

# ROMA RIGHTS

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## Exclusion from Employment

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**Cover photo:** Roma demonstrating in Macedonia. The banner reads, "If my father cannot work today, how will I be able to work tomorrow?"

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# Tackling the Systemic Exclusion of Roma from Employment

*Savelina Danova-Russinova*

**T**HE massive and disproportionate exclusion of Roma from employment is an undisputed reality in many countries. This fact raises serious human rights concerns about the failure of governments to curb racial discrimination in employment as well as to undertake proactive measures to confront disadvantages facing Roma at the labour market. In addition to rights concerns, the fact that significant numbers of people of working age, especially in the countries of Central and Eastern Europe with large Romani populations, are not participating in the national economy, should be a matter of serious concern from economic development point of view. Yet, judging by their inaction and often resistance to act to remedy exclusion of Roma from employment, most governments do not seem to be disturbed about the losses incurred in various sectors of the economy. Such inaction seems even more paradoxical in the light of mounting public complaints that Roma are a major burden for social welfare systems.

Recent ERRC research in Bulgaria, the Czech Republic, Hungary, Slovakia and Romania, undertaken with the support of the European Commission, indicate that policies to tackle unemployment of Roma are limited in scope and do not result in any noticeable improvement of the position of Roma in the labour market. In some countries, such as Slovakia, governments proceeded with what appears to be the easiest solution – to reduce the amount of the social benefits as a means of discouraging dependence on state support. This measure, although not targeting Roma specifically, has had a disproportionate impact on Roma. As is demonstrated by the analysis of the Slovak activation policies by Laco Oravec and Zuzana Bošelová in this edition, the effect of the social aid reduction was more punitive in

nature than effective in stimulating return of individuals to the labour market, because it was not coupled with adequate labour market inclusion policies. Similar is the situation in other countries of Central and Eastern Europe, in which although governments admit that education and lack of qualification place Roma in disadvantaged position, measures undertaken to mitigate the effects of poorer education are almost non-existent. In most cases, what governments call active labour market programmes do not involve training and re-qualification of Roma, or they do so only insignificantly. Existing programmes feature generally only temporary subsidized employment, at the end of which Roma who have participated do not have better chances to return to the labour market. In most cases they do not return. An article on a successful model of a labour market integration programme for Roma in Spain, presented by the Fundación Secretariado Gitano, demonstrates that outside active labour market policies, there are a host of measures which can give positive effect to increasing the employability of Roma.

One reason for governments' failure to undertake proactive measures to challenge the exclusion of Roma from employment is the widespread conviction that the fact that Roma do not work is their fault and is the consequence of poor education and lack of motivation to find work. The presumption is that employment opportunities are equally accessible for everyone, and if Roma are not taking advantage of these it is due to objective reasons – low education, as well as subjective reasons – conscious choices to live from state support rather than work. Both these explanations bear some truth: low education – the effect of a number of decades of segregated inferior education of Roma – is indeed a barrier to employment. For the long-term unemployed,

loss of motivation can be a factor contributing to exclusion from employment. The abundant evidence of raw racial discrimination against Roma on the labour market however shows that such an approach to the factors conditioning disproportionate unemployment of Roma is simplistic and counterproductive in the sense that it does not result in meaningful policies to tackle widespread patterns of discrimination. Courts in Bulgaria and Hungary have recently ruled against employers who discriminated against Romani job applicants. ERRC research, including a 2005 study of discrimination against Roma at the labour market, shows that employment is inaccessible for many Roma due to often undisguised rejection of Roma on grounds of ethnicity. A summary of that research, written by Ann Hyde, is provided in these pages.

Racial discrimination against Roma on the labour market is currently not an issue high on the agenda of governments. Efforts to fight direct discrimination – the everyday rejection of Roma from work as a result of their ethnicity – are only

rudimentary. Actions to equalise opportunities for Roma to access the labour market by implementing positive action programmes are also only in their infancy. Employers in the public and private sector alike are not under serious threat of financial loss in case of discrimination, because sanctions imposed by anti-discrimination laws are usually not dissuasive, especially for larger companies. Furthermore, especially in Central and Eastern Europe, employers – public and private – are not bound by, let alone monitored for, carrying out more proactive measures to ensure diversity at the workplace. In some countries, notably the UK and Ireland, the limitations of the mere negative duty not to discriminate have been acknowledged and public bodies, and in Northern Ireland also private employers, are bound by a statutory duty to actively engage in promoting equality between racial or ethnic groups. The effects of this legal measure, as well as of positive action in the field of employment, are discussed in this issue by Erika Szyszczak. A document summarising policy and law in Northern Ireland is also included here.



# Systemic Exclusion of Roma from Employment<sup>1</sup>

Ann Hyde<sup>2</sup>

**T**HE MAJORITY of working age Roma in Central and Southeastern Europe do not have a job and many have been out of work for a considerable length of time. Growing numbers, especially young people, have never had a job. Recent multi-country research by the ERRC based on structured narrative interviews with a total of 402 working age individuals, documents massive systemic discrimination in the area of employment, discrimination more serious than previously suspected.

The mass-unemployment of working age Roma is most often perceived as a labour market supply-side issue and the high level of unemployment is attributed to Roma's inability to find employment because of their low levels of education; out-of-date work skills and detachment from the labour market. Also because large segments of the Romani community lost out during the economic and industrial restructuring that occurred during the transition from Communism. Undoubtedly, these factors create very real barriers that reduce employability and exclude many Roma from work but there is another dimension – discrimination – which significantly aggravates the situation and causes systemic exclusion from employment for vast numbers of working-age Roma.

Discrimination is not widely acknowledged as a major factor behind Romani unemployment, and when the issue is raised there is often strong resistance to discuss the subject or denial that the problem is sufficiently severe to demand attention. Employment discrimination against Roma is not considered a major determinant in the employment (or more importantly the non-employment) of Roma by the key actors in the labour market.

Recent research by ERRC, based on field research in Bulgaria, Czech Republic, Hungary, Romania and Slovakia, offers new information that augments and helps to fill some of the gaps in the knowledge base about Roma in the labour market. It reveals a number of key facts about the patterns of employment and unemployment in the Romani working age population and provides evidence that refutes most of the commonly held prejudiced opinions about the attitudes and commitment of Roma to work. It shows that very real barriers to employment are intensified by prejudiced and stereotypical views such as the comment made by the director of a Labour Office in Prague, who told the ERRC:

It's because of the Romani culture and their lifestyle; they do not fit with the discipline

<sup>1</sup> This article summarises the results of a research on discrimination against Roma in the labour market conducted by the ERRC in the period May-September, 2005 in Bulgaria, Czech Republic, Hungary, Romania and Slovakia. The full research findings will be published in April 2006.

The research was part of the transnational project "Advocacy Action in Favour of the Promotion of the Integration of Roma in Education and Employment", implemented by the International Helsinki Federation for Human Rights (IHF) in partnership with the European Roma Rights Centre (ERRC) and the European Roma Information Office (ERIO). The project is funded by the European Union and is part of the EU Community Action Programme to Combat Discrimination 2001-2006. The content of this article does not necessarily reflect the views of the European Commission.

<sup>2</sup> Ann Hyde is a labour market and social inclusion specialist. She is an ERRC senior consultant on the research project mapping out discriminatory practices against Roma in the labour market.

of work. Roma do not have the motivation to work; they are unreliable, lazy and prefer to live on social assistance than earn a living.<sup>3</sup>

Discrimination is exercised at more or less every junction in the labour market and the already serious barriers that prevent access to employment for many Roma are significantly aggravated by prejudiced behaviour and views that unemployment and worklessness is a situation that most, if not all, Roma have chosen and are happy to live with both now and in the past.

## The Key Facts Emerging From the Research

### *The Gap Between Employment and Unemployment*

- ✧ Two out of every three working age Roma are currently unemployed, this means that only one in three currently has a job. Of those out of work, 35% fit the description of long-term unemployed as they have been out of work for a year or more and a staggering one in three working age Roma have had a period of unemployment lasting five years or more.
- ✧ Most of the working age Roma interviewed have had a period in employment. But only about one-third of working age Roma are currently in work. This employment rate is significantly lower than the figure for the working age population as a whole – in 2004 the employment rate for people aged 15-64 was 63%,<sup>4</sup> in the twenty-five European Union (EU) member states.
- ✧ Given the opportunity, and like the majority of the working age population, Roma will keep

the same job for a considerable length of time. Almost 50% of working age Roma reported periods of continuous employment which lasted five years or more. About two-thirds have had continuous employment of periods exceeding one year. These results contradict, and go some way to dispel the negative and prejudiced view that Roma are unreliable and do not keep steady jobs.

- ✧ There is a distinct polarisation in the patterns of employment and unemployment for working age Roma. At one end there are those Roma who are, or who have been working in jobs for a significant length of time. At the other end are Roma who have been unemployed and out of work for a very long time. When a Romani individual loses their job and becomes unemployed, they run a very high risk of remaining out of work for a very long time, possibly years.

### The Kind of Work that Roma Do

- ✧ Roma are very clear about their position on the labour market, and most search for work that is at the lower unskilled end of the labour market where jobs are menial and low paid. However, these are usually highly competitive positions with a rapid turnover and being filled by employers who are quick to absorb cheap and unofficial workers.

*I have been applying for unqualified manual work and I am being turned down because of my low educational level, but let me ask you: what educational level do you need for a dig? (ERRC interview, Slovakia, June, 2005)<sup>5</sup>*

<sup>3</sup> ERRC interview, May 2005, Prague.

<sup>4</sup> In the countries included in the research the rates were as follows – 54.2% in Bulgaria; 64.4% in Czech Republic; 56.8% in Hungary; 57.7% in Romania; and 57% in Slovakia. Source Eurostat, Labour Force Survey 2004 News Release Number 112/2005 at website [http://epp.eurostat.cec.eu.int/pls/portal/docs/PAGE/PGP\\_PRD\\_CAT\\_PREREL/PGE\\_CAT\\_PREREL\\_YEAR\\_2005/PGE\\_CAT\\_PREREL\\_YEAR\\_2005\\_MONTH\\_09/3-08092005-EN-AP.PDF](http://epp.eurostat.cec.eu.int/pls/portal/docs/PAGE/PGP_PRD_CAT_PREREL/PGE_CAT_PREREL_YEAR_2005/PGE_CAT_PREREL_YEAR_2005_MONTH_09/3-08092005-EN-AP.PDF).

<sup>5</sup> To encourage open disclosure of information, the research interviews allowed for anonymity of individual respondents. The examples cited in this article are extracts from the Country Research Reports prepared and submitted by the research team in Bulgaria, Czech Republic, Hungary, Romania and Slovakia. The lists of Roma interviewed during the course of the research and the questionnaires have been retained and are accessible from the ERRC.

- ✧ The type of work that Roma do is very closely correlated with their low levels of education – 68% of those in work confirmed that they are in employment which reflects their educational attainment levels. Unskilled and skilled labouring, which includes jobs as tailors and machine workers and the like, and cleaning are by far the most common employment categories. By far the least common is work in shops, offices, restaurants, hotels, teaching and professional managerial positions.
- ✧ One in every three Roma in our survey who consider that they are currently in a job are actually participating in some form of public works or government funded job creation scheme rather than in employment in the primary labour market.
- ✧ Only some 16% of those in employment are in “informal” employment, which in this research means casual, without a contract and not paying tax; a figure that also contradicts the popular belief that most Roma work in the informal shadow economy.
- ✧ Very small numbers of Roma work in restaurant/hotel type work or in shops, which is surprising given that these types of occupations usually offer some unqualified opportunities for people at the lower end of the labour market. The evidence provides a strong case that employment discrimination is preventing Roma from being employed in jobs which involve contact with the public or with the preparation or service delivery of food.
- ✧ The relationship between education and better employment is reinforced by the research as university educated Roma are in employment at the higher end of the labour market; working in either office work, teaching or skilled work. Conversely, not all Roma in professional or managerial positions achieved higher levels of education.

