ande relacia pala manuša save keren buti avsinesa (steel), Maj baro Themesko Krisi astarda afirmative akciako programo savo kamla te kerel treningura pala butjarne save si Afrikane Amerikancura, vaš odi kaj o programo kerde manuša saven si private fabrike. O areslipe sasa te opre sikadine manuša (Afrikane Amerikancura) aven trenirime te astren butjake kategorie save sesa sajekh diskriminišime thaj ande save kerde buti numaj parne manuša. Ande kazura Avsinerske Butjarne, Paradise thaj Johnson, sa trin afirmative akciake programura sesa akceptuime/astardine, vaš odi kaj von sesa kerdine te sastaren kamadi (intentional) diskriminacia savi sasa kerdini ande angluni vrama mamuj Afrikake Amerikani populacia katar New York sindikato avsinarengo (butjarne save keren buti avsinesa), e policia andar Alabama thaj mamuj džuvlja ande “skilled craft” butjaki kategoria ande santa Klara regiono.
65. Aver programura afirmative akciako sesa phagardine katar Maj baro Themesko Krisi, sar ande: Firefighters mamuj Stotts, (467 U.S. 561 (1984-to berš)); Wygant mamuj Jackson Edukaciako Bordo, (476 U.S. 267 (1986-to berš)); Foro Richmond mamuj Croson (488 U.S. 469 (1989-to berš)).
66. E kazura Firefighters thaj Wygant liduj ande relacia tradipasa katar butjako than parne butjarnengo saven si maj šerutno butjako than deso Afrikane Amerikane Koleguren/amalen, po drom te kerel pes butjako than pala džuvlja thaj minoriteta. Kadale afirmative akciake aktivitetura či nakhle dikhimasko testo. Ando kazo Croson, afirmativo akcia kerda te 30 procentura foroske kontraktorengo aven phangline pe rig katar minoriteta engo biznisura. O maj baro krisi gindisarda kaj kava naj sasa maj lačo drom te phagavel pes rasistikani diskriminacia savi sasa kerdini ande palutni vrama.
67. Po 1995-to berš, Maj Baro Themesko Krisi kerda jekh vasno deciziji ando kazo Adarand Constructors mamuj Pena (115 St.Ct. 2097).
- Ande kava kazo lie than e Adarand Constructors Compania, savi xasarda kontrakto e kompaniasa save intjarde Hispancura. E Adarand Kompania sasa maj teluni rig ande kava bizniso vaj godo naj sasa pharipe pala maj baro krisi te krisil mamuj kadi kompania vaš odi kaj o federalo statuto užes phenel kaj 10 procentura publikane butjake kontraktorengo musaj te aven kerdine pe rig katar minoriteta. O rajo Justice O’Connor užes phenda kaj e afirmative akciake planura kerdine katar Federalo Governo musaj te nakhen dikhimasko testo. Sa planura save keren pes musaj te aven kade kerdine te astaren kodo so o zakono rodel. Ande relacia e zakonosa/xakajesa, kriseske decizija kerdine ande palutni vrama kerde trin propozicie ande relacia programurenca pala e rase: (i) skepticizmo: prioriteta bazirime pe rasake thaj etnikane kriteria musaj te šuven pes po egzamo (te kerel pes lengo rodipe); (ii) konzistencia: standardo pala redikhipe (review) či trubul te avel ande relacia manušenge rasasa vi kana o plano kerel lenge lačhipe vi kana o plano kerel lenge bilačhipe; (iii) kongruencia: jekh-sar-avere opripaske/protekciake analize trubun te aven egalutne vi kana ande gasave analize lia than o them vaj o governo.⁵²
68. Ande kazura Abdulaziz, Cabales thaj Balkandali, Europako Krisi kerda deciziji: “šaj phenel pes kaj si o anglunipe/progreso ande relacia egaliteta maškar murša thaj džuvlja jekh katar šerutne areslipe ande thema save si membrura Europake Konziloski. Kava trubul te xatjarel pes kaj numaj ande but speciale kazura šaj averšhande dikhel pes pe džuvlja ande relacia e muršenca thaj kava dikhipe te avel lačo pala e Konvencia”.⁵³ Trubul te džanel pes kaj varekana vi kadale speciale kazura naj dosta po drom te sikaven kaj e džuvljenmgi diskriminacia trubusarda te kerel pes.⁵⁴
69. But si vasno te phenel pes kaj ande kadale kazoske zakonura, Amerikako Maj baro Krisi rodel maj cikne standardura ande relacia afirmative akciase vaš odi kaj kamel te ciknjarel diskriminacia maškar džuvlja thaj murša. E Governo sasa šaipe te kerel diskriminacia ande relacia e sexosa (murša thaj džuvlja) te sesa varesave vasne areslipe te kava kerel pes

thaj vov (governmento) kadala areslipa kamla vi te astarel. Sasa klaro kaj “vasno/important” šaj avel vareso so si maj cikno katar “tradipe te kerel pes vareso” thaj kadale aktivitetura či trubusarde te aven kade zurale sar si rodindo ando dikhimasko testo (scrutiny test).

70. Europake Komunitetosko (EC) zakono, sar vi sajekh, but kerel buti po drom te phagavel gender diskriminacia (diskriminacia maškar murša thaj džuvlja). Keripe butjaki kaski ares si te kerel jekh-sar-averipe (egaliteto) maškar murša thaj džuvlja si fundamentalo čačipe/xakaj. Europake Komunitetosko zakono pindžarda (dikhla) kaj si astaripe šaipasko pala egaliteto maškar murša thaj džuvlja but vasno po drom te užes mudarel pes diskriminacia thaj kaj e afirmativo akcia šaj avel lači vi kana sar rezultato kerel prioritetosko tretmano pala bibaxtale, phare dživdimaske (disadvantaged) grupe.⁵⁵ Sar vi sajekh, deciziji sar te kerel pes nacionalo afirmativo akcia thaj pe savo drom trubul te džal si kerdino katar Križi pala čačipe/xakaj.⁵⁶

71. Ando kazo Kalanke mamuj Freie Hansestadt Bremen, o križi vadži jekhvar phenda kaj artiklo 2 (4) Egalutne Tretmanoske Direktivako mukel te keren pes aktivitetura save, vi kaj si diskriminatore po starto, si kerdine te phagaven vaj ciknjaren akanutne na-egalitetura save dživdinen ande čačo socialo dživdipe, thaj vaš odi vazden opre džuvljengo žaipe te keren kompeticia e muršenca po butjarimasko/labour marketo thaj te keren piri karijera/butjarimasko trajo po eglutno levelo e muršenca.⁵⁷ Sar si derogacia katar korko (individuale) čačipa šuvdine (thodine) ande Direktiva, kadale paragrafura musaj te aven užes xatjardine: vaš odi šaj avel kaj našti xatjarel pes sar pindžaripe nationale principonengo save den garancia džuvljenge te avel len prioriteto pala promocija, vaš odi kaj kadale aktivitetura džan avral katar tradipe pe egalutne šaipa thaj nakhen e granica (limito) artiklosko 2 (4). O foro Bremen kerda buti e paragrafurenca po drom te arkhel duj kandidatura pala butjako than saven si egalutne kvalifikacie, thaj dia pes prioriteto e džuvljikane kandidatoske kana naj sasa but kandidatura save sesa džuvlja. Ande dumutani vrama cikni-reprezentacia e džuvljengi naj sasa lače definišime (sasa bilače xatjar-

dini). E paragrafura naj sesa kompatibile (po jekh drom) Europake Komisijske zakonosa pal o Križi sasa užo/klaro ande Kalanke kazo thaj phenda kaj pozitivno akcia šaj avel kerdini (utilizime) te vazdel opre šaipa pala džuvlja, te keren pes sistematikane efektura, vaj kava našti kerel pes (utilizil pes) te astaren pes egalitetura kade kaj ka anen pes po levelo te keren pes sigo thaj te na keren efekto pe lungo vrama.

72. Ando kazo Marshall mamuj phuv Nordrhein-Westfalen, o Čačimasko Križi nevljarda kava kazosko zakono.⁵⁸ Kerdino si deciziji savo sikada, te si maj cerra džuvlja deso murša save si po egalutno levelo te astaren varesavo butjarimasko than ka del pes maj baro šaipe e džuvljenge te naj varesavo specialo trubulipe savo šaj del numaj o muršikano kandidato. Ande Egalutne Tretmanoski Direktiva užes si ramosardino kaj: (a) ande svako individualo kazo obligacie save trubul te astarel jekh muršikano kandidato den garancia kaj e kandidatura pala astaripe butjarimaske thanesko ka analiziril pes patjivales (objektivo), kaj ka lel pes sama pe kriterija save trubul te astarel o kandidato thaj kaj ka phagaven pes e prioritatura ande relacia džuvljikane kandidaturenca, ande kazura kana jekh vaj maj but kriterija phagaven o balanso po muršikane kandidatosko lačipe; thaj (b) gasave kriterija či trubun te xatjaren pes sar diskriminacia mamuj džuvljikane kandidatura. Šaj phenel pes kaj o Öffnungsklausel, savo či del ande jekhvar prioriteto džuvljikane kandidaturenge thaj savo bistarel pe prioritatura kana si “lačo muršikano kandidato savo pherel varesave kondicie save si but vasne”, kerda nevipe ande Kalanke.⁵⁹

73. Sar god te avel varesavo kazo, klaro (užo) si katar maškar-themutno thaj nacionalo kazosko zakono kaj relacia maškar afirmativo akcia thaj na-diskriminacijske principura si but sani. Fakto kaj varesavi kategoria e populacijski astarel bilačhipa vaš odi kaj naj len privilegia ande relacia ekonomikane thaj sociale kondicienca či trubul te xatjarel pes, po drom te lačharen pes lenge materiale problemura (pharipa), kaj svako distinkcia bazirime pe karakteristike save keren definicia e grupaki trubun te aven legitime. Šaj avel mamuj xakaj/čačipe te keren pes afirmative

akciake aktivitetura pe manuša save gasave aktivitetura či trubun vaj utilizin e pozicia kaj sesa membro (dženo) e grupako savi si ande bilači pozicia, thaj te astaren o than varesave manuško kaske gasave aktivitetura čačes trubun pal vov sasa membro e grupako savi ande dumutani vrama sasa ande bilači pozicia ando societato.

74. Afirmativo akcia trubul te kerel aktivitetura save šaj džan po jekh drom e trubulpanca manušengi save si džene e grupaki kaske trubul specialo brakhipe/protekcija. Kana alosaren pes e aktivitetura thaj kana alosarel pes lači vrama thaj momento te kadala aktivitetura keren pes vi o them atoska šaj del beneficije pala kodi grupa thaj pe averig te na bistarel te maj dur te žutil pes e manušenge save naj mabrura opre sikadine grupako. Varekana katar varesave manuša šaj avel čordino lengo čačiipe sar o čačiipe pala egalutno brakhipe e zakonesko, jerti-masa kaj kava šaj žutil e grupenge save sesa maj anglal diskriminišime.
75. Afirmativo akciake politike šaj keren pes numaj kana či phagaven principura pala na-diskriminacia. Kana kerel pes diferencija trubul te lel pes sama sar si kadi diferencija kerdini po drom te dikhel pes kerel voj(e diferencija savi si kerdini) diskriminacia vaj na. Sar vi sajekh, naj e baza vareso so si decizivo vaj e konekcija (phanglipe) maškar baza thaj čačiipe ande savi si diferencija kerdini si vasno. Trubul te avel lači konekcija maškar baza thaj o čačiipe. E baza trubul te avel analizirime pala specifike čačiipa pe save si kerdine e diferencie. O areslipe savo trubusarda te astrel pes naj decizivo. Trubul te kerel pes jekh juristikano rodipe (analiza) po drom te dikhel pes si e diferencija savi si kerdini vareso so vazdel statuso e manuško opre vaj si godo numaj politikano aktivitetu. E afirmativo akcia savi kamel te kerel sasto egaliteto naj sajekh legitimo. Afirmativo akcia či trubul te xatjarel pes sar muklipe te kerel pes diferencija maškar manuša vaj grupe vaš odi kaj si areslipe e diferencijako te sastarel thaj te vazdel opre statuso bilače-dživdimaske grupengo vaj manušengo. Vi kana kerel pes afirmativo akcia či troman te bistaren pes na-diskriminaciake principura. Butivar principura pala na-diskriminacia keren granice/limitura pala svako afirmativo akcia.

4. Si afirmativo akcia vareso so musaj te kerel pes/obligativo?

76. Varesave maškarthemutne sitjuvipa (doktrine) phenen kaj, kana jekh them kerel ratifikacia manuškane čačimaske konvencijako, vov lel pe peste obligacia te teljarel lače aktivitetura kasko areslipe si te kerel “sasti realizacia” e čačipengi save si sikadine ande konvencija, sar si godo kazo e maškarthemutne Konvenciasa Pala Phagavipe Svakone Formako Rasis-tikane Diskriminacijako thaj e Konvenciasa Pala Phagavipe Svakone Formako e Diskriminacijako Mamuj Džuvlja.⁶⁰
77. Manušikane Čačimasko Komiteto trada avri but vakaripa ando generalo Komentari gindosa sode trubul o governo te kerel pozitivu akcia.⁶¹ Butivar si phendino kaj kava našti avel kerdino kade kaj ka kerel pes o zakonu thaj pučinde si e thema save somnissarde konvencija te den informacie ande pire raportura ande relacia e aktiviteturenca save von kerde vaj ka keren te den efekto thaj te keren pes e obligacia save si ramosardine/lekhardine ando artiklo 3 maškarthemutne Konvencijako Pala Civile Thaj Politikane Čačiipa.⁶²
78. O Komiteto pala Phagavipe Diskriminacijako mamuj Džuvlja thaj o Komiteto pala Ekonomikane, Sociale thaj Kulturake Čačiipa lie (kerde adoptacia) e turvinjipa (rekomodacie) save sikaven lengo gindipe kaj e Konvencie traden po lačhio drom e themen te keren aktivitetura pala egaliteto.⁶³ But si phares (ekstremo) te phenel pes kaj o maškarthemutno zakonu tradel pe afirmativo akcia. So vov šaj sikavel/promovišil si šaipe pala keripe afirmative akciako te astarel pes de facto egaliteto.
79. Komiteto pala Phagavipe Diskriminacijako mamuj Džuvlja palpale sikada sode si vasne šaipe ande Generalo Turvinjipe/Rekomodacia No. 5:
 “ ... Si vadži (inke) trubulipe pala aktivitetura save trubun te keren pes po drom te kerel pes implementacia e konvencijaki kade kaj ka sikaven pes e aktivitetura save keren promocija de facto egalitetosko maškar murša thaj džuvlja ... Turvinjil te e Thema save somnissarde konvencija keren maj but speciale aktivitetura sar pozitivu akcia, prioritetoske tretmanura vaj kvotake sistemura (quota systems) thaj kade te traden opre

džuvljengi integracia ande edukacia, ekonomia, politika thaj butjaripe.”⁶⁴

80. Manušikane Čačimasko Komiteto xatjarda Maškarthemutni Konvencia pala Civile thaj Politikake Čačipa sar keripe programurengo andar afirmativo akcia kana si varesave speciale situacie save roden te gasave programura keren pes. Ando generalo Komentari pala na-diskriminacia o Komiteto phenel kaj: “... egalitetoske principura varekana roden katar e thema te keren afirmativo akcia po drom te ciknjaren vaj phagaven šaipa save keren vaj žutin te džal maj dur diskriminacia savi si oprime katar Konvencia. Sar egzemplo, ande Thema kaj si e generale šaipa (kondicie) varesave populaciake ciknjardine pala utilizacia (linipe) manuškane čačimasko, o Them trubul te kerel aktivitetura te sastarel kadale kondicie. Gasave aktivitetura šaj intjaren ande peste dinipe, po jekh vramako periodo, kodole populaciaki prioritetoske tretmanurengo ande speciale situacie”.⁶⁵
81. O Komiteto pala Ekonomikane, Sociale thaj Kulturake čačipa vazda opre but pučipa ande relacia afirmative akciassa, maj but pučipa pala manuša saven si fizikane pharipa (physical disabilities) thaj pala etnikane vaj rasake minoritetura. Sar si godo sajekh naj inke(vadži) užes pindžardini obligatoro natura afirmative akciako.⁶⁶
82. Varesave sikavne manuša vadži (inke) vakaren kaj e thema musaj (trubun) te keren afirmativo akcia po drom te keren lačhipa thaj te vazden opre standardo bilače-dživdimaske grupengo.⁶⁷ Von keren baza pala piro vakaripe ande teoria “effet utile”. E čačipenge/xakajenge, save si intjardine ande manuškane čačimaske kontraktura, trubul te del pes lačo thaj sasto efekto, thaj ande varesave kazura afirmativo akcia si majlačho drom te kava kerel pes.⁶⁸ Kadale sikavne manuša bazirin pire vakaripa vi pe kazoske zakonura save buxljarda o Europako krisi Pala Manušikane Čačipa, savo arakhla kaj ande varesave situacie čikeripe (pasiviteto) savo kerel o them naj dosta vaj si pozitive obligacie save si lekhardine/ramosardine ande Konvencia. Šaj dikhel pes kaj o Marckx kazo, maj but del lenge zor te patjan kaj pozitive Themeske akcie thaj ande

varesave kazura afirmativo akcia, musaj te rodel pes katar o them po drom te keren pes e obligacie save o them musaj te kerel sar vi te atarel pes o egaliteto.⁶⁹

5. Egaliteto e šaipengo mamuj egaliteto e rezultaturengo

83. Šaj dikhel pes kaj si šerutno areslipe afirmative akciako te kerel egalutno societato. Sar vi sajekh, si but averčhande dikhipa thaj gindipa so si godo egaliteto. Šaj phenas kaj našti kerel pes užu definicia so si godo egaliteto thaj butivar godo si na-determinišime kategorija savi kerel pes katar e manuša save keren egalitetoski politika.
84. Duj idealura save si but vasne pala afirmativo akcia si egaliteto e šaipengo thaj egaliteto e rezultaturengo. Savo idealo ka avel alosardino ka sikavel savo afirmative akciako programo kamel te kerel pes thaj sarsavo socialo pakiv/čačipe trubul te implementuil pes.⁷⁰
85. Egaliteto e šaipengo šaj kerel pes numaj gindosa kaj si areslipe anti-diskriminaciake zakonosko te del zor thaj kade te ciknjarel pes diskriminacia. E diskriminacia, maj dur, trubul te phagavel pes katar keripaske-decijzenge procesura save keren pes ande relacia rasasa, dal si o manuš muš vaj džuvli vaj etnicitetosa so dukhavel e manušen. Kava naj ande relacia e rezultaturenca vaj šaj sikavel kaj o proceso džal po bilačo drom. Efgaliteto e šaipengo avel katar slobodo vizia e societatoski.
86. Kava gindipe pala egaliteto butivar šaj realizuil pes (kerel pes). Sar misal (egzemplo) ande jekh butjarimasko konteksto, kava šaj xatjarel pes sar kaj e individualcura (manuša) šaj keren aplikacia te astaren vareasavi buti pal ka alosaren pes numaj ande relacia godolesa sode džanen thaj sode si lače te keren vareasavi buti Rasa, dal si o manuš muš vaj duvli, etnikane karakteristike naj vasne pala godo sar o manuš savo kamel te astarel buti ka avel dikhindo (tretirime). Kadale manuša trubun te aven alosardine bi gindosko pe rasa, dal si o manuš muš vaj džuvli, etnikano palutnipe (background), etc. Egaliteto e šaipengo sikavel (kerel) promocio pala sloboda e alosarimaski, thaj sloboda konkurencia

maškar manuša. Vaš odi del šaipe pala socialo miškipe (mobiliteto) ande relacia manušenge talenturengo thaj kamipengo. Afirmative akciake aktivitetura save džan po jekh drom ideasa egalitetoske šaipengo či ka intjaren ande peste aktivitetura pala keripe-talenturengo (skill-building), gender (dal si o manuš murš vaj džuvlji), thaj koripe po kolori (colour-blind) keripaske decizjengo (afirmativo regrutacia thaj afirmativo prioriteto).

87. Vi kaj o egaliteto e šaipengo šaj anel sva-kones pe jekh teljarimaski pozicia (linia) vov sasa kritikuime sar proceso saves si vi but bilačhipa. Phedino si kaj si bilačhe xatjardini struktura e diskriminaciaki. Maj užes, afirmativo regrutacia thaj afirmativo prioriteto, varekana akharel pes vi kovli afirmativo akcia, ka rodel komparativo lungo vrama te kerel socialo situacia savi si slobodo katar strukturalo diskriminacia.⁷¹ Rasaki thaj sex diskriminacia si butivar vi institucionalo vi individualo thaj problemo si bilačho xatjaripe kaj si godu intencija maj but deso efekto. Či lel pes lačhe ando gindo natura rasistikane vaj gender problemsko, thaj lel pes sama numaj pe partikulare akcie sar legale intervencie pal či dikhel pes maj buxli pilita.
88. E kritike pala egaliteto e šaipengo vazden opre kaj areslipe trubul te avel te lačharen pes rezultatura keripaske decizjenge procesosko. Von phenen kaj fundo areslipe si te vazdel pes opre (del pes zor) relativo pozicia (bilači) bilačhe dživdimaske grupengi. Gasavo gindipe si maj but ande relacia grupenge vaj klasenge relative pozicias a deso e manušenca (individualcurenca). Egaliteto našti avel ande relacia individuale prioriteto.
89. Kaj egaliteto e šaipengo intjarel te e talentura thaj džanglipa (skills) naj distribuirime uniformo egaliteto e rezultaturengo sikavel kaj džanglipa thaj talentura si distribuirime uniformo. Muršen, džuvljen, parnen thaj etnikane minorituren si ande maj baro procento e kazurengo egalutne džanglipa thaj talentura. Šaj phenel pes kaj implementacia idealoski pala egaliteto e šaipengo šaj kerel egalutne rezultatura kade te e murša, džuvlja, parne thaj etnikane minoriteta aven reprezentuime pe thana save si proporcionale lenge

saste zorako ando societato. Kana gindil pes pala kava opre ramosardino šaj phenel pes kaj svako baro dispariteto rezultato e sistemasko vaj diskriminaciake strukturako kasko rezultato si dikhindo ande praksa.