#### *Discrimination against Roma at the Labour Market*

The most prevalent incidence of employment discrimination against Roma is at the job search stage and in the recruitment practices that companies apply. Raw, direct discrimination prevents applicants from even reaching the phase of the interview. Many companies have a total exclusion policy regarding the employment of Roma and practice across-the-board unmitigated discrimination against Romani applicants. As a result, Romani job-seekers are eliminated and excluded from the application process at the very outset; regardless of education, qualifications and competences for the job.

- ✧ Out of 402 interviewed, 257 Romani individuals of working age have experienced discrimination in employment. The situation is almost twice as bad for Roma in the five countries targeted by the research where two out of every three working age Roma are likely to experience employment discrimination, than for ethnic minorities in the 11 countries in Europe and North America, that were surveyed by the ILO and found to have discrimination rates of up to 35%.<sup>6</sup>

- ✧ When asked ‘How do you know it was because you are Roma’, almost one in two people said they had been openly told by the employer or someone in the company and in addition 20 individuals were told by the labour office. Therefore more than half of all Roma who reported that they have experienced employment discrimination know

*I am a qualified cook. I was made redundant when the firm I had been employed by for many years was closed down. So I applied and was hired to work as a cook in a spa resort but there was an important condition the person in charge of recruitment imposed: I would be hired as a cook and perform my duties on the basement floor where I could not be seen by doctors and patients. (ERRC interview, Czech Republic, May 2005)*

<sup>6</sup> See International Labour Organisation. “Challenging Discrimination in Employment: A Summary of Research and A Compendium of Measures”, October 2000, available at: <http://www.ilo.org/public/english/protection/migrant/download/disc-01-2000.pdf>.

for sure that their ethnicity, the fact they are Romani, has prohibited and reduced their chances of getting a job.

*Before setting off to attend a job interview I called the potential employer to make sure that the position was still free. I was assured that nothing had changed and that they were looking forward to seeing me. As soon as I entered the office they told me that I had wasted my time as they do not employ Roma. (ERRC interview, Slovakia, July 2005)*

*At my local employment office I found an announcement that a factory was hiring eight unskilled workers. I went along with a friend for a job but they told us they had no jobs available. On our way back we met two Romanian friends (non-Roma) who were also going to apply having seen the same announcement. We told them the jobs had gone. But they went to the factory anyway and they were hired. (ERRC interview, Romania, September 2005)*

The incidence of discrimination in employment was not as frequently reported as the discriminatory practices that prevent access to employment. But discrimination in employment is notoriously difficult to prove and frequently goes unreported and unchallenged for fear that action will jeopardise individuals' employment status. Inequality in employment is nonetheless a serious problem for Roma, as some 1 in 4 of those who are, or have, been in employment reported that they received lesser terms and conditions of employment than non-Romani counterparts doing the same job.

The most common differential in terms and conditions of employment took place in relation to remuneration – rates of pay. Over half of respondents who reported some form of inequality in employment claimed that they either received

lower rates of pay or were denied the opportunity to work overtime.

Many Roma who are in employment find that their opportunities are severely constrained by an invisible 'Glass Box'<sup>7</sup> which limits their opportunities to progress upwards, sideways or to obtain employment that is not connected to the delivery of services for other Romani people. For example in Slovakia, where a higher incidence of university educated Roma was reported than in other countries, nearly all are employed in Roma related work in the Social Development Fund,<sup>8</sup> as Roma social workers or in the office of government specialising on Roma issues. A quote from the research was that "Roma with higher education can only get work in Roma-specific areas; otherwise they would probably be unemployed like most Roma."

### *The Perpetrators of Discrimination*

Despite existing equality legislation that prohibits discrimination on the grounds of ethnicity, many companies appear unconcerned and take no positive measures to ensure that they comply with the legislation or ensure that equality in employment is functioning in the hiring and employment. It is clear that enterprises, no matter whether they are in the private or public sector, are making very little effort to actively apply an equal opportunity or diversity policy. Even multi-national companies from Western Europe and the USA with branch offices in Central and Southeastern Europe, where the law will have required them to observe and monitor employment equality policies, seem content to hide behind national claims in Central and Southeastern Europe that it is illegal to monitor the ethnic diversity of their workforce.

Two-thirds out of 43 employers interviewed claim that they have an equal opportunities/diversity policy in place but none could provide a detailed explanation of how the procedures

<sup>7</sup> The "Glass Box" metaphor is an analogy to the "Glass Ceiling" used to describe the invisible factors that limited the progress of women and ethnic minorities into senior positions.

<sup>8</sup> The Social Development Fund, is a state institution funded by the Slovak state and the European Social Fund. The aim of the SDF is to improve the inclusion of groups at risk and marginalised groups and enable access to economic opportunities and social services.

operate. Similarly, none of the companies could provide information about how they monitor the ethnic composition of their workforce. Most claim that they do not measure because it is illegal to monitor ethnicity.

The public sector is one of the largest employers in each country especially government ministries, but even in the public institutions there is no evidence of a proactive approach to guarantee equality of opportunity in employment.

There is no evidence that Government Ministries are reflecting the positive methods adopted by their counterparts in Government Departments in the old EU Member States. Nor are they taking steps to ensure that their recruitment and employment practices are free from direct and indirect discrimination and compliant with the EU Employment and Race Directives. At best, some make special advisory positions on Roma related issues available for qualified Roma.

There is strong evidence of institutional racism in the labour office structures in Central and Eastern Europe. During the ERRC interviews with labour offices, what emerged was a transparent display of the racism and entrenched prejudice that exists and was openly and freely expressed.<sup>9</sup> The entrenched negative stereotypes of those working in public institutions, at the front-line of dealing with Roma unemployment, bring into question their capacity to deliver an unbiased and professional service that is not distorted by their prejudiced views. In fact, labour offices were reported to be the least effective means of finding a job. In many instances labour office officials have reportedly condoned discrimination against Roma respecting employers' request not to offer positions to Romani job seekers.

*Emily's girlfriend works for the local labour office and she showed her on the labour of-*

*...fice computer screen, job offers where the employer did not want Roma people had an "R" flag to signify that no Roma were employed by the company. Joseph, from the same town, also reported that the local labour office only made placements to the locations where the "R" flag was missing from the name of the company. (ERRC interview, Hungary, August 2005)*

*An experienced cleaner was sent by the labour office to a bank that was advertising for part-time cleaning staff. She arrived on time for interview, but the bank representative on seeing her told her the jobs had been taken. Later the labour office again announced the same job opportunity; but this time they apparently followed the bank's signal that no Roma would get the jobs. Later the woman heard the job had been given to non-Romani students. (ERRC interview, Hungary, August 2005)*

The attitude and behaviour of many labour office officials compounds the problem of employment discrimination against Roma. Although many labour office officials defend their actions on the basis of efficiency and compassion, to save an individual from the humiliation of being rejected and refused the job, their passive behaviour sends the wrong message to employers. Their laissez-faire attitude and failure to challenge employers who refuse to hire Roma is making an unacceptable situation even worse.

Labour office officials argue that affirmative action is not necessary because discrimination does not exist, and the only reason that Roma do not have jobs is their lack of education and their different attitudes to employment.<sup>10</sup> It was not unusual for the labour office officials to imply that the current hierarchy in the jobs market, which ensures that non-Roma get selected for

<sup>9</sup> In all cases ERRC interviews were not with low level public employees, but with either the Director or their representative, usually accompanied by other senior labour office officials.

<sup>10</sup> This is an amalgam of the different views expressed when labour office officials were asked their opinion about positive action to guarantee unemployed Romani people access to government training programmes and/ or jobs. A similar point was made in all the labour office interviews carried out during the course of this research.

jobs before Roma, is the right one – the way it should be. Statements such as, “After all there are many unemployed; Czechs, Slovaks; Bulgarians, etc. who are also searching and can’t find work,” confirm these widely held beliefs.

Furthermore, the services that labour offices provide are not meeting the needs of Romani job seekers. The shortcoming in the services and the lack of connection between unemployed Roma and labour offices is unacceptable given the role that labour offices have in linking out of work people with job vacancies and with government, and donor-funded employment and training opportunities.

The behaviour of the labour market gatekeepers has a very real impact on the opportunities that are made available to unemployed Roma trying to re-enter the labour market. But there is no comprehensive understanding amongst labour market gatekeepers – employers, human resource personnel and labour office officials – that their behaviour is one of the major contributors resulting in systemic exclusion from employment for vast numbers of working-age Roma.

### *Tackling Employment Discrimination*

The ERRC research provides evidence and draws on experience from other EU countries to show that a mixture of: **strong anti-discrimination legislation** when it is vigorously enforced; **equality policies** which contain very clear directives and a convincing level of compulsion; and a public equality authority that monitors enforcement of the **public duty to promote equality** can be successful to contain, constrain and reduce discriminatory behaviour of employers and their employees.

There is strong evidence, from countries with the most effective measures to combat racial discrimination in employment, that workforce monitoring, including the collection of data on ethnicity, is a key means of obtaining statistical evidence to support positive actions to address under-representation of ethnic groups in the workplaces and more generally in specific occupations and sectors of the labour market. Monitoring, recording, reporting and responding to the ethnic composition of a workplace are key factors that guarantee the effectiveness and efficiency of equal opportunities policies. For example, mandatory monitoring and compulsory reporting of workforce composition on the basis of nationality, ethnic group and any other grounds of discrimination (religion in the case of Northern Ireland) has proven to be a significant lever that motivated improved access to the employment for a victimized group.<sup>11</sup>

Employment discrimination is more pervasive and insidious than the basic numbers suggest, especially when it is as blatant and explicitly exercised as the cases described by Roma who took part in the ERRC research. Achieving equality in employment for Roma will take a considerable length of time; it requires widespread commitment and cooperation across all strands of the labour market. The situation is critical and the problem demands immediate attention from Governments as well as legislators, policy makers, employers and drivers of change; from the Equality Bodies charged with the responsibility of enforcing and stimulating compliance; and from employers who are in the position to guarantee recruitment practices and workplaces that are free of discrimination.

<sup>11</sup> *Experience from Northern Ireland, relating to discrimination against Catholics in the labour force in the sixties and seventies, is comparable to the systemic exclusion from employment that many Roma in Central and South Eastern Europe currently experience.*



## ***The Fair Employment and Treatment Order (FETO) - Northern Ireland***

*The text that follows was produced for the ERRC, the European Roma Information Office (ERIO), and the International Helsinki Federation for Human rights (IHF) as part of an ongoing project supported by the European Commission's Community Action Program to Combat Discrimination involving, among other things, research into policy relevant to Roma in the field of education and employment. Discussed below is the relevance of the Northern Ireland Fair Employment and Treatment Order (FETO) – a measure introduced to combat the systemic exclusion of Catholics in Northern Ireland – as a possible model for policy on Roma in Central and Eastern Europe.*

There are recognisable similarities between the situation in Northern Ireland prior to the introduction of Fair Employment and Treatment Order (FETO) and the current situation for Roma in Central and Eastern Europe (CEE). Similarities are discussed, and FETO is highlighted as a possible model for the CEE countries.

The socio-economic situation for Catholics in Northern Ireland prior to the introduction of FETO was in many ways similar to the situation for Roma in CEE today. An unofficial government memo reported that in Northern Ireland “on all the major social indicators, Catholics are worse off than Protestants. Catholics are more likely to experience long term unemployment. Catholics are significantly less likely than Protestants to hold professional, managerial, non-manual positions. More Catholics than Protestants leave school lacking any formal educational qualifications. Catholic households have a lower gross household income than Protestant households. Almost double the proportions of Catholic households are dependent on social security than Protestant households.”

The Protestant majority which included most employers also had prejudiced and stereotypical

views about Catholics and their attitudes to work. For example, that they were lazy, did not want to work, preferred to live on welfare benefit, only wanted work in the informal economy, and that Catholics were thieves, unclean and not to be trusted. This views are resoundingly familiar and often held about Roma in CEE today.<sup>1</sup>

Although Northern Ireland had anti-discrimination legislation in place for 10 years, the legislation did not have a discernable effect on the problems of inequality in the labour market and religion-based job segregation did not alter significantly as a result. Labour market discrimination was keeping many Catholics out of work, and as a consequence they were at least twice as likely to be unemployed as Protestants and twice as many were long term unemployed; out of work for more than four years. The situation appeared unlikely to change unless some direct measures were put in place that would enforce the legislation and make employers an active part of the solution. This is arguably very similar to the situation in CEE today, where some form of direct action is needed to challenge the discriminatory practices and prejudiced views that are creating insurmountable barriers for Roma in the labour market.