90. Afirmativo akcia idealosa pala egaliteto e rezultaturengo ka tradel pe aktivitetura afirmative prioritetongo vaj maj užes, pe phare afirmative akciake aktivitetura sar: kvote, rezervacie, areslipa/golura etc. Egaliteto e rezultaturengo rodel aktivitetura save maj dur indjaren džiči kaj proporcionalo reprezentacia e grupengi, sar egzemplo butjarimaski zor, edukacia thaj urbanizmo. Sociale lačhipa si distribuirime pe baza e rasaki, genderoski (dal si o manuš murš vaj džuvlji), etnikane palutnipaski/background, etc. Manuša save vazden opre afirmativo akcia phenen kaj voj trubul te dikhel pes maškar ekonomia, sociale thaj kulturake čačipa, so rodel vi politikani akcia katar o them areslipasa te astaren pes (te kerel pes adoptacia) speciale aktiviturengo po drom te šukarel pes e situacia socio-legale kategoriengo ande varesave domenura.⁷²
91. Idealo pala egalitetoske rezultatura si maj strenne (kontraverzo) vaš odi kaj si len speciale metode save si putarde-agorimaske thaj phare, sar adoptacia/linipe e kvotengo. E kvote si butivar vi kritikuime kaj žutin te keren pes diference maškar dukhadine grupe saven si egalutno mangipe pala egaliteto, pala dinipe žutipasko te kerel pes či-kamipe (hostility) maškar sociale grupe thaj pala bistaripe te lel pes sama pe fundamentale elementura individuale alosarimasko. Kadale rezultatura, ando fremo tradicionale kriteriengo, kerel alokacia sociale lačhipengo.
92. Vaj, trubun e individualcura te aven pučinde te keren vareso ando than avere manušengo po drom te keren kompenzacia pala varesave džene andar target grupe? Sar si phendino maj anglal, trubul te našel pes katar kontra (reverse) diskriminacia. Sar o rajo McCruden phenda, kava drom si sikadino sar šaipe te o pharipe pala žutipe phare-dživdimaske grupenge perel pe trito rig savi varekana naj “bangi” pala godu so si kerdino ande palutni vrama, saven naj interesu te kerel pes diskriminacia mamuj kadale grupe ande palutni vrama, thaj save šuven (thon) andre varesave

sekcije andar komuniteto ande relacia lenge ekonomikane standardosa.⁷³

93. But si interesanto te phenel pes kaj but thema teljarde/startuisarde afirmative akciako programo savo intjarel ande peste idealo pala šaipasko egaliteto. Sar vi sajekh, kava idealo sasa lokhes paruvdino rezultatoske egalitetosa pal motivura te kava kerel pes sesa politikane thaj sociale.⁷⁴ Butivar, duj idealura džan jekh mamuj aver, thaj e legislacia či kerel uži situacia te dikhel pes savo egalitetosko idealo trubul te astarel pes (te kerel pes leski implementacia).

94. Maj palal, šaj phenel pes kaj kadi tema(issue) naj kade lokhi vi te si vatreko pala vaj mamuj afirmativo akcia vaš varesavi grupa. O metodo savesa vazdel pes opre pozicia si ande relacia pučipasa: si gasave akcia žutipe vaj na-žutipe averendar?⁷⁵ Maj palal trubul te phenel pes kaj: afirmative akciake programura našti parujen programura mamuj čorripe. Kadale programura či parovel zakono mamuj diskriminacia thaj či žutin e grupenge sar si e Kinezura vaj Židovura, pe save kerel pes diskriminacia ande but thema numaj naj bilačhedživdimaske grupu (disadvantaged).⁷⁶

ANNEX

PUČIMASKO LIL PALA AFIRMATIVO AKCIA

1. Save si šerutne konstitucionale thaj/vaj legislative paragrafura ande relacia principonencia pala egaliteto thaj opripe (prohibicia) e diskriminaciako? Maj šukares kamas tumendar te den amen kopie pala opre sikadine paragrafura.
2. Šaj den timen godi (seron) pala jekh křisimasko kazo savo šaj avel egzemplo (sar misal) pala egalitetoske principura thaj opripe (prohibicia) e diskriminaciako.
3. Si varesave paragrafura save si konstitucionale, legislative vaj egzekutive save si ande relacia e konceptosa pala “afirmativo akcia” thaj/vaj sar akna akharel pes “pozitivo” vaj “kontra” diskriminacia? Te si maj šukares kamas tumendar te den amenge kopie (duplikatura) pala kodola paragrafura.
4. So, ande relacia kadale paragrafurenca vaj nacionale kazoske zakonosa, si relacia maškar opripe e diskriminaciako thaj koncepto afirmative akciako?
5. Šaj den egzemplura pala nacionalo nacionalo afirmativo akciaki shema save si šuvdine ande kadala paragrafura.
6. Save grupe peren telal afirmative akciake sheme (džuvlja, rasake grupe, speciale minoriteta, manuša save si biandine ande godo them /indigenous, manuša save našle andar jekh ando aver them/migrantura, invalidura, manuša save avile andar maripe/veteranura etc.)?
7. Pe savo tereno (fields) keren buti kadale afirmative akciake sheme (edukacia, butjaripe, urbanizmo, transporto, politikane alosaripa, treningura, vareso aver)?
8. So si historikano palutnipe (konteksto) ande save si kadale afirmative akciake sheme linde (adoptuime)?
9. So si e areslipa (golura) save si vazdine opre ande relacia afirmative akciake shemasa?
10. Si varesave vramake limitura pala kadale afirmative akciake sheme thaj sar ka sikaven pes, kana e golura kodole afirmative akciake shemaki aven astardine ?
11. Afirmative akciake sheme keren egalutni buti sa e grupenca vaj si varesave diference kerdine kade te varesave grupenca maj but kerel pes buti?
12. Si varesavo nacionalo kazosko zakono ande relacia pala kodole afirmative akciake sheme? Te si, maj šukares kamas tumendar te den amen kopie katar krisipa save si lače sra egzemplura.
13. Si varesave speciale organura, barederipa, komisie, krisura kasko ares si te ašunen rovimaske lila (complaints) ande relacia imple-

mentaciasa thaj operacienca save si kerdine ando fremo afirmative akciake shemenca?

14. Ko si alavardino (entitled) te kerel rovimasko lil thaj te teljarel procedura anglal gasave organura?
15. Arakh, te šaj, statistika savi sikavek sode si lači afirmativo akciaki shema thaj specialo

anglunipe (progreso) kerdino katar e vrama kana si voj sikadini.

Note: Te si afirmativo akciaki šema (scheme) ande relacia pala averčhande (diferente grupe) lindi (adoptuime) iripe po pučipe trubul te avel dindo pala svako grupa.

ENDNOTES

- ¹ *Sar egzemplo, Ande USA "protektuime/brakhime" grupe savenge trubul žutipe katar afirmativo akcia sesa arakhadine kade kaj: Indiancuro andar USA thaj manuša katar e Alaska: kava si e manuša save si biandine sar vi lenge dumutane ande North Amerika thaj save arakhen piri kulturaki identifikacia maškar piri vica (fela) vaj komunitetoski rekognacia (pindžaripe); Aziake vaj Pacifikane Islandera: manuša save avile andar Dural (durutno) Easto, Teluni-Easto Azia, Teluni Azia vaj Pacifiko Island; Kale manuša: manuša save avile katar kale grupe andar Afrika; Hispanikura: manuša save avile (lenge dumutane) andar Meksiko, Puerto Rico, Cuba, Centralo thaj Teluni Amerika vaj aver Espaniake kulture bi diferenciako pe rasa. Andi Teluni Afrika vasne grupe si e manuša save si kale (Afrikake manuša), džuvlja thaj manuša save si invalidura. Pala maj but pučipa andi relacia rasake identiteta andi Teluni Afrika dikh P.E. Andrews, "Affirmative action in South Africa: transformation or tokenism", Law in Context, 1999, pp. 91-93.*
- ² *Dikh M.O. Chibundu, "Afirmativo akcia thaj maškarthemutno zakono", Law in Context, 1999, lil. 21.*
- ³ *Andi India e Kastenge thaj vicenge saven si maj but deso 20 procentura manuša si dinde speciale čačipa (xakaja). Aver grupe save si but čorre thaj saven si but bilači edukacia astaren lačhipa katar afirmative akciake aktivitetura. Problemo si kaj kaste thaj vice si kategorije pala save si but phares te kerel pes deŋinica. Lengo identiteto si sajekh telal baro pučipe. But grupe probisarde te astaren kadaka xakaja (čačipa) thaj vaš odi si kerdine duj Komisie ande 1953-to berš thaj 1979-to berš jekh palal aver. Lengo mandato sasa te keren liste e grupenca po drom te dikhel pes kasa trubun te keren afirmativo akcia. E India šuvda afirmativo akcia ande piro maj baro zakono po drom te phagavel kastengo sistemo, vaj pe aver rig e afirmativo akcia kerda te e manuša andar čore klase vazde palpale kastengo sistemo. Po agor e lista savi sasa kerdini naj khanči aver deso kastengi selekcija (alosaripe) e limitosa savo sasa kerdino katar Indiako maj baro krisi kaj e čorikane*

klase našti intjaren ande peste maj but deso 50 procentura e populaciaki. Dikh F. de Zwart, "Positieve discriminatie and identiteitpolitiek in India: grenzen aan sociale constructies", Tijdschrift voor beleid, politiek en maatschappij, 199, No. 4, pp. 262-274; W.F. Menski, "The Indian experience and its lessons for Britain", in B. Hepple and E. Szyszczak, Discrimination: The Limits of the Law, London, Mansell, 1992, pp. 300-343; O. Mendelsohn, "Compensatory discrimination and India's untouchables", Law in Context, 1999, vol. 15, No. 4, pp. 51-79; D.W. Jackson, "Affirmative action in comparative perspective: India and the United States", in T. Loenen and P.R. Rodrigues, Non-discrimination Laws: Comparative Perspectives, The Hague, Kluwer Law International, 1999, pp. 249-263.

- ⁴ *G. Moens, Afirmativo Akcia, Nevi Diskriminacia, Sydney, Centro pala Independente Studie, 1985, pp. 81-82.*
- ⁵ *L. Newton, "palutni rig e diskriminaciaki mamuj o xakaj (čačipe).", Maškarthemutno Etikano Žurnali, 1973, vol. 83, pp. 311-312.*
- ⁶ *Dikh C. Hamilton, "Afirmativo akcia thaj maripe eksperimentale realitetonca", The Annals, 1992, vol. 523, pp. 10-18. Ekspiriance Afrikane Amerikancurengo thaj imigranturengo (našalde manušenjo) pe aver rig keren averčhande politikane decizija.*
- ⁷ *N. Glazer, Afirmativo diskriminacia: Etnikano naegaliteto thaj politika, New York, Basic Books Inc. Publishers, 1978, pp. 198-200.*
- ⁸ *G. Moens, op. cit., pp. 82-83, citato katar o Sowell: "Naj o Rockefeller vaj Kennedy vareko ko kamel te kerel soba pala kvota; kodo si o DeFunis vaj o Bakke. Vi kana šuvel pes pe rig personalo influencia pala kodo ko kerel decizije, e barvale šaj den pire čavorren privato edukacia savo ka del lenge sekuritato pala lače rezultatura. Sar vi e studentura save but phares astaren edukacia, maj lače si te aven telal parne distribuciako pal e minoriteturenge studentura save si alosardine maj lače si te aven opral minoritetongi distribucia. Šaj phenel pes kaj si kava jekh transferi savo kerel pes pe zor katar kodola save šaj astaren kava dži kaj kodola savenge kava trubul."*

- ⁹ *Sar egzemplo manuš saves si Espaniako (Spanish) familikao anav savo kamel te pharuvel piro angluno anav vaš odi kaj ande USA afirmative akciake programura žutin e manušen saven si Espaniako familikao anav N. Glazer, op. cit., p. 200.*
- Indikani Komisia andar 1953-to berš , savi sasa kerdini te ramol (skrinil) lista čorikane klasengo/ grupengo save trubun te astaren lačhipa afirmative akciako, sasa ande baro problemo vaš odi kaj varesave barvale kaste kamle te čhuden piro statuso “te na xasaren žutipe katar o them (raštra)”. F. de Zwart, loc. cit., p. 268.*
- ¹⁰ *Dikh HRI/Gen/1/Rev.1, (1994), Kotor III.*
- ¹¹ *Ande Malezia čorre Kinezura thaj Indiancura save keren buti pe gava sar gavutne (farmera), save keren buti e gumasa vaj minera vaj e manuša save keren buti pe forutne (urbane) thana sar robura/sluge si eksploatišime sar vi lenge Malezikane amala (kolege). Sa si von viktimura katar inter-rasaki thaj intra rasaki eksploatacia. Sar phenel o rajo Philips, “eksploatacia džal e klasenca, zorasa sar vi rasasa, thaj pe aver rig džal ekonomikane thaj etnikane statusosa.” Vi kaj e Maleziancura astaren lačhipa katar afirmativo akcia kava si maj but kerdino pala Malezikani thaj na-Malezikani opruni klasa. Vaš odi, o rajo Philips si pala efektivo arakhipe e grupengo pala afirmativo akcia savi ka avel maj but ande relacia klasasa thaj lokaciasa (thanesa) deso etnikane grupasa” E. Philips, “Pozitivo diskriminacia ande Malezia: bari paramiča pala Anglia”, ande B. Hepple, thaj E. Szyszczak, *Diskriminacia: Limito e Zakonosko*, London, Mansell, 1992, pp. 352-353.*
- ¹² *Pala generalo gindipe, dikh G. Pitt, “Šaj kontra diskriminacia avel džastifikuime?”, ande B. Hepple, and E. Szyszczak, op. cit., pp. 281-299; C. McCrudden, “Re-gindipe pala pozitivo akcia”, *Industrikanjo Zakonengo Žurnali*, 1986, vol. 15, pp. 219-243.*
- ¹³ *M.O. Chibundu, loc. cit., pp. 18-19.*
- ¹⁴ *Sar egzemplo , jekh afirmative akciako plano šaj kerel šaipe te jekh butjako šerutno (šefo) del butjako than pala jekh procento neve butjarne minorititurengo save ka butjaren pe jekh vrama. Dži kaj šerutne u butjako šaj kerda diskriminacia mamuj, Afrikane Amerikancura, ande palutni vrama neve Afrikane Amerikancura den butjako than e manušenge save či roden te keren buti buti , sa gindosa te na aven viktimura šrfoske palutnipasko pe savo si kerdini diskriminacia, thaj kade te keren peske lačhipe.*
- ¹⁵ *Kava si o vakaripe savo kerda o prezidento Lyndon Johnson, kana vakarda pala areslipe afirmative akciake programurengo: “Tumen či ka xosen e dukha save si kerdine ande but šel-berša kade kaj ka phenen: ‘Akana tumen sen slobode te džan kaj godi tumen kamen, thaj keren sar tumen kamen’ ... našti len e manušes savo sasa pala but berša phanglino ande lancura te numaj muken les te avel slobodo, te anen (lingren) les po starto thaj te phenen ‘Tu san slobodo sar vi aver manuša’, thaj te patjan (gindin) kaj kerden sa so trubul thaj kaj kerden lači buti ... Amen rodas na numaj egaliteto sar xakaj/čačipe thaj teoria amen rodas egaliteto sar fakto thaj sar vi rezultato.” Kava si kator katar vakaripe savo kerda o prezidento Johnson e studenturengo po Howard Univerzitetu, Juni 1965-to berš, sar si phendino (citirime) ande S.M. Cahn, (ed.), *Afirmativo akciaki debata*, London, Routledge, 1995-to berš, p. xii.*
- ¹⁶ *USA Komisia pala Civile čačipa/xakaja, Dokumento pala afirmativo akcia, Oktobri 1977-to berš, p. 2, sar si citirime ande W.L. Taylor; thaj S.M. Liss, “Afirmativo akcia ande 1990-to berš”, *E analura*, 1992, vol. 523, lil. 31.*
- ¹⁷ *T. Sowell, Preferenciale/prioritetoske Politike, jekh maškartemutni perspektiva, New York, William Morrow thaj Company Inc., lil. 148-150. Nathan Glazer (op. cit. p. 201) phenel kaj kompenzacia pala dumutani vrama si but pharo (komplekso) principo. Šaj buxljarel pes pe biagorimaski vrama thaj šaj kerel biagorimaske problemura.*
- ¹⁸ *M.O. Chibundu, loc. cit., lil. 18-19.*
- ¹⁹ *Ibid., lil. 34. Dikh vi B. Parekh “kazo pala lači diskriminacia”, ande B. Hepple thaj E. Szyszczak, Diskriminacia: Limitura e zakoneski, London, Mansell, 1992, lil. 265-268: “Pharadino dumutanipe našti mukel ulavdino akanutnipe (akanutni) vrama thaj ulavdino avutnipe dži kaj adivesutne generacie či arakhen o drom pala pakiv ande relacia e viktimurenca.”*
- ²⁰ *E Amerikako maj baro themesko krisi thaj Europako krisi pala čačipe (xakaj) buxljarde kazosko zakono save dži akana lačhes marel pes mamuj indirekto diskriminacia. Ande Griggs v. Duke Power Co. (401 U.S. 424, 1971) teoria pala kontra vaj averčhando impakto (areslipe) sasa kerdino thaj lesko areslipe sasa te intjarel e butjarnen responsabile pala averčhando efekto pala načačimaski (nadžastifikuime) butjarimaski praksas. E kompanija/fabrika savi akharel pes Duke Power Co. sasa kerdini po than ande opruni/North Carolina, ande Amerikani republika savi si pindžardi sar than kaj sasa kerdini bari segregacia thaj kaj si dindi bilači edukacia kale manušenge save avile andar e Afrika. Sar rezultato gasave edukaciake politikako baro numbri (gendo) kale manušenge či astarda bare školaki diploma so kerda lenge problemopharipe te astaren varesave butjarimaske thana. Kale manuša či kerde protesto kaj e kompanija kamla te kerel diskriminacia mamuj (kontra) kale manuša vaj*

kerda protesto (rovimasko lil) mamuj efektura gasave praksaki. Jekhe glasosa thaj cikne decizjasa Amerikako Maj Baro Krisi vazda opre kaj kadi politika šaj arakhel pes telal punkto VII Civile Čačimaske Dokumentosko (Lilesko) andar 1964-to berš savo si bazirime pe efektura e praksaki. O krisi sikada (kerda) eksplanacia: “O kongreso ispida o dokumento pe konsekvence butjarimaske praksaki, na numaj motivacia. O Kongreso maj dur phenda kaj si pala kodi situacia bangi e kompania vaš odi kaj sa so kamel pes katar o manuš savo kamel te kerel buti, trubul te avel ande relacia e butjarimasa sar pučipe”. Maj palal maj baro Amerikako Krisi kerda restriktia pala “disparato (averčhando) efekto” teoria ande Wards Cove Packing Co. v. Antonio (490 U.S. 642, 1989), savi kerda kava maj phares te sikavel pes indirekto diskriminacia kerda kava maj lokhes pala buti (biznis) te kerel džastifikacia pala politika kas si disparato impakto. Ande 1991-to berš Civile Čačimasko Dokumento nakhlo thaj ande lesko fremo sasa šuvdino vi disparato impaktoski teoria ando skopo kotoresko VII Civile Čačimaske Dokumentosko 1964-to berš.

Maškarthemutno čačimasko krisi andar o Luxembourg phenda piro gindipe pala Griggs kazo ande piro decizji Bilka Kaufhaus v. Weber von Hartz (CJ 13-to Maj 1986-to berš, kazo numbri 170/84, ECR 1986, 1607). O kazo vakarel pala cirdipe avri (ekskluzia) opaš-vramake butjarnengo katar penziaki šema. O rajo Weber phenda kaj si kava cirdipe avri (ekskluzia) pe baza čačimaski pala jekh sar aver/egalutno pokinipe sar si vi ramosardino ande Europako Komunitetosko zakono. Kadi politika či kerel diferenca maškar murša thaj džuvlja vaj maj baro si numbri e džuvljengo save keren opaš vramaki buti. O krisi phenda kaj o čačipe pala egalutno (jekh sar aver) pokinipe “si phagardino/čhindino katar departmanureng kompanie save cirde (čhude) pe rig e butjarne manušen save keren opaš-butjaki vrama, andar penziaki šema. Varekaj kava pharipe maj but astarel e džuvljen deso e muršen, numaj kana lel pes ando gindo kaj kava kerel pes ande relacia objektivne faktorenci atunči našti phenel pes kaj si kava varesavi diskriminacia”. O krisi maj dur kerda kvalifikacia e kamipasko pala “objektivno džastifikacia” kade kaj roda te aktivitetura e praksaki astaren “čače kompanienge trubulipa” thaj te avel pes “zuralo ande kadi buti” dži kaj či agoril pes. Ande kazura save maj palal avile kava testo palpale sasa kerdino thaj palpale kerda pes indirekto diskriminacia katar o them, sar egzamplo perdal diskriminatoro legislacia, “čače trubulipaske” kamipa nevljaren pes thaj po lengo than aven neve generale rodipa pala “legitimo ares”. Keripe indirekte diskriminaciako si ulavdino pe duj aktivitetura: sikavipe bilače efektosko (bilačo areslipe) ando fremo varesave

grupako thaj sikavipe kaj našti kerel pes objektivno džastifikacia. Evidencia pala direkto diakriminacia šaj dikhel pes perdal komparacia duj manušengi, vaš odi kaj evidencia (proof) pala garavdini (indirekto) diskriminacia intjarel ande peste komparacia maškar e grupe. Dikh maj but ande T. Loenen, “Garavdini/Indirekto diskriminacia: oscilacia maškar ačhavipe thaj revolucia”, ande T. Loenen thaj P.R. Rodrigues, (eds), Na diskriminaciako Zakono: Komparativo Perspektiva, foro Hag, Kluwer Maškarthemutno Zakono, 1999-to berš, lil. 195-211; M. Selmi, “garavdini (Indirekto) diskriminacia: so si o gindo e Amerikako ande relacia kadalesa ande avutni vrama”, ande T. Loenen thaj P.R. Rodrigues, cit., lil. 213-222; B. Vizkelety, “Bilačo efekto e diskriminaciako ande Kanada: nakhavipe e granicako katar formalo dži kaj čačo egaliteto”, ande cit., lil. 223-236. I. Sjerps, “Efektura thaj džastifikacia. Vaj sar te kerel pes prima facie kazo pala indirekto (garavdini) sex diskriminacia”, ande cit., lil. 237-263.