<sup>1</sup> *The similarities in the situation of Roma in the CEE labour market today and the Catholics in Northern Ireland in 1960s through into at least 1990s, in particular the prejudiced views of the majority population against the minorities, were recognised in a discussion with the Committee on the Administration of Justice in Belfast in September 2005.*

Largely in response to international pressure, and a weighty internal campaign calling for equality mainstreaming, the 1989 Fair Employment (Northern Ireland) Act was introduced, imposing specific obligations on employers regarding equality in employment. Since the introduction of the Act, there has been a steady progression which has extended the employment monitoring to smaller firms and the policy appraisal and fair employment guidelines to the point where all private sector employers with more than 10 full-time employees, and all public sector employers, are required to register with the Equality Commission for Northern Ireland (ECNI) and to carry out monitoring to guarantee the proportionality of their workforce. In 1989 the Fair Employment and Treatment (NI) Order (FETO) tightened the regulatory framework, and made it a statutory requirement to promote equality of opportunity.

Firms are required by the legislation to submit annual returns to the Equality Commission for Northern Ireland showing the number of Catholics and Protestants and men and women in their workforce. If in the course of the monitoring process the firm discovers that they do not have a proportionate workforce, they must ensure that corrective steps are taken and they must draw up a programme of measures to achieve a balance in their workforce and a timetable to implement the measures. Over and above the annual monitoring, at least once every three years, firms must undertake a full review of the composition of their workforce (Article 55). If such a 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”, or may be directed to do so by the Equality Commission.

The positive measures permitted under the Fair Employment and Treatment Order include the following:

- ✧ the encouragement of applications for employment or training from people in under-represented groups;
- ✧ targeted 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 for Northern Ireland.

Ensuring participation of employers and enforcement of the workplace monitoring procedures has been the responsibility of first the Fair Employment Agency (now the Equality Commission for Northern Ireland). This has been very much a carrot and stick approach which has used moral responsibility as a good employer, as well as grant aid to encourage participation from employers but at the same time, the Commission has the authority to investigate and impose sanctions on firms that are suspected of non-compliance.

According to the Commission this approach has been extremely successful and it has seldom had to make use of their sanction capabilities.<sup>2</sup> Another major factor that has guaranteed and motivated compliance from employers is the proactive approach that the Commission adopted to support new and inexperienced employers with the administration of the fair employment process. The financial assistance to set up the administrative procedures has also been a useful incentive to motivate co-operation from more resistant firms.

Those interviewed during the course of this research are in no doubt that FETO has been a significant driver of change, in terms of equality in employment in the Northern Ireland workforce.

<sup>2</sup> Under FETO if companies fail to meet statutory reporting and workforce monitoring requirements, or instructions to apply affirmative action sanctions can be placed on employers including exclusion from public authority contracts. These have been said to have a greater long term deterrent effect than the sanctions following litigation.

A recently published evaluation<sup>3</sup> assessed the changes that have taken place, ten years on as a result of the fair employment legislation in the labour market and the availability of employment opportunities for Catholics and Protestants in Northern Ireland. The assessment confirmed:

- ✧ 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.

FETO as a model is particularly relevant for CEE, not only because it has proven to be successful at counteracting serious and widespread discrimination in employment for a disadvantaged minority group. But also because the strict

process of measuring and monitoring equality in employment has the potential to have a significant impact on the behaviour and attitudes of public and private sector employers, and further upon the attitudes of employees. The adoption of such a strong and regulated approach by the Governments in CEE would be a very clear and explicit message that employment discrimination against Roma will no longer be tolerated.

The ultimate purpose of Fair Employment legislation in CEE would be to create an atmosphere of equality consciousness in the workplace, so that all aspects of working conditions from recruitment through the course of employment to dismissal are monitored and audited and corrective measures are taken, whenever necessary. It would be impossible for every employer and every organisation in CEE to change the ethnic composition of their workforce overnight; it must however be a process that starts and is managed by clear goals and timetables. The burden for change must sit very clearly with employers, public and private, giving them the responsibility to ensure that they have a proportionate workforce, and a workplace free of discrimination. If these conditions are not met, then employers must take the necessary steps and apply adequate measures to change that situation.

<sup>3</sup> Osborne, B. and Ian Shuttleworth; *Fair Employment in Northern Ireland, A Generation On*. Published by Blackstaff Press; Northern Ireland (2004).





## Activation Policy in Slovakia: Another Failing Experiment?

*Laco Oravec and Zuzana Bošelová<sup>1</sup>*

A recent position paper of the European Anti-Poverty Network (EAPN) argues that “Good activation is the ambitious but only relevant approach.”<sup>2</sup> The same paper defines ‘good activation’ by the following criteria:

- ✧ Improving personal, social and vocational skills and competencies and enabling to further social integration.
  - ✧ Individualised and flexible offers taking the whole person into consideration and acknowledging diversity of age, experience, etc.
  - ✧ Relevance of the offer for the individual person’s needs, wishes and priorities.
  - ✧ Aiming to overcome or compensate for the excluding forces in society.
  - ✧ Wide range networking with relevant actors at local level, such as actors on the labour market, health care services, social services, housing sector, communities, etc.
  - ✧ Respecting the individual’s identity and self-respect.
- ✧ Achieving quality compared to ambitious social standards.
  - ✧ Raising status.
  - ✧ Building on reciprocity between the individual and the (municipal) agency.
  - ✧ That the planning, the design and the implementation of activation is carried out in cooperation and interaction between the claimant and the (municipal) agency.
  - ✧ Involving the resources and strengths of the claimants.
  - ✧ Using adequate social income, including minimum income, as a positive tool likely to guarantee the security needed for activation. Benefits should be used also as a positive incentive to face the extra costs and risk when resuming a job after unemployment.

In this paper we offer an analysis of the Slovak activation policy vis-a-vis these criteria. We also discuss the effects of this policy on the Romani population, which is affected by massive and disproportionate exclusion from the labour market.<sup>3</sup>

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<sup>2</sup> *See European Anti-Poverty Network. EAPN Position Paper - can activation schemes work for social inclusion? EAPN criteria for ‘good’ activation, November 25, 2005, available at: [http://www.eapn.org/code/en/publ\\_detail.asp?pk\\_id\\_content=1675](http://www.eapn.org/code/en/publ_detail.asp?pk_id_content=1675).*

<sup>3</sup> *It is difficult to provide any precise data about the rate of unemployment among Roma in Slovakia because the government does not collect ethnic data in this area. According to some estimates, the rate of Romani unemployment in 2002, based on personal perception, was 82% and using the ILO definition of unemployment, it was 62%. (See UNDP Regional Human Development Report – Avoiding the Dependency*

Given the fact that the Slovak government has not implemented any large scale Roma-targeted programmes for reintegration in the labour market, the activation programme is also the major government initiative aimed at reducing unemployment among Roma. Indeed, research indicates that in some places Roma constituted close to hundred percent of the individuals participating in the activation activities. The impact of activation policies on Roma is also discussed in the context of the implementation of the amended Act on Assistance in Material Need which introduced a fixed ceiling for social assistance income as a result of which large Romani families relying on social aid were disproportionately disadvantaged. The following analysis is based on research undertaken by Milan Šimečka Foundation in the period May-July 2005 in Slovakia.

For years, Slovak social policy has been criticised for being too paternalistic and for failing to motivate people to escape from the dependence on social benefits and to seek jobs. In 2004, the Slovak government launched activation policy as one of the active labour market policy tools. The activation policy is considered by the government as one of the most successful measures in our recent history and an effective tool in helping unemployed to enter the labour market.

The activation policy was introduced in the beginning of 2004 when the new Act on Employment Services (Act No 5/2004 Coll.) entered into force. The Act states at Article 52, paragraph 1: *“For the purposes of this Act, activation activity is defined as support for maintaining the working habits of the job seeker. Activation activity shall be executed in the duration of at least ten hours per week and 40 hours per month, except for the month in which the activation activity began.”* Further the Act stated: *“Activation activity may be performed in the form of minor communal services performed for a municipality and organised by the latter, or of voluntary works organised*

*by a legal person or by a natural person.”* The Act on Assistance in Material Need (No 599/2003 Coll.) lists the categories of individuals who can be involved in various forms of activation policy as well as the activation payment (some extra payment added to social benefits) they are entitled to. Initially, this amount was 1,000 SKK (approximately 25 EUR), and currently it is 1,700 SKK (approximately 45 EUR) per month.

The introduction of this tool was followed by a high demand for organising activation programmes among municipalities and non-governmental organisations. Only in the first year after the launch of this measure, over 200,000 persons participated in activation programmes which were managed by almost five thousand subjects (municipalities, NGOs, churches etc.). The number of individuals who took part in activation activities exceeded by far initial expectations of about 100,000 persons. During the research, many Roma testified that they were not included in activation activities due to shortage of vacant jobs. It could be assumed that in the regions with high levels of unemployment, many families were not able to gain access to the activation activities and to compensate the loss of income resulting from the reduction of the social benefits, also a result of legal amendments undertaken at that time. This especially relates to the regions of Košice, Prešov and Banská Bystrica, which are also the regions with the highest numbers of Romani population.<sup>4</sup>

The implementation of the Slovak activation programmes is plagued by numerous problems which question their efficiency. While aware of the urgent need to reform the Slovak social policy, we are afraid that the way the reform has been organised makes it another example of misguided policy.

In the first place, the activation programmes seem to be failing in their major goal – to regenerate people’s employability. Activation policy evolved

*Trap, Bratislava, December 2002, available at <http://roma.undp.sk/> According to some general observations, the unemployment rate in the most excluded Romani settlements is in the range of 95% to 100%. On the other hand, many Roma living in more integrated municipalities are either employed in some local companies or they travel to work in more developed regions of the country or abroad.*

<sup>4</sup> See data from the 2001 census of the Slovak population, available at: <http://www.statistics.sk/webdata/slov/scitanie/tab/tab.htm>.

from a short-term active labour market policy tool into a new form of a long-term social dependency. Initially, the programmes were designed to activate participants in the course of 6 months – a period considered long enough to allow them to join the labour force. Shortly after the launch of the programmes, it was obvious that this was an ambitious task – after one year of implementation, only approximately 1% of all participants succeeded in finding jobs.<sup>5</sup> Later, the whole concept of the activation policy was revised and the 6 month limitation dropped. The revised activation policy allows for continuous involvement of persons in the activation activities. As a result, their chances of advancing towards a real job are significantly reduced.

The introduction of the activation policy coincided with an adoption of the new Act on Social Assistance in Material Need, which reduced the social assistance income of families and introduced a fixed benefit ceiling limited to 2 adults and 4 children.<sup>6</sup> As a consequence, activation activities and related payment were not perceived as an opportunity to re-enter the labour market. Many people sought in activation activities compensation to reduced social benefits and saw the activation activities as the ‘real’ job that generates money (social benefits). During the research we met respondents who stated: “I am not seeking job, I work in activation”. Activation policy appears to be functioning as an alternative social policy rather than an active labour market tool<sup>7</sup>, thus departing from the goals of the European Social Fund, which has funded it.

Another factor which has weakened the impact of the activation policy is that it has ignored the limitations of the labour market as well as the limitations of its participants. One significant consequence of the transition process was the shrinking of the job market.<sup>8</sup> In that context it might be interesting to note, that national activation policy was launched in a period when the official supply of jobs (registered at labour offices) was 20 times lower than the demand (number of unemployed). This fact raises the question – towards what is the government activating unemployed people, when there are no jobs available? Furthermore, the predominant part of the unemployed population are persons with very low qualification who have little chances to find a job in relation to the needs of present labour market.