Maj vasno manušikane čačimasko ramosaripe/teksto pala diskriminacia, ILO diskriminacia (butjaripe thaj profesia) Konvencia andar 1958-to berš UNESCO Konvencia mamuj Diskriminacia ande Edukacia andar 1960-to berš, Maškarthemutni Konvencia pala Phagavipe Svakone Formako Rasistikane Diskriminaciako mamuj džuvlja, opril (či mukel) diakriminacia savi si definišime sar aktivitetu savo kerel pes kamipasa te vazdel pes opre e diskriminacia.

Katar sa akava opre phendino šaj užes dikhel pes kaj “kamipe” naj vareso so si maj vasno po drom te kerel pes diskriminacia. Kodo so maj dur trubul tre džanel pes si kaj vi indirekto/garavdini diskriminacia si oprime manušikane čačimaske zakonosa. Ande piro gindipe pala Afrikako kazo o krisari Tanaka phenda: “E arbitražu (krisipe) savo si oprime si jekh čačikano fakto pal na subjektivno kondicia. Ande relacia kadalesa so si phendino o krisipe (arbitražu) šaj kerel pes vi bi motivoski sostar si vareso kerdino” (Krisareske Tanakaske averčhande gindipa, Afrika, (2-to faza), Krisipe katar 18-to Juli 1966-to berš, I.C.J. Raporto, 1966-to berš, lil. 306).

Egalutno gindipe sasa vazdino opre vi ande relacia artiklosa 2 andar maškarthemutni Konvencia pala Civile thaj Politikane Čačipa, Ekonomikane, Sociale thaj Kulturake Čačipa. Manušikane Čačimasko Komiteto del definicia pala The Human Rights “diskriminacia” ando Generalo Komentari 18 ande savo phenel “svako uladipe/distinkcia, cirdipe avri, restriktia vaj prioriteto savo si bazirime ande relacia pala rasa, kolori, sexo, čhib, religia, politikano vaj aver gindipe, nacionalo vaj socialo bučim, barvalipe, bijandipe vaj aver statusi, thaj savo kerel pes po drom te opril pes (te na del pes) varekaske te astarel

- pire čačipa thaj slobode”. (HRI/Gen/1/Rev.1, Kotor I, manuškane Čačimasko Komiteto, generalo Komentari 18, paragrafo. 7.) Kadi definicia unzol pes thaj del drom Komitetoske Kazoske Zakonoske na sajekh.sar egzemplo (sar misal) ande K. Singh Bhinder v. Canada sikavel kaj lokhe dikhimaske instance indirekte (garavdine) diskriminaciake šaj phagaven Maškarthemutni Konvencia Pala Civile thaj Politikane Čačipa (A/45/40, vol. II, annex IX, sect. E, Communication No. 208/1986). Maj palal Komiteto pala Phagavipe Rasistikane Diskriminaciako phenda: “Kana rodel pes si efekto varesave akciako savi si kerdini savi si mamuj Konvenciasa, atunči rodel pes si varesave akcia averčhando areslipe (impakto) ande relacia e grupasa thaj lake rasasa, kolorosa, nacionale vaj etnikane bučimosa.” (HRI/GEN/1/Rev.1, Kotor III, Komiteto pala Phagavipe Rasistikane Diskriminaciako, generale Rekomodacia (Turvinjipe) XIV pala artiklo 1 e Konvenciaki, paragrafo 2.) Dikh vi Lord Lester of Herne Hill thaj S. Joseph, “Na-diskriminaciake obligacie”, ande D. Harris thaj S. Joseph, E Maškarthemutni Konvencia Pala Civile thaj Politikane Čačipa thaj Bare Angliako Zakono, Oxford, Clarendon Press, lil. 575-576 thaj A.F. Bayefsky, “Principo pala egaliteto vaj na-diskriminacia ande maškarthemutno zakono”, Manušikane Čačimaske Zakonosko Žurnali, 1990-to berš, lil. 8-10.
- ²¹ Dikh pala maj but informacie, T.L. Banks, “Egaliteto, afirmativo akcia thaj averčhandipe (diverziteto) ande USA”, C.R. Lawrence thaj M.J. Matsuda, Amen či kamas te džas palal: keripe kazosko pala afirmativo akcia, Boston, Houghton Mifflin Company, 1997.
- ²² Ande kava kazo Maj baro themesko krisi či kamla te phenel si rasake prioritatura vareso so trubul te mukel pes, thaj kerda decizji pal či lia sama pala kodo si kava jekh problemo vaš odi kaj o manuš savo kerda peticia, kama agoril piri legalo edukacia vi kaj xasarda.
- ²³ Averčhandipasko koncepto sasa atakuime maj palal ande varesave federale krisura sar: Hopwood v. Texas (78 F 3d 932, 5th Cir 1996, cert denied, 135 L Ed 1094, 1997). O krisi kerda decizji kaj rasako diverziteto ande bari edukacia či aresel governoske interesura thaj naj ande relacia e konceptosa pala kolori-koro vaj aver mulimaske kriteria. Dikh vi Podberesky v. Kirwan (38 F 3d 52, 4th Cir 1994, cert denied, 131 L Ed 1002, 1995), S. Thernstrom, “Zakonenge školengo skandalo”, Komentara, December 1997, lil. 27-31. Maj dur:po 1996-to berš Regenturengo bordo univerzitetosko andar e Kalifornia oprisarda (kerda prohibicia) pala utilizacia rasaki, religiaki, dal si o manuš murš vaj džuvlji, koloreski, etnicitetoski vaj nacionale bučimaski pala admisia/muklipe, butjaripe vaj keripe kontrakturengo decizjengo po Kaliforniako Univerzitetu. Dikh vi Kaliforniaki propozicia 209, savi opril rasake preference ande bari edukacia. Dikh vi sikavne manušen saven si averčhando gindipe,save phenen kaj utilizacia rasake prioritaturengo (preferancurengo) ande bari edukacia naj efektivo thaj ande but kazura keren pes duj standardura. Muklipe minoritetonge studenturengo te korkore keren pala peste lačo than (pozicia) si maj lače po drom te kerel pes maj sasti thaj maj lači situacia.Von maj dur xatjaren kaj e diskusia pala prioritatura ande bari edukacia trada te našel pes katar čačo problemu: bari rasistikani diferencija ande edukaciake prioritatura maškar studentuta ande cikni thaj maškarutni škola. Dži kaj gasavi diferencija egzistiril aktivitetura po drom te kerel pes paritetura pe univerzitetura thaj koledžura našti kerel pes. Aver problemu si kaj naj kerdino kontrakto sode baro “diverziteto” si lačo thaj sode gasavo “diverziteto” šaj dukhavel avere manušen. S. Thernstrom thaj A. Thernstrom, “Rasistikane problemura: so amen akana džanas”, Komentara, čhon Februar 1999-to berš, lil. 44-50.
- ²⁴ G. Moens, *op. cit.*, lil. 30-31.
- ²⁵ Dikh maj but ande K. Greenawalt, Diskriminacia thaj kontra Diskriminacia, New York, Borzoi Čačimaske/Zakonenge Pustika ande Amerikano Societato, 1983, pp. 52-70; R.K. Fullinwider, Kontra Diskriminaciaki Kontroverzija, Morali thaj legale Analize, New Jersey, Rowman and Littlefield, 1980, pp. 18-29; thaj I. Glasser, “Afirmativo akcia thaj legaliteto rasake na-čačipasko”, ande P.A. Katz and D.A. Taylor, Phagavipe e Rasizmosko, Profilura ande Kontroverzija, New York, Plenum Press, 1988-to berš.
- ²⁶ Dikh M.O. Chibundu, *loc. cit.*, pp. 31-32. Dikh vi lil savo kerda o F. de Varennes, “Minoritetonge čačipa thaj prevencia etnikane konflikturengo (ma ripasko)” (E/CN.4/Sub.2/AC.5/2000/CRP.3).
- ²⁷ Sar dia citato o J.D. Skrentny ande , Ironie Afirmative Akciengo, Chicago, Univerzitetu katar Chicago Press, 1996, p. 113.
- ²⁸ T. Sowell, *op.cit.*, lil. 153-156.
- ²⁹ Ande Fan Yew Teng v. Public Prosecutor, Federalo prosekutori kerda krisipe pala bilači pub likacia jekhe artikloski, savo kerda kritika e Governoski pala muklino partialiteto (kamipe) ande relacia e Maleziancurenca. O krisi vazda opre kaj “kadale paragrafura našti aven telal pučipe trubun vaj na thaj but si vasne te žutin e manušenge save si ande bilači pozicia”. Sar phenda o rajo E. Philips, “Pozitivio diskriminacia ande Malezia: baro egzemplo pala Anglia”, ande B. Hepple thaj E. Szysszczak, Diskriminacia: Limitura e zakoneski, London, Mansell, 1992-to berš, lil. 352.
- ³⁰ Dikh P.A. Samuelson, Ekonomia, New York, McGraw-Hill Book Company, 1970-to berš, lil. 780-794.