The amount of the compensation offered for activation work is so low that it can be considered a form of modern slavery. In 2004, the amount of the activation wage per hour was 12.5 SKK (approximately 0.35 EUR) and currently it is 21.2 SKK (approximately 0.60 EUR).<sup>9</sup> The official minimum wage per hour in Slovakia is 39.70 SKK (approximately 1.05 EUR).<sup>10</sup> As long as the activation programme is part of an active labour market policy it should respect some ethical aspects of the value of work. Failing in these aspects, the whole policy can trigger deformations in the labour market. For instance, now it is cheaper to hire for unqualified work persons with activation status than regular employees, and some companies (e.g. municipal cleaning

<sup>5</sup> Based on information provided to the MSF by the State Secretary of Ministry of Labor, Social Affairs and Family in July 2005.

<sup>6</sup> The Act on Social Assistance in Material Need (Coll. 599/2003) is available in Slovak at: [www.zbierka.sk/get.asp?rr=03&zz=03-z599](http://www.zbierka.sk/get.asp?rr=03&zz=03-z599).

<sup>7</sup> This is one of the reasons why the total expenses of Slovak budget assigned to social assistance in material need have dropped for more than 50% since social reform. See daily newspaper SME, 11<sup>th</sup> November 2005, available at <http://www.sme.sk/clanok.asp?cl=2540905>.

<sup>8</sup> The rate of registered unemployment measured by the Ministry of Labor, Social Affairs and Family in the year 2004 was 14.3%. (<http://www.employment.gov.sk/mpsvrsr/internet/home/page.php?id=1490&SID=b84ba2f0cb0feb5ffe6cb415f5648e23>); the rate of unemployment for the same period according to the Labor Force Sample Survey collected by the Slovak Statistical Office was 18,1% (<http://www.statistics.sk/webdata/english/tab/une/une05a.htm>).

<sup>9</sup> The administratively defined maximum of working hours in activation is 20 and the monthly activation payment was fixed initially, at 1,000 SKK and was increased to 1,700 SKK in 2005.

<sup>10</sup> Government resolution 428/2005 Coll.

companies) have dismissed their employees and replaced them with individuals from the activation programme. People have lost their jobs as a result of state policy.

An important aspect of an activation programme is its public utility. In the case of the activation programmes implemented in Slovakia many times the work assigned was useless. Everyday cleaning of the same street is an example. It can be presumed that if municipalities were also obliged to financially participate in the programmes, they could have generated more useful types of work. Activation policy could in that case significantly contribute to regional development. Furthermore, participating persons would feel more useful and self-confident.

Another failure of this policy which was observed is the occurrence of corruption. There were some rumours and suspicions that in some municipalities people were appointed not for public interest work, but for personal benefit of the mayor or some other public official. Although this is not a systematic malfunction, it demonstrates the lack of efficient control mechanisms.

Finally, authorities managing the activation programmes have lots of complaints about complications with reimbursement, inefficient communication with local labour offices, etc. On the other hand those complaints we consider minor, as there is still chance of improving the whole system to function more smoothly.

Many of the deficiencies described above were obvious even before the launch of the activation policy. Some of them have occurred during its implementation.

Research conducted by Milan Šimečka Foundation (MSF) in cooperation with the European Roma Rights Centre (ERRC) established a

number of abusive and discriminatory practices by organisers of activation programmes with respect to Roma. Despite the fact that the activation policy did not specifically target Roma, large numbers of Roma were registered for activation activities and in some parts of Slovakia, activation programmes have recruited predominantly Romani individuals. For example, in Brezno, eastern Slovakia, the Technical Service Company employs 275 persons on activations, about 255 of whom are Romani. As a consequence the company is called “the Gypsy Company”.<sup>11</sup> In another instance, in Zborov, one man looking for the activation coordinator asked: ‘Where are those who take care of ‘the blacks?’<sup>12</sup> Our research has revealed that when the activation positions are being allocated, the worst and lowest status positions are given to Roma. Discrimination exists even in this type of work; it is the Romani participants who are given the most degrading, least attractive and most labour intensive tasks. Some examples documented during the research are provided below:

In Hermanovce, eastern Slovakia, the organiser of activation activity (local municipality) and managing coordinators tolerated the situation of some people sending other persons (in some cases children) to work instead of them. In the same locality as well as in some others, we found that Romani participants complained about the fact that they are assigned to heavier work as compared to non-Roma participants in the activation programme.<sup>13</sup>

In a few cases reported to the ERRC/MSF researchers in Heľpa and Brezno, central Slovakia, non-Roma had demanded from Roma activation workers to work in their households, for example to do the cleaning in the front of their private houses. As the coordinators of the programme stated – “The result of activations is that the non-Roma became lazy”.<sup>14</sup>

<sup>11</sup> ERRC/MSF interviews, Brezno, June 2005. ERRC/MSF withheld the names of the individuals interviewed in respect of their wish to provide information on condition of confidentiality.

<sup>12</sup> ERRC/MSF interviews, Zborov, June 2005.

<sup>13</sup> ERRC/MSF interviews, Hermanovce and Heľpa, June 2005.

<sup>14</sup> ERRC/MSF interviews, Heľpa and Brezno, June 2005.

In Sobrance, eastern Slovakia, the workers are required to clean playgrounds for local football clubs; to work on weekends or after working hours; and to perform private tasks on behalf of managers of the programme or local officials. No compensation has been provided for these activities. People who have complained against such practices, have often been threatened with dismissal. In this village, Romani workers on activations are often used for heavy physical work, e.g. digging canals. While few had the capacity to do such work, some were over-qualified (secondary education) for it. Non-Romani workers are reportedly rarely required to do similar tasks.<sup>15</sup>

Most of our respondents who worked on activation activity in small towns or villages in Slovakia were dissatisfied with this work and the high degree of dependence on social benefits (material need benefit) and the activation benefits (job-start allowances). Most of the people whom we interviewed stated that they

would rather have a regular job than this type of survival job. Some of the respondents admitted that they were able to combine activation activity with informal work (demolition work, digging) or seasonal work (picking of fruits or herbage, recycling). They have no motivation to find regular jobs, especially in regions with high unemployment and low salaries.

When the social policy reform involving reduction of social aid was announced two years ago, the MSF has criticised it, anticipating its impact would be atrocious. We were sceptical about the attainment of the declared goals, namely that the activation policies would reduce the number of unemployed and thus balance the social benefit cuts. Just recently the World Bank presented its findings saying that the amount of people living in risk of poverty is not increasing, but poverty has become more serious, and poor families are even poorer now than before.<sup>16</sup>

<sup>15</sup> *ERRC/MSF interviews, Sobrance, July 2005.*

<sup>16</sup> *World Bank. Report No. 32422-SK, The Quest for Equitable Growth in Slovak Republic, September 22, 2005, available at: [http://www-wds.worldbank.org/servlet/WDS\\_IBank\\_Servlet?pcont=details&id=000160016\\_20051118100010](http://www-wds.worldbank.org/servlet/WDS_IBank_Servlet?pcont=details&id=000160016_20051118100010).*





# The Multiregional Operational Program Fight Against Discrimination "ACCEDER"

Actions aimed at the Romani Community in Spain<sup>1</sup>

A SIGNIFICANT NUMBER of individuals belonging to the Spanish Romani community of over 650,000 people are currently experiencing serious difficulties to access employment and vocational training – a problem which is one of the main causes for their inequality and social exclusion. Prejudices and stereotypes that have led to the stigmatisation of Roma by the majority have contributed a lot to this situation. The ACCEDER Programme presented in this article provides a unique opportunity for the current generation of Romani youth to have access to the labour market and equal opportunities as any other non-Romani Spanish citizen.

The actions under the Operational Multiregional Programme "Fight Against Discrimination" (O.P.) "ACCEDER" are aimed at increasing opportunities for the integration of the Romani community in Spain. The Programme is aimed preferably at the Romani community but also envisaged participation of up to 30% of non-Roma. The Programme aimed at involving 15,000 Roma and ensuring a minimum of 2,500 labour contracts in the period 2000-2006. In order to do so, a methodology based on the individual needs was developed including the following types of actions:

✧ Sensitising and awareness-raising of young Roma (above 16 years old) and their families

about the availability of guidance, training and job search processes;

- ✧ Providing guidance for defining the content of the individual employment pathways for training and job search;
- ✧ Labour market research focusing on economic sectors in which Roma may have adequate qualifications; contact with enterprises to build bridges between employment opportunities and unemployed Roma. Once the matching process is completed, follow up and assistance to the newly employed Roma and to the entrepreneurs, especially in the beginning of the process;
- ✧ Training to improve the employability of Roma: bricklayer, shop assistants, general delivery, store unloading, cleaning services (hotel, domestic or industrial cleaning), air conditioning installer, cook assistants, etc.)
- ✧ Promotion of positive experiences of social intervention with the Romani community in relation to labour insertion, along with exchange of good practices aimed at promoting labour insertion of Roma;
- ✧ Creation of an information system – Monitoring Centre on Roma Community Labour Insertion – which provides information on developments in the employment situation of Roma.<sup>2</sup>

<sup>1</sup> This article is a collective work of the Employment and Operational Programme Department of the Spanish non-governmental, non-profit organisation Fundación Secretariado Gitano (FSG). The FSG provides services for the development of the Romani community in Spain and on the European level as well. It has commenced its work in the 1960s and was formally established as a foundation in 2001. Its mission is the integration and advancement of the Romani community based on respect for their cultural identity. The FSG seeks to support access of Roma to rights, services and social resources on an equal footing with the rest of the citizens. To accomplish this, a wide range of actions are carried out focused on improving the living standards of Roma and encouraging recognition, support and development of their cultural identity. More information on the ACCEDER Programme is available at: <http://www.fsgg.org>.

<sup>2</sup> This information can be accessed at: <http://www.fsgg.org/acceder/observatorio.htm>.

When implementing a project targeting both the Romani community and the society at large, dissemination activities have a key role. Bringing examples of good experiences opens up Roma persons' awareness of possibilities for employment and training as ways of promoting themselves in society.

### **The Programme's priorities**

Although actions themselves are directly run by the Fundación Secretariado Gitano, the definition and establishment of priorities have been consulted with various representatives of Romani organisations in Spain.

The main priority is to promote and launch labour insertion actions such as individual employment pathways and the development and improvement of human resources. This priority has three dimensions:

- ✧ promote access of Roma to regular employment;
- ✧ launch community services aimed at improving the quality of life and specially, advancing the social integration of the Romani community;
- ✧ foster more active and targeted social and cultural policies with respect to the Romani community at the level of regional and local governments.

### **Objectives and strategy**

The main goal is to promote equal opportunities for Roma to access the labour market. The achievement of this goal relies on an integrated and multidimensional approach, including the following elements:

- ✧ Development and improvement of the employability or labour insertion capacity of the Romani community by facilitating their access to vocational training and local and regional employment resources, and eventually, to the labour market. Individual

treatment is essential in this methodology, beginning with an initial diagnosis of the employability conditions of each person and designing appropriate measures and steps needed to improve the individual's access to employment;

- ✧ Development of new jobs within the community services, fostering more active policies targeting the Romani community. Community services should address social integration issues which are crucial for the Romani community.

### **Mobilising resources**

Actions within the ACCEDER Programme were assigned to the Fundación Secretariado Gitano (FSG) with consideration of this entity's experience in the field of vocational training and employment.

In order to implement the Programme, 45 integrated employment units were set up throughout Spain. These units are located in accessible places for the Romani community and have a staff of 5 professionals in charge of running the Programme at the local level (one manager, two labour counselors, one mediator working with employers and one intercultural mediator working with the Romani community).

Establishing partnership relations at various levels is a major guiding principle in the implementation of the Programme. Following this philosophy, the Programme has involved various entities and operates in synergy and complementarily with other initiatives with similar aims (other Operational Programmes of the European Social Fund, EQUAL Initiatives, regional and local programmes, and national programmes).

### **Key aspects which guarantee the success of the Programme**

- ✧ Financial support from more than 100 public administration departments at national, regional and local levels, in the areas of social policies, vocational training and employment;

- ✧ Involvement of entrepreneurs, media and other entities;
- ✧ Leading role of the target groups and their representative entities (Romani associations, social networks, etc.) in the development of the Programme's actions;
- ✧ Setting up of Monitoring Committees involving over 100 entities from all over Spain. The aim of these Committees is to disseminate information and to guarantee full transparency of the Programme's actions.

### The process

In the beginning of 2006, the Programme has entered the last year of its implementation and the quantitative results of the implementation reinforce the relevance of its methodology. The Programme's evaluation allows us to highlight its impact in at least three areas:

- ✧ Improvement of Roma employability conditions achieved through training and job experience of the clients of the 45 guidance and employment units throughout Spain. Such intermediate results constitute small but important steps towards the elimination of discrimination of Roma in their access to the labour market;
- ✧ Raising awareness and sensitising institutions about the need to adapt the training and employment systems to the specific situation of the Romani community in order to improve access of Roma to public services;
- ✧ Raising awareness in the general society and among entrepreneurs. Although there is still much to achieve in this respect, we have witnessed attitude changes, mainly due to concrete personal experiences of relationships with Romani people and due to campaigns and production of documents challenging stereotypes and ignorance about the Romani community.

In spite of the overall positive evaluation of the Programme, we are aware of its limitations as well as of the challenges which remain, such as:

- ✧ To ensure that certain groups within the Romani community, who have not benefited from the Programme until now, benefit from it;
- ✧ To intensify assistance provided to the Programme's beneficiaries in their employment pathways, so that they achieve more stable employment and increase their participation in training schemes;
- ✧ To promote more training actions aimed at improving the quality of jobs by improving professional qualification, paying special attention to the development of professional competences in the field of new technologies;
- ✧ To deliver more positive messages confronting patterns of discrimination in the labour market, by promoting sensitising actions aimed at entrepreneurs, public administrations and society in general.

### Results achieved

In the beginning of 2006, the initial objectives of the Programme have been exceeded. Here are some examples:

From a quantitative point of view:

- ✧ 25,190 people have gone through individual employment pathways – training and assistance oriented towards their individual needs;
- ✧ 16,560 employment contracts have been concluded;
- ✧ 7,998 persons have had individual employment contracts, 5,182 out of which are Roma;<sup>3</sup>

<sup>3</sup> Some participants in the Programme have had more than one contract during the period.

- ✧ More than 160,000 hours of vocational training have been provided through 190 courses where more than 1,800 Roma pupils have participated.

From a qualitative perspective:

- ✧ Promotion of participants' autonomy and welfare. This process included:
  - Improving opportunities to access a job
  - Guaranteeing advance in equal opportunities
  - Increasing specific measures aimed at Roma
  - Facilitating involvement of Roma into mainstream active labour market activities
  - Improving the social participation of Roma
- ✧ Challenging discrimination on ethnic grounds
- ✧ Promotion of more active social policies targeting Roma, and in particular opening up of new training and employment possibilities in which Roma can participate;
- ✧ Launching the Programme in 43 cities of 13 regions of Spain with the participation of around 100 public and private entities, many of which supported the Programme financially. The Programme, therefore, is operating at a multiregional level, taking into account the specifics and the needs of each territory, but also preserving common elements which may be transferable;
- ✧ Wide publicity, especially among Roma, of the Programme's aims and actions;
- ✧ Design, elaboration and implementation of a guidance and labour insertion methodology and tools adapted to the target group.

### Sustainability

- ✧ **Financial:** More than 100 public administration departments (state, regional and local) contribute financially. These departments deal with social welfare policies, vocational training and employment. Their participation will facilitate the incorporation of such measures in the mainstream public policies.

- ✧ **Social and Economic:** Partnership with public administration at regional and local levels has allowed the Fundación Secretariado Gitano to take part in the development of local development plans and to initiate policies in line with the Programme's goals. That is to say, that "Romani policies" are being mainstreamed into general public policies.

On the other hand, social cohesion is enhanced through the involvement of all relevant actors working within the same territory.

Gender equality is also fostered. Romani women are identified as a group in need of special attention within the Programme's action plan. Around 50% of the Programme's beneficiaries are women; 65% of the participants in vocational training courses are women, and 48% of all Romani clients who have had access to employment, are women. Specific actions aimed exclusively at Romani women are also developed. Positive action to promote access of Roma women to all Programme's actions are essential in order to achieve equal opportunities for them in two ways: as women and as Roma.

- ✧ **Cultural:** The action plans are based on substantial knowledge of the Romani community and its situation with respect to the labour market, which is a precondition for a more efficient and quality intervention. Such intervention is developed by teams of Roma and non-Roma. Many Roma act as mediators within their community.

The involvement of the Romani community itself is also promoted, strengthening its capacity for participation, and allowing for greater accessibility of the information to the community.

### Lessons learned and impact of the Programme

- *Design and testing of specific methodology on Roma labour insertion:* A guidance and labour insertion methodology and tools adapted to the Roma community have been elaborated and applied based on the principle of individual intervention that takes into account cultural aspects (the relevance of the family,

the concept of work and time...). Such methodology can be used by other actors dealing with Roma population. Such methodology includes the following components:

- Gathering of personal information
- Elaboration of diagnosis
- Design of individual employment pathways
- Development of actions
- Assistance to clients
- Support within the family and community environment

➤ *Challenging discrimination on ethnic grounds:*

- Ideological elements that may hinder equality: The Programme contributes to weaken stereotypes by promoting the incorporation of Roma into the regular circuits of training and employment.
- Structural factors that raise barriers to equality: The Programme has fostered more flexible and adapted regulations and norms in relation to accessing training and employment resources. Through the Programme, discriminatory practices and patterns are being detected, recognised, quantified and analysed. Sensitising measures aimed at our own staff are carried out so that they become aware and involved in the detection of discrimination and in the promotion of anti-discrimination practices and approaches.
- Historical tensions between the Romani community and the rest of society: The Programme contributes to increase the capacity of Roma for participation and expression. Contact and communication and relationships between Roma and non-Roma are facilitated. Joint activities between Roma and non-Roma are launched.

### Acknowledgements

There have been several acknowledgements of the ACCEDER Programme as an example of good practice:

- ✧ The Spanish National Action Plan in 2001 included the ACCEDER Programme as an example of best practices;
- ✧ It was selected and identified by the European Social Fund in 2003 as an “Example of Best Practices” in the interim evaluation of the entire Multiregional Operational Programme to Fight Against Discrimination carried out by an independent enterprise. The results of that evaluation highlight key aspects contributing to the ACCEDER Programme’s being chosen as an example of best practices, namely:
  - Degree of action effectiveness
  - Successful insertion rates
  - Users satisfaction
  - General contribution to the European Employment Strategy and National Employment Action Plans
  - Contribution to the horizontal priority of equal opportunities in achieving widespread participation and insertion rates for women.
- ✧ Selected as BEST at the Dubai International Award for Best Practices in improving the living conditions, organised by the United Nations – UN HABITAT- in 2004.
- ✧ The European Council of Employment, Social Policy, Health and Consumer Affairs Ministers of 1 June 2004 held in Luxemburg identified the ACCEDER Programme as an example of Best Practices in guaranteeing access to the labour market for the society’s most vulnerable groups.

### Transferability of the Program

Large numbers of Roma facing high levels of social exclusion became citizens of the EU as a result of the accession process. This situation calls for urgent measures to tackle Roma issues in the European context. The ACCEDER Programme may be a model for CEE countries since its approach is based on social integration rather than cultural identity, concentrating efforts to improve the life conditions of the Romani community by

their full incorporation into vocational training and regular employment.

The Council of Europe Development Bank, which considers this Programme transferable to the countries of Central and Eastern Europe, has signed an agreement with the FSG to provide technical assistance to projects aimed at improving the living conditions of the Romani community in Central and Eastern European countries.

The Programme has expanded within Spain itself. In 2000, we started 30 guidance and employment units in 30 different territories of Spain. Nowadays, following requests from other municipalities and regional administra-

tions, we have enlarged the Programme to cover 44 units.

Due to the size of the Programme, the management and coordination system is a key element for its success. Such system may be transferred to other large-scale employment and social intervention projects.

Finally, the Programme is a model of an integrated approach to enhancing employability. Also, it operates with a multiregional strategy, taking into account peculiarities and specific needs and characteristics of each territory, starting from their common elements in this field, so that they become transferable.



# Positive Action as a Tool in Promoting Access to Employment

Erika Szyszczak<sup>1</sup>

**S**INCE the signing of the Treaty of Amsterdam in 1997, EU law has provided a number of opportunities to increase employment and social law protection. This has taken place against a backdrop of creating a Constitution for the EU where ideas of citizenship and fundamental rights play an increasingly important role. The Constitution goes further in creating a set of values which are shared within the EU. Of significance is Article I-2:

“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance and justice, solidarity and equality between men and women must prevail.”

The EU Constitution has yet to be ratified but it remains a powerful document of the vision the EU has of its own future.

The European Court of Justice, the supreme arbiter of EU law and a central political actor in the institutional framework of the EU, has also taken on board citizenship and fundamental rights issues in its judgments. Since 1997 the EU has adopted a raft of measures which tackle anti-discrimination, using ideas of citizenship and fundamental rights to add greater weight, and a constitutional quality to this area of law.

The significance of these developments lies in the fact that a common constitutional framework for the EU is being mapped out. The use

of EU law in national courts and tribunals is a particularly useful way of overcoming limitations and lacunae in national law, and of creating new opportunities for legal concepts and ideas. EU law also provides a useful political process to campaign for change at the national level, using examples of best practice drawn from other Member States. One significant contribution of this new phase of EU law for Roma rights is the endorsement of the use of positive action in the new legislative measures.

## What Is Positive Action?

Positive action refers to a broad spectrum of policies and programmes which are aimed at targeted groups in order to redress inequalities which result from discriminatory practices, or the position of certain groups in a given society. The concept is sometimes called affirmative action. It should be distinguished from positive discrimination where certain individuals or groups are given preferential rights, for example, a fixed quota of posts is reserved for them, and also from reverse discrimination, where members of a dominant group or class are actively discriminated against in order to secure a more diverse workforce, education cohort or political composition of a public body or agency. In some countries, South Africa, for instance, the use of what is termed affirmative action, is found as a Constitutional idea. Positive action policies may be used to change the composition of institutions and bodies, for example, to achieve a higher representation of female members of Parliament, or more women as company directors, or more judges drawn from ethnic minorities. As a legal tool it has enormous value in being able to tackle what

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is sometimes described as multiple discrimination. This is where one particular characteristic, for example, sex, or race, or age cannot be pinpointed as leading to a particular act of discrimination, but where belonging to a particular group, or social class in society perpetuates the perceived role of that group in society. The policy may also be used to change the composition of educational establishments and the labour force of a particular sector or workplace. France, for example, uses positive action as part of a broader social policy programme, by giving preferential treatment to women who have been at home looking after children instead of participating in the paid labour market. By and large such policies are usually introduced into the public sector with the idea that acceptance here will lead to a trickle down effect into the private sector. The use of positive action in the public sector is also closely linked to a second aim of positive action: to increase the representation of particular groups in public life.

Positive action has proved to be problematic from many angles. Members of the targeted group are often reluctant to take up appointments based upon a positive action strategy. Ideas of winning a job, or a political position, on merit and criticisms of tokenism are two central reasons for this reluctance to embrace positive action programmes. Positive action, as a legal and constitutional idea, is also fraught with difficulties over the use of appropriate language. Ideas of “disadvantaged” groups, or groups who have been “discriminated” against or “victims” of social and political discrimination can, arguably, seek to perpetuate stereotypes of such groups. From the legal perspective positive action programmes are frequently attacked by individuals who feel discriminated against where positive action results in a candidate from a protected group obtaining a job, or a place in an educational programme, or a seat in parliament, when the alleged victim feels he/she is equally as well placed, or even better qualified, to take up such an opportunity. Similarly, it is argued that positive action results in too much interference with individual liberty. Thus, positive action programmes have come under attack as misplaced ideas of social engineering.

A major weakness of such programmes is whether, at the end of the day, they do achieve results. Discussion of positive action programmes in India, for example, has argued that positive action helped those individuals who were already socially mobile, with a thin layer of financial and social resources.