- ³¹ Dikh M. Triest, "Positieve actie en arbeidsmarkt", ande Graeve thaj aver, Positieve actie, positieve discriminatie, voorrangbehandeling voor vrouwen, Antwerpen, Kluwer, 1990-to berš, lil. 19.
- ³² Dikh G.C. Loury, "lače efektura afirmative akciaki", Analura, 1992-to berš, vol. 523, lil. 19-29; W.B. Reynolds, "Afirmativo akcia thaj laki (bilači) negativio reperkusia", Analura, op. cit., lil. 38-49.
- ³³ E. Philips, op. citato, lil. 344-356.
- ³⁴ Dikh J.G. Kellas, Politike pala nacionalizmo thaj Etniciteto, London, McMillan, 1991, lil. 125.
- ³⁵ P.E. Andrews, "Afirmativo akcia ande Teluni/South Afrika: transformacia vaj lokho respekto?", Zakono ando konteksto, 1999-to berš, lil. 80-81.
- ³⁶ Dikh rajosko Ncholosko gindipe (observacia) ande "Egaliteto thaj afirmativo akcia ando keripe maj bare zakonesko: Teluno Afrikako kazo", ande B. Hepple thaj E. Szyzszak, Diskriminacia: Limitura pala zakono, London, Mansell, 1992-to berš, lil. 412-432.
- ³⁷ "Afirmativo akcia ande Teluni Afrika či kerel khanči ande relacia pala minorititurenge šaipa. Kodo so voj kerel si transformacia e ekonomiami kavi si 75 procentura maj tele deso sasa." (phendino ande P.E. Andrews, citato., lil. 82)
- ³⁸ J. Hodges-Aeberhard thaj C. Raskin Afirmativo Akcia ando arakhipe butjarimaske thanesko manuŝenge save si Etnikano Minoriteto thaj Manuŝenge save si invalidura, foro Geneva, Maŝkarthemutno butjarimasko kher/ofiso. Von dokumentuisarde pire studie kade kaj sikade oxto (8) kazoske studie andar Kanada, India, Lebanon, Malazia, Norvegia, Filipini, Rusiaki Federacia thaj Uganda.
- ³⁹ Alison Sheridan buxljarda klasifikaciako sistemo savo sikavel but averčhande (diferente) tipura pala "afirmativo mobilizaciake" aktivitetura ando specifiko konteksto pala phagavipe sex diskriminaciako thaj pharipa (disadvantage) pala astaripe butjarimaske thanesko. Voj identifikuisarda ŝtar tipura afirmative akciake strategiengo: (i) temperamento politika kamel te sikavel averčhandipa (dieferencie) pala tretmano e džuvljengo, karaktere, intencie, sociale predispozicie save butivar oprin progresio e džuvljengo (sar egzemplo seminara si kerdine pala gender komunikacia thaj keripe e imidžosko, networko (drakhalin) si kerdino džuvlja si promovišime, (ii) politike ande relacia pala e role pharuvipe (dihotomia) thaj kas si save role ande familia, societato, džuvljengi ekspirianca ande relacia e familiasa e butjasa thaj specialo: (iii) (a) buti thaj familiaki politika te žutil pes e džuvljenge ke keren kombinacia pala income-generation thaj home-maker (buti) ando kher role (sar egzemplo briga pala e čhave, lači/fleksibilo vrama pala e buti, baripe šaipengo pala opaš-vramaki buti, e trningura keren pes kana si butjarimaske časura, "family-friendly" klauzule si šuvdine ande uniake kontraktura), thaj (iii) (b) na-tradicionalne butjake politike te bararen pes šaipa pala e džuvlja (sar egzemplo: džuvlja akharen pes te džan po baro paj te gothe keren buti kade kaj keren pes bare postera kaj si sikadine džuvlja save keren buti po pajesko kaštuno (ship), keren pes vi lila/brošure save den zor e džuvljange te keren piri aplikacia), (iv) socialne strukturalne politike kamen te phagaven stereotipura thaj ekskluzivo praksa-kategorija ande savi si maj bare aktivitetura (sar egzemplo: formalo politika pala seksualo harazmento/violencia si adoptuime/linde kade kaj si sikadine e postera, sa vakacie si maj anglal promovišime internalo, o personalo savo kerel buti si trenirime te našel katar stereotipura pala o sekso, džuvljenge del pes zor te keren aplikacia pala thana/pozicie pe save maj anglal kerde buti numaj murša) thaj (v) šaipaske politike žutin e manuŝenge save butjaren save mangel te džan maj dur/te keren piri kariera (sar egzemplo: keren pes kursura te džal pes maj opre ande kariera, žutil pes e džuvljange te astaren than ande butjarimaske thaneske komitetura). Varesave katar kadale strategije šaj utilizin pes po drom te phagavel pes rasistikano naegaliteto po butjarimasko than. A. Sheridan, "Šablono ande politika: afirmativo akcia ande Australia", Džuvlja ande Manadžment Redikhipe/Review, 1998-to berš, lil. 243-252.
- ⁴⁰ Sekcia 35 Angliake Dokumentosko (lilesko) pala relacia maŝkar e rase užes phenel "svako aktivitetu kerdino pom drom te del pes šaipa ,andar varesavi rasaki grupa, te astarel servisura thaj lačhipa, te ažutil pes gasave manuŝenge te astaren pire trubulipa ande relacia pala edukacia". Sekcia 37 užes phenel kaj pozitivio akcia šaj kerel pes te del pes zor manuŝenge andar rasake grupe, vaj džuvljange, te astaren varesavo treningo, te astern varesavi buti kaj naj lače prezentuime.
- ⁴¹ Kava butivar kerel pes ande Amerika, kaj si e implementacia Egzekutive Dokumentoski 11246 muklini e Ofiose pala Federale Kontraktureske Programura (OFCCP) thaj Egalutne Butjarimaske Šaipaske Komitetoske (EEOC). Von dikhen pe afirmativo akcia sar pe but specifike thaj rezultatoske orientirime procedure saven si varesave golura/areslipa. Vice prezidento o rajo Nixon, afirmativo akcia lia te avel keripe statistikane trubulipengo (rodipengo) save si bazirime pe rasa, kolori, nacionalo bučim pala manuša save den butjako than thaj pala edukaciake institucije. Varesave federale departmanura kerde anglune šerutne "qvoteke" planura. Kadale kvotake planura si but

kontraverze thaj sesa subjekto jekh buxljarimaske kazoske zakonosko. Astaripe kvotengo thaj rezervacia ka avel ande relacia situaciassa ande save von ka keren aplikacia. Sar egzemplo, but Amerikancura xatjaren kaj ande palutni vrama sasa kerdini diskriminacia. Vi e purane gindoske-manuša kamen te lel pes e idea pala krisoske-direktivake kvote kana diskriminacia savi sasa kerdini si sikadini anglal o zakono thaj o krisi.

- ⁴² Kvote si golura personale reprezentaciako ando fremo e kompaniengo vaj instituciengo save si kvantifikuime thaj save trubun te keren pes (realizuin) pes ando jekh vramako periodo savo si užes sikadino thaj precizirime. Kadale kvote si dinde thaj vazdine opre katar o them vaj direktivasa katar o krisi. Šaj avel vi te phenel pes e kompaniengo vaj instituciengo (te del pes lenge direktiva) te sekurišin kaj 5 vaj 10 procentura e manušengo save keren buti trubun te aven džuvlja. Šaj avel te e kompanie vaj institucie trubun te sekurišin kaj palal svako štarto murš savo kerel buit si vi jekh džuvli savi kerel buti. E kvoten šaj avel vi diskriminatoro intencia(kamipe) kade kaj keren restrikcija varesave grupengo pala varesave aktivitetura. Areslipe/golura si ,pe aver rig, si numaj gendura (numbrja) save e kompanie vaj institucie kamen te realizuin; von šaj xatjaren pes vi sar “lače vojake aktivitetura“ te astaren pes.

O areslipe/golo naj diskriminatoro vov si afirmativo pire intenciasa (kamipasa): te žutil pes po drom te bararel pes numbri kvalifikuime manušengo andar varesavi grupa savi si but čorri, ande jekh kompania vaj institucia. Vadži butivar, ande praksa, golura ka xatjaren pes sar kvote, kade kaj ka šuvel pes bangipe po manuš savo del butjake thana (direktori) kaj či ačhavel e diskriminacia. Dikh N. Glazer, “Avutnipe/futuro pala preferencialo afirmativo akcia”, ande P.A. Katz thaj D.A. Taylor, Phagavipe rasizmosko, Profilura ande Kontroverzija, New York, Plenum Press, 1988-to berš, lil. 329-339.

- ⁴³ Dikh pala diskusia vaš kadi tema, R.T. Bron, Afirmativo Akcia pe buti. Xakaj, Politike thaj etike, Pittsburgh, University of Pittsburgh Press, 1991-to berš, lil. 37-59; J. Edwards, “Khetane/ kolektive čačipa/xakaja ande liberale thema”, Nederlandiako trin-čhonengo raporto pala manušikane Xakaja/čačipa, 1999-to berš, lil. 259-275.
- ⁴⁴ Sar si phendino ande G, Moens, op. citato. lil.12.
- ⁴⁵ Dikh S.M. Lipset “Egalutne šanse mamuj egalutne rezultatura”, Analura, 1992, vol. 523, lil. 63-74. Amerikaki dilema (problemo) sar te phagavel pes kontradikcija maškar religie thaj legaliteto pala e robura.
- ⁴⁶ Jekhethaneske Naciengo Departmano pala Ekonomikane thaj Sociale Informacie thaj Politikane Analize Raporto pala Saste Lumaki

Socialo Situacia 1997-to berš, (E/1997/15), lil. 105-106.

- ⁴⁷ O rajo Bayefsky phenel kaj si akana vi e religia jekh phari kategorija savi šaj kerel pharipa (problemura) maškar manuša. Dikh Lord Lester of Horne Hill thaj S. Joseph, cit., lil. 590. O rajo Bayefsky phenel kaj si bilači tendencia pe varesave džene (membrura) Maj Bare Amerikake Krisosko te gindin rigido maškar kategorije save si kerdine decizjenca maj anglal sar kodi kaj “rasa si jekh phari klasifikacija”, sar egzemplo., svako rasistikani diskriminacia šaj trail (džal) maj dur numaj kana kerel pes “strikto dikhipe/ scrutiny”. J.A. Baer, “Kontra diskriminacia, špharipe pala zurale kategorije”, Trin-čhonengo žurnali pala zakono thaj politika, 1982-to berš, lil. 71-94.
- ⁴⁸ Afrikake Kazura, Dujto faza/kotor, I.C.J. Raportura, 18-to Juli 1966-to berp, paragrafo. 293.
- ⁴⁹ Legale Pharipa pala Thema andar Teluni Afrika (Namibia) Sekuritetosko Konzilo 276 (1970), Advetosko Gindipe, 1971-to berš, I.C.J. Raportura 3, paragrafo. 57. Dikh vi Barcelona, Phabipe thaj Zor Co., I.C.J. Raportura, 1970-to berš, paragrafura. 33-34.
- ⁵⁰ Europaki Komisia Pala Manušikane Čačipa/ Xakaja, Afrikane Azijcura katar Stungo Lumaki Rig mamuj Anglia, 14-to decembri 1973-to berš, 4403/70, paragrafo. 270.
- ⁵¹ Pala literatura dikh: O. de Schutter, “Égalité et différence: le débat constitutionnel sur la discrimination positive aux Etats-Unis”, Revue Trimestrielle des Droits de l’Homme, lil. 347-368, žurnali savo akharel pes The Annals, andar 1992-to berš, vol. 523 pala “Serimos pala Afirmativo Akcia”. Si vi jekh vakaripe Amerikake Komisiako pala Civili Čačipa andar 1984-to berš savo si but vasno: “O čačipe či žutisarda, kamipe te na kerel pes viktimo katar butjarimaski diskriminacia opral trito rig, savi si ande relacia e rasasa si ares svakone afirmative akciake planosko. Gasave prioritetura pala varesave rase keren (vazden) opre aver forma e diaskriminaciaki, keren nevi viktimurengi klasa thaj kana kade kerel pes ando publiko butjaripe, dukhavel Maj Bare Themeske Zakoneske Principura pala egalutno brakhipe e zakonesko anglal sa thanutne (civila).” G. Moens, citato., lil. 30-31.
- ⁵² Ande Kalifornija, ande maj palutni vrama kamla pes, perdal propozicija 209, te oprin pes rasake prioritetura/lačhipa ande bari edukacija so, sar phenel o rajo Paust, naj po jekh drom e paragrafurenca andar maškarthemutne kontraktura sar o ICCPR thaj ICERD, thaj bari federalo policia či džangla te phagavel kava problemo. Ando fremo maj bare krisoske klauzulaki, Kalifornija musaj te del muklipe afirmative akciaki so si garantuime

maškarthemutne Amerikake kontraktoske zakonenca. Kava či del garancia kaj varesave aktivitetura afirmative akciake šaj nakhen varesave propozicie andar maj baro zakono vaj lačhipe afirmative akciako ando fremo Amerikake maškarthemutne kontraktoske zakonesko thaj aktivitetura save inklen andar kava zakono traden o them te keren aktivitetura thaj keren kontribucia ande relacia Maj bare Zkonosa savo vazdel opre manuškano digniteto. J.J. Paust, "Afirmativo akcia bazirime pe rasa thaj maškarthemutno zakono", *Michigan Journal of International Law*, 1997-to berš, vol. 18, lil. 674-677.