The most tangible evidence of the success of positive action is seen in the political arena. Countries that have succeeded in raising levels of women’s representation in parliaments beyond minimal levels have almost invariably used some form of positive action. Success in one State often leads to the adoption of positive action in other States which want to change the gender composition of national parliaments. Under such systems, women are in effect assured election to the legislature, either through quotas in electoral law or quotas in the selection procedures of political parties. Use of such systems began on a voluntary basis in the Nordic countries in the 1970s, and has since spread widely throughout the world. For example, the African National Congress adopted a quota system for South Africa’s first democratic elections in 1994, whilst an electoral law adopted in Argentina in 1991 required 30 per cent of candidates for the legislature to be women. In the UK the use of women only short lists for candidates was found to be contrary to the Sex Discrimination Act 1975, necessitating a change in the law in The Sex Discrimination (Election Candidates) Act which was adopted in February 2002.

Assessing outcomes of positive action is indeed hard to quantify. It relies upon monitoring and statistical evidence for tangible evidence of success. Such methodology fails to quantify how positive action may encourage members of a protected group to think about applying for different posts, or jobs, or educational courses, even if they are not immediately successful. It fails also to quantify how a particular mind set, particularly of those in political power, or holding economic power, for example employers, change attitudes. This last point is in fact the starting point for a forward looking view of positive action. Modern ideas of positive action see it not as a backward-looking tool, to redress past and current discrimination, or to provide compensation for past

injustice, but as a forward looking tool to plan a society where the constitutional ideas and values of pluralism, found in the EU, are recognised: to build a society based upon diversity. This note looks at the way in which positive action is used in the European Community law and explains the legal basis for positive action measures in the United Kingdom as an example of the kind of methods which can be used to introduce positive action into domestic policies.

### Positive Action in EU Law

Positive action was acknowledged in one of the earliest pieces of sex discrimination legislation, Council Directive 76/207 EC. It was a limited acknowledgement that some Member States used positive action and the Directive protected measures taken by Member States which promoted equal opportunity for men and women, in particular by removing existing inequalities which affected women's opportunities in relation to employment, training, promotion, working conditions and to a limited extent, social security. This was seen as a derogation from a fundamental concept of European Community law, namely, the principle of equality, and it was interpreted in a narrow way by the Court of Justice.

A change was seen in the Treaty of Amsterdam where the equal pay provision, Article 141 EC, was amended to permit positive action measures for the under-represented sex, to pursue vocational activities or prevent or compensate for disadvantage in professional careers. Article 13 EC provided a legal base for a wider raft of anti-discrimination measures and in 2000 two new Directives were adopted, Directive 2000/43 and 2000/78, addressing equal treatment issues in racial and ethnic origin and in employment and occupation matters generally. Significantly, both Directives permit positive action to be used. A criticism of the EU legislation is that it does not compel Member States to use positive action, although it is arguable that in order to meet the overriding obligation to secure equality Member States should, in certain circumstances, where women and ethnic groups are under-represented

in particular positions or segments of the labour market, have a duty to use positive action to secure results.

### The Use of Positive Action in the United Kingdom

Discrimination law is one area where the cross-fertilisation of ideas from different jurisdictions may have a considerable impact. UK anti-discrimination law has tended, until recently, to have been influenced by developments in the US. Instead of developing from a constitutional basis or a charter of fundamental rights or even civil liberties ideas, anti-discrimination law has grown from a narrow employment-related context to embrace a wide range of areas. This narrow approach was criticised in the past, and indeed ideas of civil liberties were negligible, but it has allowed anti-discrimination law to develop in a pragmatic and practical way, exposing weaknesses and strengths of the particular model of discrimination. Many of the ideas and concepts which form the basis of anti-discrimination law have emerged from litigation and this has involved test case litigation to clarify concepts and push forward new ideas. Now UK anti-discrimination policy is dominated by the change in pace of EU legislation. It may, therefore, provide a useful model and learning experience for other EU states.

Of huge significance in the UK model is the reliance of enforcement bodies established to promote and monitor equality. The emphasis upon the public duty to promote equality and combat discrimination has, perhaps, been at the expense of looking at public duties imposed upon private bodies, such as employers. The emphasis in the UK has been, until recently, upon individual enforcement of discrimination claims. The public enforcement bodies of the Equal Opportunities Commission and the Commission for Racial Equality played a role in test case litigation, sector inquiries and providing backing for individual litigation, alongside research into discrimination. The Race Relations (Amendment) Act 2000 introduced a duty upon public bodies to promote race equality and this is reinforced with specific duties, for example public bodies are required to produce and publish race equality schemes and action

plans. The Commission for Racial Equality monitors these schemes for compliance and adequacy. This is an important step forward in terms of transparency and accountability of public bodies. It also paves the way for statistical evidence to be used to redress imbalances in the composition of a public body. This is particularly important for justifying the use of positive action and for ensuring that any positive action programme targets real need. But the whole process is reliant upon adequate monitoring of these programmes. Educational establishments appear to be the main sector where there is a proactive approach towards ensuring equality schemes and action plans reflect the needs of the staff and students who work in these areas. Particularly in relation to religious needs, for example accommodating timetables to meet particular prayer times, particular facilities for Muslim staff and students, recognising the need to wear particular forms of dress have dominated the equality agenda. Monitoring of applications for student places and the profile of the workforce lead to greater accountability and transparency in hiring procedures. However, these duties are still relatively new and the full impact of using positive measures to alter the status quo has yet to be felt. Indeed, although the use of positive action has been recognised in the United Kingdom since the 1970s, drawing upon the United States' use of affirmative action programmes, UK law continues to see positive action as a very peripheral part of the equality/non-discrimination agenda.

In the United Kingdom the Sex Discrimination Act 1975 (as amended), the Race Relations Act 1976 (as amended), the Sexual Orientation Regulations 2003 (SORs) and the Employment Equality Religion or Belief Regulations 2003 (RBRs) provide a limited scope for positive action. Section 48 of the Sex Discrimination Act 1975 (as amended) permits employers to provide single sex training and also to encourage female or male applications in respect of jobs in which, over the previous year that sex has been significantly under-represented. A typical advertisement in the public sector would read:

“A local government office is an equal opportunities employer. Women are currently under-represented in this employment sector

and applications from women are particularly welcomed.”

Section 38 Race Relations Act contains a similar approach and Regulation 26(1) of Sexual Orientation Regulations and Race, Belief, Regulations also permit the encouragement of applications from persons of a particular sexual orientation or religion or belief respectively. Section 47 of the Sex Discrimination Act, section 37 of the Race Relations Act and Regulation 26(2) of the SORS and RBRs permit targeted training by persons other than employers along similar lines to the SDA and RRA.

Section 47(3) of the Sex Discrimination Act permits training to be targeted at people in special need of training by reason of the period for which they have been discharging domestic or family responsibilities to the exclusion of regular full-time employment”. This provision appears gender-neutral but in reality targets women who continue to bear the main responsibility for childcare and eldercare. Many of these training schemes are funded by central, local government often with matched funding from the EU. Other bodies, for example trade unions, may also permit some form of limited positive discrimination under the anti-discrimination legislation.

The Race Relations Act and Sex Discrimination Act have a significant difference in relation to positive action. SORs and RBRs make targeted training, advertising lawful where the action reasonably appears to the organisation to prevent or compensate for disadvantages linked to sexual orientation, religion or belief suffered by those of that sexual orientation, religion or belief who are doing, or likely to take on the relevant work, or are holding or likely to hold the relevant posts. In contrast, the SDA and RRA require statistical under-representation before positive action measures can be taken. To require statistical evidence in relation to sexual orientation, religion and belief would, at this stage, be very difficult to adduce since such forms of discrimination have only just been recognised in law and the collection of such statistics would be difficult. Some employers are asking for this information on monitoring forms, but this is voluntary and some applicants may be

reluctant to provide this information before they have a firm offer of employment.

Under Employment Equality (Age) Regulations 2006 which have been introduced to comply with the final aspect of Council Directive 2000/78/EC positive action is permitted in two narrowly defined areas: access to vocational training and encouragement to use employment opportunities. The conditions for positive action to apply are where such measures are reasonably expected to prevent, or compensate, for age-related disadvantages. But this does not extend to positive discrimination, for example recruitment a person to a post because they are from an under-represented age group.

Under the Disability Discrimination Act 2005 amendments have been made to the current disability legislation. From 4 December 2006 there is a positive duty to promote equality between those who are, and who are not, disabled.

A controversial issue in the UK has been the attempt by the government to promote wider access to higher education. This is an interesting dimension to the equality/non-discrimination debate since the policy of the UK government is based upon the premise that children from poorer and disadvantaged backgrounds have less opportunity to meet the entry requirements for tertiary education. Higher education institutions facing growing economic and financial problems are able to charge higher fees for tertiary education but this must be matched by a requirement to demonstrate that they are also taking steps to widen participation. This can be achieved by making bursaries available to students from low income families.

There have been pressures to promote positive action by lowering admission grades for students who can show that they have been educationally disadvantaged or requiring different admission grades depending upon the kind of school (private or state) the student has studied at. Where a student feels he/she has been treated unfavourably by this system it is difficult under current anti-discrimination laws to bring a claim of discrimination and therefore the legality of

this practice has yet to be tested in the courts. It is arguable that such a practice may infringe the discrimination provision under Article 14 ECHR in relation to the provision of education under Article 2 of Protocol 1 of the Convention. But the higher education institution and the government would probably be able to justify the measures as a proportionate response to a pressing social need: widening participation to higher education.

The most far-reaching idea of positive action is seen in Northern Ireland. This is often held up as an example of good practice, but in fact may not be readily transferable to other countries, or indeed other ideas of antidiscrimination models since it reflects the particular political background of discrimination coupled with violence in Northern Ireland. The Equality Commission for Northern Ireland has the duty to enforce the Fair Employment and Treatment (Northern Ireland) Order 1998, (as amended). Some of its duties are to ensure that positive action policies are implemented to ensure fair treatment between Protestants and Catholics in Northern Ireland. This has been implemented by the adoption of Codes of Practice. Employers with eleven or more employees are under a duty to register with the Equality Commission. Employers must set timetables and goals to ensure that there is a fair participation of Catholic and Protestant employees in the workforce. They must monitor constantly the composition of their workforce, returning annual statistics to the Equality Commission. Every three years the employer must review the workforce composition and hiring policies to ensure that there is fair representation of Catholic and Protestant workers in the employment. Where this is not achieved a positive action policy must be implemented.

What is of significance of the experience of the UK and positive action is the emphasis upon a strong public body with political acceptance and credibility to promote equality, to monitor how policies are working in practice and to take the lead in facilitating reviews of best practice. It relies heavily on the trickle down effect of such policies. But the use of positive action continues to be in a permissible sense: it provides individual

employers, government agencies, or public bodies with a defence to the use of positive action when it is attacked by aggrieved individuals, but it does little to foster the acceptance of positive ac-

tion and the transfer of good practice throughout a broad spectrum of employment opportunities, or access to decision making bodies for groups who have hitherto been invisible.



# Few and Neglected: Roma and Sinti in the Netherlands

*Peter R. Rodrigues<sup>1</sup>*

How extensive is the discrimination that the 6,000 Roma and Sinti experience in the Netherlands? Our goal was to make an inventory – from the perspective of the Roma and Sinti – of whether incidental or structural instances of discrimination occurred in the period 2002-2003. Information provided by ‘key informants’ was supplemented by our own research and available statistics in this area.

## Numbers

In recent history, there has been a group of Sinti in the Netherlands since the beginning of the twentieth century. Before and after the Second World War they were the largest group; nowadays their total number is about 2,500 persons.

A small group of Roma arrived in the Netherlands between the First and Second World War; this group will later be referred to as the ‘old’ Roma. At present day there are about 500 descendants of them in the Netherlands.

In 1943, during the Nazi Occupation of the Netherlands, caravan dwellers were prohibited from travelling. Many Roma and Sinti subsequently chose to abandon their caravans and went into hiding. Nonetheless, in May of 1944, 245 Dutch Roma and Sinti were rounded up and deported to Nazi concentration camps. Of this group, only 30 Roma and Sinti returned.<sup>2</sup> This small group of

survivors retreated to isolated areas of the country. They felt (and still feel) as if their very existence and the story of their persecution in the Netherlands has never been properly acknowledged.

After the Second World War, new groups of Roma arrived in the Netherlands. This migration can be divided into a few distinct periods. There were Roma among the so-called migrant labourers who came to the Netherlands in the 1960s as foreign workers from Italy, (former) Yugoslavia, Greece, and Turkey.<sup>3</sup> The best estimate is that their numbers in the Netherlands – including descendants – are in the neighbourhood of a thousand people.

Beginning in the middle of the 1960s, groups of Eastern European Roma – often stateless – travelled to Western Europe. West European governments tried, as best as they could, to discourage this migration. By the mid-1970s, a group of approximately five hundred ‘stateless’ Roma were living in the Netherlands. Given the fact that this group could not be expelled because no other country was willing to take them, the Dutch government was forced to come up with a solution. It took a year before eleven municipalities were found that were prepared to provide quarters for these Roma, but in houses, not in caravans. With the stipulation that they would choose for a sedentary lifestyle, 450 Roma were issued residence permits in one of these so-called *opvanggemeenten* (relief municipalities). Their numbers are now estimated at 1,500 people.

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<sup>2</sup> *W. Willems and L. Lucassen. Ongewenste vreemdelingen. The Hague: SDU Uitgeverij, 1990, p. 19.*

<sup>3</sup> *P. Hovens and L. Weiss. “Sinti en Roma anno 2002”. In: P. Jorna (ed.) Terug naar Auschwitz. Een gedenkwaardige reis van Nederlandse Roma and Sinti Utrecht, FORUM, 2002, p. 1920.*

The newest group of Roma in the Netherlands is found among refugees and asylum seekers who fled – especially Eastern Europe – for political and economic reasons in the 1980s and 1990s. Their exact numbers are not known because they usually do not reveal their Romani background. We estimate their number at 500 people. Their position differs from earlier groups of Roma and Sinti. They hardly travel and they live in permanent housing, so they are less recognisable as a separate group. In addition, they have frequently been educated or have worked in the countries they originate from and are therefore better able to adjust in Dutch society.

### One group?

To answer the questions related to the likelihood of discrimination occurring against Roma and Sinti in the Netherlands, it is crucial for the classifications that are made to be correct. The question then arises whether it is judicious to regard the Roma and Sinti as one population group, or is it essential to our analysis to divide them into diverse groups with their different backgrounds and circumstances? It is difficult to provide an answer to this question, because it also depends on the selected approach.

What all Roma and Sinti have in common is their history of travelling and being persecuted. Furthermore, it would seem they share a common origin and their language and customs exhibit huge similarities. Additionally, they are almost always stigmatised by the outside world as one group: with terms such as ‘Gypsies’, or simply ‘caravan dwellers’. Some of our informants admitted that even they, at times, have presented themselves as one group in order to improve their position. Certainly a larger group has more influence than all sorts of smaller groups with competing interests. It is indeed striking to see that when they have a mutual interest at stake, such as their rehabilitation after the Second World War, that different groups of ‘old’ Roma and Sinti can work together relatively well. But aside from these similarities, there is also a huge amount of diversity within and between these groups, something they themselves generally like to emphasise.

Illustrative of this diversity in the community is the fact that not even our key informants could agree about the breakdown of and actual differences between the groups. However, it is clear that except for a few Roma families, the Sinti have lived in the country the longest. Their situation in Dutch society is therefore not an issue. They know how to arrange the essentials required to survive in Dutch society. For a (limited) number of the Roma – some who arrived in the 1970s as well as some new refugees – problems still exist related to the status of their residency. Naturally, this uncertainty about their situation and future does not contribute to their integration into Dutch society. At this moment, the Dutch Roma tend to travel more than the Dutch Sinti. By all accounts the Roma feel more European – more like world citizens – than they do Dutch and are therefore less inclined to invest in their position in the Netherlands. In contrast to this, the majority of Roma live in more urban areas and mingle faster with the rest of society, while the Sinti primarily live in the countryside and often withdraw into their own communities. This can be attributed in part to the Sinti being more attached to traditional customs.

The question remains if the differences between the diverse groups of Roma are not just as great as between the Roma and the Sinti. The older group of Roma (from before the Second World War) resembles the Sinti the most. Besides their long history in the Netherlands, among other things, they have the experience of the war years in common. The Sinti and ‘old’ Roma regularly have contact with each other, including via the marriages that occur between their families. In many ways, the 1970s Roma are removed from these other groups. Both the Sinti and the ‘old’ Roma were unhappy with the stigmatisation created by the problems that existed at that time, and the media attention that this group attracted. Despite the steps that were finally taken toward legalisation, the problems with this group were not resolved. This can, in part, be attributed to the uncertainty of the position they found themselves in for quite a long time. In addition, the arrival of (new) illegal Roma and their unwillingness to adhere to certain rules and procedures increased the difficulty of their situation. Today, a relatively

large amount of problems still plague this group. In the meantime, not only does this affect the public image of the 'old' Roma and Sinti, but that of new Romani refugees as well.

## Discrimination

One of the most striking outcomes of the interviews we conducted is that most of the key informants could barely recall any concrete complaints or incidents about disadvantage and exclusion in the period 2002-2003. Hypothetically, this could mean that the Roma and Sinti experience little disadvantage and exclusion, or discrimination. However, the general impressions of the key informants conveyed a different feeling. They stated, almost without exception, that the Roma and Sinti are in fact disadvantaged, excluded, and discriminated against in the Netherlands. We indicate that the public image of the Roma and Sinti plays an important role in the discrimination they experience. Without exception, all of those we interviewed thought that the portrayal of the Roma and Sinti in the media is almost exclusively negative. It seemed to some of those we interviewed that negative incidents seem more newsworthy to the media than reports of (gradual) achievements.

Because of all of this, there is a feeling in the Roma and Sinti community of biased reporting and unequal treatment. One should not underestimate the influence of the media. This is the only way most people in the Netherlands receive any information about the Roma and Sinti community. The key informants specifically listed housing, education, work, goods and services, public policy-making and the judiciary as important areas in society where exclusion (and disadvantage) occurs. In addition, many of those we interviewed remarked that it is difficult to determine whether something is a problem or an impasse as opposed to actual discrimination.

Those we interviewed see disadvantage and exclusion more as a structural phenomenon than as a string of isolated incidents.

## Housing

The most important issue for Roma and Sinti in the area of housing is policymaking related to caravan sites. This is a problematic issue which also applies to many other caravan dwellers. The shortage of caravan sites which has existed just about everywhere in the Netherlands has already been a problem for years. This shortage is estimated at around 3,000 sites.<sup>4</sup> The government initially tried to reduce this shortage by measures taken in the Dutch Woonwagenwet (Caravan Sites Act 1968). The *afstammingsbeginsel* (birth-right proviso) which was included was in fact directed at diminishing the number of caravan sites. Since the abolition of the Woonwagenwet in 1999, policymaking for caravan dwellers has been covered by regular housing legislation. Some municipalities have taken this as a signal that they are no longer responsible for providing enough caravan sites, which has resulted in long waiting lists. This often makes it impossible for family members to pitch on the same encampment, something of great importance to the Roma and Sinti.<sup>5</sup> Even a temporary visit by a family member with a caravan can lead to their wagon being towed away.

A trend which has emerged since the abolition of the Dutch Caravan Sites Act is that, whenever possible, municipalities delegate the management of caravans and caravan encampments and sites to private companies. According to one of our key informants, presently sixty percent of the caravans that are being rented belong to private owners. On the other hand, what should be noted is that municipalities encounter a lot of resistance from the local population when looking for sites for caravan encampments. Almost without

<sup>4</sup> K. Sikkema. *Roma and Sinti in Nederland, Een onderzoek naar de algemene levensomstandigheden, gezondheidssituatie en toegang tot de gezondheidszorg van de Roma and Sinti in Nederland*. Amsterdam, *Dokters van de Wereld*, February 2004, p.10.

<sup>5</sup> See also the *kamervragen Aanhangsel Handelingen II (Appendix parliamentary questions II)*, 2002/03, no. 32 and no.199.

exception, there are protests against the establishment of any new caravan locations. Neighbourhood residents are afraid of trouble and fear that the value of their property will decrease. This argument is strengthened by incidents such as one that occurred in 1997 in the Dutch town of Weert. A councilman was awarded damages in a case he brought forward because a few new caravans located near his home obstructed his view.<sup>6</sup> The compensation in this case led to claims for damages by other neighbours. This is probably the reason that in appropriating caravan sites, the (isolated) locations which are usually chosen could be called unpleasant at best and at times downright dangerous. The housing of minority groups in inferior areas in terms of environmental and safety standards – such as the blasting zone of an explosives factory<sup>7</sup> – is known as environmental racism in the United States.<sup>8</sup>

## Education

We identified quite a lot of complaints about disadvantage and exclusion or discrimination in the area of education. Certain schools seem to be guilty of discrimination because they refuse to admit Roma and Sinti, if not always explicitly because of their ethnicity. Other problems are school absenteeism and segregation.

An important ruling was issued in 2003 by the Commissie Gelijke Behandeling (CGB or Equal Treatment Commission) with respect to admittance in a case involving a primary school in the town of Ede.<sup>9</sup> The case was brought before the commission by the Landelijk Bureau ter bestrijding van Rassendiscriminatie (LBR or National Bureau against Racial Discrimination) and the Anti-Discrimination Bureau in the town of Veenendaal. The complaint filed by these anti-discrimination bureaus was directed against the governing body of an association for Protestant-

Christian primary school education. This association applied a maximum admittance of fifteen percent for children using Dutch as their second language. In addition, the association imposed a quota on the number of children they would enrol from the Roma and Sinti community. The school association also made agreements with other educational institutions regarding this dispersal policy. The CGB ruled that the school was in violation of the Equal Treatment Act.

The key informants acknowledged in the interviews that Roma and Sinti children are regularly refused admittance to schools they want to attend. The reasons for this are often vague and usually not based on school performance. The mistrust of Roma and Sinti is so great in some areas of the Netherlands that schools ask for prior assurance that a child will not cause any problems. Bad experiences and prejudice seem to contribute to this. In the meantime, it becomes more and more difficult for the Roma and Sinti to find a school where their children are welcome. There are ways to hold schools that refuse children without legitimate reasons accountable, but this is seldom the pursued approach. This would undoubtedly disturb the relationship with the school in question from the start, so Roma and Sinti children who are refused enrolment usually end up going to other schools.

Nowadays, most Roma and Sinti complete at least primary school and usually attend a few years of secondary education. However, absenteeism is above average and many students prematurely drop out of school. Some Roma and Sinti still do not feel it is normal for their children to attend school for an extended period and on a regular basis. In the past, truant officers often looked the other way in respect for the culture, but also out of despair. Often those involved with compliance are uncomfortable pointing out to the Roma and Sinti what their own responsibilities are in this matter.

<sup>6</sup> *HP/De Tijd (magazine) 11 July, 1997 (Weert op wielen/Weert on wheels).*

<sup>7</sup> *Noord-Hollands Dagblad (newspaper) 20 November, 2003.*

<sup>8</sup> *See for example D. M. Robinson. Environmental Racism: Old Wine in a New Bottle, at: <http://www.wccoe.org/wcc/what/jpc/echoes/echoes1702.html> (16/06/2004).*

<sup>9</sup> *Commissie Gelijke Behandeling, case file CGB 2003-105.*

## Work

The percentage of Roma and Sinti who are unemployed is very high. Some believe the percentages reach even as high as ninety per cent.<sup>10</sup> However, concrete figures, as well as a break down amongst the different groups, are not available. The high unemployment in this community is a direct result of disadvantage in the area of education. The ambitions and traditions of the Roma and Sinti are also contributing factors. Many of them prefer self-employment as opposed to holding down a regular job. Due to the vanishing of many traditional vocations and the administrative and financial activities that accompany starting a business, the Roma and Sinti are frequently not successful at this, with the exception of performing music.