⁵³ *Abdulaziz, Cabaes thaj Balkandali mamuj Anglia*, Europako krisi pala Manušikane Čačipa/Xakaja, 18-to Decembri 1986-to berš, Ser. A, No. 112, paragrafo. 80.

⁵⁴ Dikh maj but ande A.F. Bayefsky, loc. cit., lil. 22-24.

⁵⁵ Konziloski Direktiva 76/207/EEC katar 9-to Februari 1976-to berš pala implementacia e principonengi egalitetoske tretmanosko pala murša thaj džuvlja ande relacia pala astaripe butjarimaske thanesko, speciale treningura thaj promocija, thaj butjarimaske šaipa. Artiklo 2, paragrafo. 4: "Kadi Direktiva trubul kamipasa te kerel promocija e aktiviturengi pala jekh-sar-aver šaipe maškar murša thaj džuvlja, kade kaj ka ,maj anglal, tradel pe rig e na-egalitetura save si kerdine thaj save či den šaipe e džuvljange te astaren varesave barvalipa sar si godo vi phendino ando Artiklo 1, paragrafo 1." Ande 1984-to berš , kadi direktiva sasa pherdini vi e Konziloske Rekomodacienca (turvinjipenca) po 13-to Decembri 1984-to berš pala promocija lače (pozitive) akciengo vaš džuvlja. Kava turvinjipe (rekomodacia) sasa dindo vaš odi kaj: "... legale pargafura pala egalutno tretmano, save si kerdine te žutin te astaren pes manušenge (individualcurenge) čačipa, si na-adekvate pala phagavipe sa na-egaliturengo save akana dživdinen (egzistirin) thaj o Governo trubul te kerel paralele aktivitetura". Vaš odi turvinjin pes e thema save si membrura "te len/keren adoptacia pala pozitivno akciaki politika savi si kerdini te phagavel akanutne na-egalitetura save si kerdine mamuj džuvlja ande lengo butjarimasko trajo (dživdipe) thaj te keren promocija pala maj lačo balanso maškar murša thaj džuvlja ando butjaripe. Sa akava šaj kerel pes kade kaj ka keren pes lače aktivitetura ando fremo nacionale politikako thaj praksako respektosa pala kompetencia duj rigake save si e industria."

⁵⁶ Dikh maj but ande: E. Szyszczak, "Pozitivno akcia maj palal Kalanke", *Nevo/adivesutno Zakonesko Redikhipe*, 1996-to berš, lil. 876-883; G.F. Mancini, S. O'Leary, "neve granice pala sexesko egalitetosko zakono ande Europaki Unia", *Europako Zakonesko Redikhipe*, 1999-to berš, lil. 331-353. E. Ellis, "Maj sigutne buxljaripa ande Europake Komunitetosko sex-

osko egalitetosko zakono", *Svakodivesutno Market Redikhipe*, 1998-to berš, lil. 404-406. C. McCrudden, "legalo drom pala egalutno šaipe ande Europa: palutni, akanutni thaj avutni vrama", *Maškarthemutno Žurnali pala Zakono*, 1998-to berš, lil. 200-201. A.G. Veldman,

"Preferencialo (prioritetosko) tretmano ande Europake Komunitetosko Zakono: akanutno legalo buxljaripe thaj areslipe (impakto) nacionale praksengo", ande T. Loenen thaj P.R. Rodrigues, *Na-diskriminaciake zakonura: komparative perspektive*, Foro Hague, Kluwer Law International, 1999-to berš, lil. 279-291.

Pala artiklura save vakaren pala nacionalo legislacia dikh V. Sacks, "Pharuvipe e diskriminaciako po lačo drom ande Anglia" thaj J. Shaw, "Pozitivno akcia pala džuvlja ande Germanija", vi ande B. Hepple vi ande E. Szyszczak, *Diskriminacia: Zakoneske granice/limitura*, London, Mansell, 1992-to berš, lil. 357-385 thaj lil. 386-411.

⁵⁷ C-450/93, *Kalanke mamuj Bremen*, 17-to Oktobri 1995-to berš, E.C.R. I-3051.

⁵⁸ C-409/95, *Marshall mamuj phuv Nordrhein-Westfalen*, 11-to Novembri 1997-to berš, E.C.R. I-6363.

⁵⁹ But si vasno te džanel pes kaj varesave Governura ramosarde thaj bičhalde pire gindipa (observacie) po drom te vazden opre thaj te den pakiv nacionale zakonenge.

⁶⁰ Artiklo 2.2 Maškarthemutne Konvenciako Pala Phagavipe Svakone Formako Rasistikane Diskriminaciako užes phenel: "E thema save somnisarde Konvencia trubun, kana e situacija godo rodel, te keren sociale, ekonomikane, kulturake thaj aver aktivitetura po drom te zuraren (den zor) lačo buxljaripe thaj brakhipe varesave rasake grupengo vaj manušengo andar kodola grupe, areslimasa te den lenge šaipe te astaren, sar vi aver, manuškane čačipa thaj fundamentale slobode. Kadale aktivitetura či troman te keren na-egalutne čačipa vaš diferente rasake grupe kana astaren pes e areslipe sostar si vi kerdine".

Artiklo 3 Konvenciako Pala Phagavipe Svakone Formako Rasistikane Diskriminaciako mamuj džuvlja užes phenel: "E thema save somnisarde Konvencia trubun te keren, po svako tereno, specialo ando politikano, ekonomikano, socialo thaj kulturako tereno, sa aktivitetura save trubun te keren pes, khetane e legislaciasa, po drom te zuraren (den zor) buxljaripe vaš džuvlja, areslimasa te del pes lenge te utilizin (astaren) manuškane čačipa thaj fundamentale slobode pe egalitetoski baza e muršenca."

⁶¹ Dikh sar egzemplo, Manušikane Čačimasko Komiteto, Generalo komentari 4 ando artiklo 3, (dikh HRI/GEN/1/redikhipe.1, Kotor I)

- (1994), paragrafo. 2: “Maj anglal, artiklo 3, vaj artiklura 2 (1) thaj 26 sar kadale artiklura len sama pe prevencia e diskriminaciaki pe but baze, thaj maŝkar lende sexo (relacia maŝkar dŝuvlji thaj murŝ) si jekh, rodel na numaj aktivitetura pala protekcia vaj rodel vi afirmativo akcia kerdini kade te del zor pala pozitivo utilizacia e čačipengi/xakajengi.”
- ⁶² *Ibid.*
- ⁶³ Sar misal (egzemplo), Komiteto pala Phagavipe Diskriminaciako mamuj Dŝuvlja, Generalo Turvinjipe no.8 pala implementacia artikloski 8 andar Konvencia (dikh HRI/GEN/1/Redikhipe.1, Kotor IV) (1994-to berŝ): “Turvinjil te e thema save somnissarde konvencia keren maj dur aktivitetura save trubun te aven po jekh drom artiklosa 4 e Konvenciaki te zuraren sasti implementacia artikloski 8 andar Konvencia thaj te keren lačo drom areslimasa te e dŝuvlja aven egalutne e murŝenca bi diskriminaciake ŝaipengo te sikaven (reprezentuin) lengo governo po maŝkarthemutno levelo thaj te len than ande butja maŝkarthemutne organizaciengo.” Komiteto pala Ekonomikane, Sociale thaj Kulturake Čačipa, Generalo vakaripe/gindipe no.5 pala manuŝa saven naj ŝaipe (dikh E/C.12/1994/13) paragrafo. 9: “Obligacie e themenge save somnissarde konvencia te sikaven (keren promovacia) neve keripasko relevante čačipengo maj but sode ŝaj rodel katar e guvernura te keren maj but deso te ačhen pe rig thaj te na keren aktivitetura so ŝaj kerel bilačo efekto po manuŝ saves si varesave problemura. Te si gasave grupe saven si bare problemura (pharipa) obligacia e themeski si te kerel pozitivo akcia te ciknjarel e problemura thaj te del lačo tretmano e manuŝenge saven si gasave problemura po drom te astaren pes e areslipa save phenen kaj trubul te kerel pes sasti participacia (lethanipe) thaj egaliteto ando societato vaŝ sa manuŝa saven si problemura (disabilities).”
- ⁶⁴ Komiteto pala Phagavipe Diskriminaciaki mamuj Dŝuvlja, Generalo Rekomodacia /Turvinjipe No. 5 pala akanutne speciale aktivitetura (dikh HRI/GEN/1/Redikhipe.1. Kotor IV).
- ⁶⁵ Manuŝikane Čačimasko Komiteto, generalo Komentari 18 pala na-diskriminacia (dikh HRI/GEN/1/Redikhipe.1, kotor I, (1994-to berŝ), paragrafo. 10.
- ⁶⁶ M. Craven, Maŝkarthemutni Konvencia Pala Ekonomikane, Sociale Thaj Kulturake Čačipa/Xakaja Thaj Perpektive Lake Buxljarimasko, Oxford, Clarendon Press, 1995-to berŝ, lil. 186.
- ⁶⁷ B.G. Ramcharan, citato. lil. 261; A. Bayefsky, loc. citato., lila. 27-33; E. Vogel-Polsky, Les actions positives et les contraintes constitutionnelles et legislatives qui pčsent sur leur mise en ŝuvre dans les Etats Membres du Conseil de l'Europe, Comitč europeočn pour l'čgalitč entre les femmes et les hommes, Strasbourg, 27-29-to aprili 1992-to berŝ, CEEG, (87), 14, 11.
- ⁶⁸ E. Vogel-Polsky, “Les actions positives dans la thčorie juridique contemporaine”, ande B. de Grave, (ed.), Positieve actie, positieve discriminatie, voorrangsbepaling voor vrouwen, Tegenspraak-Cahier 8, Antwerpen, Kluwer, 1990-to berŝ, lil. 79.
- ⁶⁹ Europako Krisi Pala manuŝikane Čačipa, Marckx v. Belgium, 13-to Juni 1978-to berŝ, vol. 31, Ser. A., paragrafo. 31.
- ⁷⁰ Dikh pala i diskusia M.B. Abram, “Affirmativo akcia: fair shakers and social engineers”, ande C. McCrudden, (ed.), Anti-diskriminaciako Zakono, Dartmouth, Maŝkarthemutni biblioteka pala Zakonenge esejura thaj Legalo Teoria, 1991-to berŝ, lil. 499-513; S. Fredman, “Kontra discrimination”, Star-čhonengo Zakonesko redikhipe, 1997-to berŝ, lil. 575-600.
- ⁷¹ G. Moens, cit. lil. 11.
- ⁷² E. Vogel-Polsky, “Les actions positives dans la thčorie juridique contemporaine”, ande B. de Grave (ed.), Positieve actie, positieve discriminatie, voorrangsbepaling voor vrouwen, Tegenspraak-Cahir 8, Antwerpen, Kluwer, 1990-to berŝ, lil. 75-77.
- ⁷³ Pala skurto (ciknjardi) analiza so si lače pal so bilače ande egaliteto pala ŝaipe thaj egaliteto pala rezultatura, dikh C. McCrudden, Anti-diskriminaciako Zakono, Dartmouth, maŝkarthemutni biblioteka pala esejura ando Zakono thaj Legalo Teoria, 1991-to berŝ, lil. xvi-xviii.
- ⁷⁴ Dikh, sar egzemplo, evaluacia afirmativo akciaki ande Australia, G. Moens, op. cit., lil. 53-74, thaj xistoria afirmativo akciako ande Amerika, D. McWhirter, Agor Afirmativo Akciako, kaj amen dŝas katar?, New York, Birch Lane Press, 1996-to berŝ.
- ⁷⁵ T. Sowell, (op. cit., p. 165) serol (del gindo) kaj ande Amerika politike save den prioriteto varesave grupen, sesa sajekh čhudine ande publike analize. Vaj, pe aver rig Amerika zurales ŝutil speciale edukaciake vaj profesionale kursura, bi lovengo, po drom te vazden pes opre (te del pes zor) minoritetonge grupe.
- ⁷⁶ Jekhetaneske Naciengo Departmano pala Ekonomikane thaj Sociale Nevipa/Informacie thaj Politikaki Analiza, raporto pala saste Lumjaki Socialo Situacia, 1997-to berŝ (E/1997/15), kotor. VIII, para. 94-to.

The Personal is the Political: A Story of Another¹ Journey from India

Zarine Habeeb²

I HAVE OFTEN BEEN ASKED WHY I have chosen to come to Hungary and then to work at the ERRC. I have given shorthand answers to this question, sometimes even without thinking a lot. As feminism teaches us, the personal is the political. The identity crisis I experienced in 2002 when genocidal violence was launched against Muslims in the Indian state of Gujarat³ had a deep impact on me, a Muslim, who was and continues to be deeply proud of India's secular and pluralistic traditions. So, to go back to using shorthand phrases, in my mind Gujarat 2002 has a connection to Budapest 2003.



study of minority rights. Especially in the wake of the Balkan wars in the 1990s, this region seemed to provide the perfect backdrop for the study of minority rights. Of course, Roma, as readers of this journal are well aware, have been the silent victims of these wars, a fact that I came to know only through the pages of this journal.

After spending a year at the ERRC, I have come to believe that minority rights per se cannot provide solutions. Where a minority identity, such as the Romani identity, is vilified in mainstream society as inferior and unworthy of respect, it leads to either assimilation or ghettoisation. Assimilation forces Roma to deny their Romani identity and ghettoisation forces them to deny other parts of their selves, such as Slovak, East European, feminist, etc. Either way, the burden of choice falls on Roma.⁴ This is not to deny the distinctiveness of the Romani identity. Indeed, the Romani identity should take

In India, in both scholarly and lay circles, the "Muslim problem" is thought of primarily in terms of minority rights. So, it was no surprise that in my application for the Henigson fellowship, I expressed my interest in the comparative

¹ *It will be probably clear to my readers that I have used "another" in reference to the journey of Roma from present day India and Pakistan. I also use it in acknowledgment of all those Romani men and women who on hearing that I am Indian express a sense of fraternity with India and Indians.*

² *Zarine Habeeb was awarded the Henigson fellowship by the Human Rights Program of Harvard Law School in 2003 to pursue a year long internship at the ERRC. She is originally from Ernakulam, Kerala, India.*

³ *In February 2002 a train carrying Hindu pilgrims and right wing agitationists was burnt down in the town of Godhra in Gujarat allegedly by a Muslim mob. Many of the agitationists had gone to the state of Uttar Pradesh to participate in a movement launched by right wing groups to build a temple in the town of Ayodhya on the site where a mosque used to stand until it was demolished by right wing groups in 1992. In the retaliatory violence that followed the burning of the train Muslims were systematically targeted in Gujarat. Human Rights Watch has produced a report on the violence and the collusion of the Gujarat authorities entitled "We have no orders to save you", available at: <http://hrw.org/reports/2002/india/gujarat.pdf>.*

⁴ *I accept that it is quite possible that a person may consciously decide to privilege a particular identity over every other identity. My purpose in drawing the distinction between assimilation and ghettoisation is only to point out that in this dichotomous framework, people belonging to vulnerable groups cannot choose to be everything, they have to give up some part of their selves.*

its rightful place among the other affiliations that Romani men, women and children possess and ways must be sought to combine robust anti-discrimination policies with a coherent minority rights approach.

While on the topic of identity, I have to say that the time spent with the ERRC and in Hungary gave me the opportunity to realise that identity is not only something you have (in my case Indian, Muslim, Woman, feminist, Keralite, etc) but also something you don't have, like, non-Roma, non-ethnic Hungarian, and non-Westerner.⁵

When I conducted research and writing on Romani women's issues, I was keenly aware of my role as an outsider, not only a non-Roma, but also a person who was very new to the region itself. One of my favourite moments at the ERRC was when ERRC's board member Nicoleta Bițu told me that the African-American feminist and literary critic bell hooks had inspired her. I was reminded of the sweltering heat of Delhi when I was reading hooks' "Feminism: From Margin to Center" and had wanted to scream out in sheer joy in the silent environs of the library of the Centre

for Women's Development Studies. Bițu and I reflected on the power of hooks's language in challenging race and gender hierarchies. Though our experiences differ, hooks, Bițu and I shared something: the conviction that markers such as race, nationality, gender, class and religion can exclude as they include. I think that as women who stand at the cross roads of these markers, we have a special responsibility to ground our theory and activism in humanity and not in exclusion.

I realise that I can never be Roma or ethnic Hungarian or even a Westerner. But, globalisation has ensured greater connection between diverse societies and peoples and it would be foolish not to constructively engage with "other" cultures and peoples. I believe that to be rooted in who you are, but to treat, as the Indian litterateur and philosopher Rabindranatha Tagore said Vasudaiva Kudumbakam (the universe as my family) is one of the ways of making sense of the complex world we live in. Come to think of it, this is the message of the Universal Declaration also, that all of us, Roma, non-Roma, Muslim, non-Muslim, Westerner, Indian, all belong to the same human family.

⁵ *I admit that the term "Westerner" is imprecise. I use it (with a nod to my dear friend and ERRC staff attorney Ioana Banu, a Romanian national, who was surprised when I said she would be considered a "Westerner" in India) here in the way it is used in India to make a cultural distinction between us Indians and the residents of Australia, Europe, New Zealand and North America.*

Publications

December 15, 2004: Published *Knowing Your Rights and Fighting for Them, A Guide for Romani Activists*.

Campaigning, Conferences and Meetings

December 3, 2005: In the framework of a joint project with OSCE and CoE, held a round table discussion in Sofia on desegregation in education in Bulgaria, Sofia, Bulgaria.

December 7, 2005: Organised a side event for the OSCE Council of Ministers meeting discussing desegregation in education in OSCE countries, Sofia, Bulgaria.

December 9, 2005: In the framework of a joint project with OSCE and CoE, held a round table discussion in Bucharest on desegregation in education in Romania, Bucharest, Romania.

December 14, 2004: Participated in a hearing in the European Parliament on the situation of Roma in Bulgaria and Romania, in Strasbourg, France.

December 15, 2004: Participated in the launch of the European Roma and Travellers Forum, Council of Europe, Strasbourg, France.

December 15, 2004: Jointly with the Croatian Helsinki Committee (CHC) filed an application against Croatia with the European Court of Human Rights in Strasbourg in relation to racially segregated education in Croatia.

December 16, 2005: In the framework of a joint project with OSCE and CoE, held a round ta-

ble discussion in Budapest on desegregation in education in Hungary.

December 17, 2004: Held a roundtable workshop jointly with the Organization for Security and Co-operation in Europe and the Council of Europe to engage Hungarian law- and policy-makers on the need for a funding mechanism for school desegregation in Hungary, Budapest, Hungary.

December 17, 2004: Together with Belgrade-based Humanitarian Law Center (HLC) and Minority Rights Center (MRC) filed a joint communication with the United Nations Committee against Torture against Serbia and Montenegro relating to the cruel, inhuman and degrading treatment of Mr. Besim Osmani by police officers during a forced eviction and demolition operation in 2000.

January 12-15, 2005: Attended the Working Group on an Optional Protocol to the International Convention on Economic, Social and Cultural Rights, an initiative aimed at providing an individual and collective complaint mechanism under the Covenant, Geneva, Switzerland.

January 13, 2005: Participated to a meeting with NGOs convened by the Slovene Chairmanship-in-Office of the Organisation for Security

and Co-operation in Europe (OSCE) and the International Helsinki Federation (IHF), Vienna, Austria.

January 18, 2005: Sent written comments and attended UN Committee on the Elimination of Discrimination Against Women review in New York of Croatia's compliance with international law obligations in the field of women's rights. Also, facilitated attendance at the session by a Croatian Romani woman activist.

January 25-27, 2005: Organized meetings in Northern Czech Republic jointly with local partner the Czech League of Human Rights to provide fora for Romani women coercively sterilized by Czech authorities to come forward and join ongoing action to challenge this practice.

February 1, 2005: Undertook a study visit to the Court of Justice of the European Communities and attended a hearing.

February 2, 2005: Attended the launch of the Decade of Roma Inclusion, Sofia, Bulgaria.

February 8, 2005: Participated in a roundtable event entitled "Building a dialogue between

Romani leaders and police officials", organised by non-governmental organisation Romani Yag in Uzhgorod, Ukraine.

February 9, 2005: Participated to the launch of the Decade of Roma Inclusion in Romania, Bucharest, Romania.

February 18, 2005: Held a seminar jointly with the Ministry of Youth, Social Affairs and Equal Opportunities entitled "Equal Access to Healthcare in Hungary", Budapest, Hungary.

February 22-23, 2005: Sent written comments and attended oral hearing in the UN Committee on the Elimination of Racial Discrimination review of France's compliance with international law banning racial discrimination, Geneva, Switzerland.

February 23, 2005: Attended oral hearing in the case *Nachova v. Bulgaria* at the Grand Chamber of the European Court of Human Rights, Strasbourg, France.

March 1, 2005: Provided oral argument at public hearing of the case of *D.H. and Others v. The Czech Republic*, challenging racial segregation in the Czech school system, Strasbourg, France.

EUROPEAN ROMA RIGHTS CENTRE

The *European Roma Rights Centre (ERRC)* is an international public interest law organisation engaging in a range of activities aimed at combating anti-Romani racism and human rights abuse of Roma. The approach of the *ERRC* involves, in particular, strategic litigation, international advocacy, research and policy development, and training of Romani activists. The *ERRC* is a cooperating member of the *International Helsinki Federation for Human Rights* and has consultative status with the Council of Europe, as well as with the Economic and Social Council of the United Nations.

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The *ERRC* was founded by Mr Ferenc Kószeg.

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