Not all Roma and Sinti are interested in having permanent jobs. Yet those who do seek permanent or durable employment encounter discrimination from employers more often than not.<sup>11</sup> Our key informants who are involved with mediating in the labour market indicate that employers are prejudiced as a result of the negative reporting by the media. This probably exerts the most influence on small companies in the towns where Roma and Sinti live. Larger companies, in cities such as Eindhoven, seem more prepared to give Roma and Sinti a chance. However, the Roma and Sinti often actually prefer smaller companies. They feel more comfortable there and above all they do not have to travel to the big city, which is considered dangerous especially for youngsters and women.

## Goods and services

As far as the delivery of goods and services to Roma and Sinti is concerned, the problems that arise seem to be related to the surroundings where they live. Some companies are reluctant to deliver to the residents of caravan sites. Another example is that companies will only deliver goods when specific conditions are met. Customers have to pay in advance or have to collect the goods themselves. What is often said in defence of this sort of unequal treatment is that they do not want to risk exposing their personnel to violence or threats because of the bad experiences of suppliers in the past. They also consider the chance of goods being stolen too great. The Equal Treatment Commission ruled in a case brought by a non-Roma caravan-site dweller that this kind of unequal treatment against all caravan dwellers in the Netherlands is not justifiable based on a few bad experiences of the past.<sup>12</sup> Refusal of goods and services sometimes takes place based on the 'suspect' postal code of the client. Excluding certain postal codes when providing (customer) service is called 'redlining'.<sup>13</sup>

Problems also arise for Roma and Sinti when they try to purchase insurance, because insurance companies consider this group as a whole to carry an increased risk. This leads to insurance premiums being higher or caravan sites being excluded. The latter sometimes occurs because of high claims by a few other people living on a particular encampment. Based on the Equal Treatment Act such an indirect distinction by area of residence is only permitted if there is an objective justification.<sup>14</sup> Therefore a legitimate goal is required and

<sup>10</sup> K. Sikkema. *Roma and Sinti in Nederland, Een onderzoek naar de algemene levensomstandigheden, gezondheidssituatie en toegang tot de gezondheidszorg van de Roma and Sinti in Nederland*. Amsterdam, *Dokters van de Wereld*, February 2004, p. 11.

<sup>11</sup> M. Beijering. "Stichting Romene Sinti" (Foundation Romany Sinti) in: *De grote kleinekansen atlas (The big atlas of little opportunity)*, P. Voogd (ed.), Den Haag: Landelijk Centrum Opbouwwerk, 2003, p. 95.

<sup>12</sup> Case file CGB 1999-65.

<sup>13</sup> P.R. Rodrigues. *Anders niets? Discriminatie naar ras en nationaliteit bij consumententransacties. (Discrimination on the grounds of race and nationality in consumer transactions)* Lelystad: Koninklijke Vermande, 1997, p. 154.

<sup>14</sup> Article 2, section 1 AWGB (Equal Treatment Act).

the means of achieving this goal must be appropriate and necessary. The concrete examples that are known are only related to caravan dwellers, but it seems obvious that Roma and Sinti living in caravans could encounter the same problems.

### Public policymaking

What can be concluded from the interviews we conducted is that the relationship of the Roma and Sinti with governmental agencies is often problematic. Not only is there a certain apprehension in organisations in regard to Roma and Sinti, but there is also a lack of understanding. Particularly the people who work closely with the Roma and Sinti complain that a variety of agencies such as juvenile social work, the departments that allocate income benefits, and the school inspectorates are often too afraid to intervene in the face of problems, while they simply would not hesitate with other groups. As a result, the Roma and Sinti are only approached when things have gone too far. Often, the aid of the police or a bailiff is then immediately called for. Subsequently, the Roma and Sinti feel they are being treated as criminals. This apprehension at different organisations is purportedly fed by a few incidents of threats made by Roma and Sinti. The generally poor relationship with government agencies leads Roma and Sinti to ask other people to call for them, also because people with Roma or Sinti names are not taken seriously. Given that Roma and Sinti often come from very large families, there is a good chance that people who have not done anything wrong might end up paying the price for somebody else's actions.

According to one informant, a city official deliberately housed Roma and Sinti in a disadvantaged neighbourhood so they would have the least possible problems with discrimination by their neighbours. Perhaps this was meant well, but it is obviously discriminatory. Another

informant related that there are generally few social welfare programmes specifically set up for the Roma and Sinti, while they often do not have access to neighbourhood projects in the isolated areas where they live. An additional problem is that Roma and Sinti in most municipalities are such a small group that it is hardly feasible to set up special activities only for them. Some municipalities with a larger number of Roma and Sinti have developed special projects, such as the town of Ede (educational project) and Nieuwegein (an afternoon open house for Roma women). A number of our informants felt that projects such as these are usually terminated much too soon.

Many key informants perceive the government's termination of the structural funding it was allocating to the Dutch National Sinti Organisation (LSO) as evidence that the government is not seriously committed to the situation of Roma and Sinti in the Netherlands. It is incomprehensible from their viewpoint that in countless European forums the government of the Netherlands supports the prevention of disadvantage, social exclusion, and poverty among the Roma<sup>15</sup> but fails to do so at home.<sup>16</sup> We can only conclude that a striking discrepancy exists here.

### Police and judiciary

Our research indicates that the relationship of Roma and Sinti to the police is far from optimal. Due to (often unsubstantiated) criminality, the Roma and Sinti frequently come in contact with the police. This often gives them the feeling that the police discriminates against them without due cause. An incident we were told about concerned a twelve-year-old Romani youngster from the town of Nuenen, who was unjustly accused of a sexual offence. This was allegedly not handled according to the rules of the juvenile justice system. The same fate awaited a thirteen-year-old girl caught in the act of pick-pocketing. In addition, against policy,

<sup>15</sup> See among others *Recommendation Rec (2001)17 of the Council of Europe (27 November, 2001) and Decision 566 of the de OVSE (27 November, 2003)*.

<sup>16</sup> See also: *Andacht voor Roma in verband met de uitbreiding van de Europese Unie (attention for the Roma and Sinti in an expanding European Union), Kamerstukken II (Parliamentary documents), 2002/03, 23 987, no. 29*.

the youngster was apparently not questioned in her own language (Romani). She was released after the intervention of one of our key informants.

Many people were amazed by the handling of the extradition request by the United States of America to the government of the Netherlands regarding the Romani family named Moro, especially from a humanitarian viewpoint. The family was suspected of theft in the U.S. and many of them were imprisoned for 28 months in the Netherlands while they awaited extradition. After the judge<sup>17</sup> and the Minister of Justice agreed to hand over these stateless Roma, the U.S. abandoned prosecuting them any further.<sup>18</sup> The threat that Father Moro would be separated for an extended period from his underage children who lived in the Netherlands expired with this decision.

Another incident in 2003 also received a lot of publicity.<sup>19</sup> A Public Prosecutor from the city of Arnhem was charged with discriminating against the Roma. He made the following controversial remarks in his arguments at the trial of six members of a Roma family accused of theft and fraud:<sup>20</sup> 'In the Romani Gypsy community, criminality is considered commonplace. The Romani community is involved with crime and punishable offences. Breaking and entering is considered normal. Although there are a few exceptions amongst them who are not criminals, all the rest are.' Only when his statement appeared in the media and there were many outraged reactions, was a press release issued in which the Public Prosecutor's Office declared that 'by no means is this office of the opinion' that a majority of the Roma community are criminals.<sup>21</sup> A press release followed a day later in which the Prosecutor rectified his statement and

apologised.<sup>22</sup> Nevertheless, this incident resulted in many indignant reactions from Roma and Sinti themselves, as well as from many others who were involved with the community in some way or another. This case had a huge impact on the Roma and Sinti community. Given that the Prosecutor's defamatory statement did not result in legal action, people in the Roma and Sinti community are very concerned that this gives others free reign to express their prejudices and hatred of 'Gypsies'.

## Conclusions

The issues we have presented in this contribution originate in essence from the huge cultural differences and long-standing mutual lack of acceptance that exist between the Roma and Sinti community in the Netherlands and Dutch 'civilian society'. This has created a considerable amount of distrust between these parties, which further contributes to prejudice and leads to unequal treatment. The Roma and Sinti do not see themselves as 'civilians' and are usually not interested in participating in Dutch society. They differ in this way from other ethnic minority groups, because during their long history they have not aspired to 'civilian' careers. They are therefore less receptive to help and advice to achieve this. The high unemployment and criminality in the community does not contribute to their integration either. Moreover, the (nomadic) lifestyle of the Roma and Sinti no longer has its place in today's post-industrial society.

The social status of the Roma and Sinti is cause for concern. The considerable disadvantage they experience in participating in educa-

<sup>17</sup> *Rb (District Court) Den Haag 28 August, 2003, LJN nummer (number) AI 1543.*

<sup>18</sup> *NRC Handelsblad (newspaper) 24 September, 2003.*

<sup>19</sup> *See newspapers such as: De Gelderlander (15 May 2003), NRC Handelsblad (16 May 2003), and Vrij Nederland (24 May 2003).*

<sup>20</sup> *ANP, 15 May 2003. Mensenheugenis. Terugkeer en opvang na de Tweede Wereldoorlog. Getuigenissen (Living memory. Return and reception after the Second World War. Testimonies). Amsterdam, Bert Bakker, 2001, p. 75.*

<sup>21</sup> *Eindhovens Dagblad (16 May 2003) and press releases from the Public Prosecutor's Office in Arnhem, 15 and 16 May 2003.*

<sup>22</sup> *Follow-up press release related to this case from the Public Prosecutor's Office (Arnhem) on 16 May 2003.*

tion and the labour market surpasses that of other minority groups in the Netherlands. There are not enough caravan encampments and sites in the country, which leads to housing problems for those Roma and Sinti who are still living as caravan dwellers. In addition, the public image of 'Gypsies' in Dutch society is negative and stereotypical, and the Roma and Sinti are often perceived as threatening. It is not surprising then that negative attitudes about this population group lead to suspicion and exclusion. The Dutch government has not managed to turn this tendency around, and at times exactly the opposite has occurred. This relationship between the

Roma and Sinti and governmental agencies is influenced by the persecution of the community during the Second World War.

It seems as if the Roma and Sinti more or less accept the discrimination directed against them as something normal. Incidents are not reported, complaints non-existent. However, our study indicates that disadvantage and exclusion did occur in important areas of society during the period 2002-2003. This was usually not related to individual incidents of discrimination, but primarily concerned mechanisms that result in structural forms of discrimination and exclusion.



**SNAPSHOTS FROM AROUND EUROPE**



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

- **Bulgarian** courts find discrimination against Roma in employment and by prosecutorial officials;
- Pressure to reform discriminatory electoral system in **Bosnia and Herzegovina**;
- Racially-motivated violence and abuse of Roma in the **Czech Republic, Macedonia, Russia, and Turkey**; Roma file complaint against the Romanian state with the European Court of Human Rights challenging unremedied police violence;
- Denial of public services causes death and severe injuries to Roma in a segregated settlement in **Slovakia**;
- Systemic denial of fundamental rights to Gypsies and Travellers in **France**;
- Inflammatory anti-Romani speech in **Belarus, Germany, and Romania**;
- International concerns about disproportionate vulnerability of Roma to trafficking;
- UN Committee against Torture finds **Serbia and Montenegro** in violation of the Convention against Torture;
- UN Committee expresses concerns about violation of Romani children's rights in **Hungary**; UN Special Rapporteur finds housing conditions of Romani children in settlements in **Greece** unacceptable;
- School segregation of Romani children in **Greece**; European Court of Human Rights fails to find violation of the ECHR by the **Czech** State for segregation of Romani children in special remedial schools;
- UN women's rights committee expresses concern about the situation of Romani women in **Macedonia**.

## ALBANIA

### ✧ IOM and UN Special Rapporteur Concerned over Trafficking in Albania

In their “Second Annual Report on Victims of Trafficking in South Eastern Europe 2005”, published in November 2005, the International Organization for Migration (IOM) voiced concerns over minority victims of trafficking in Albania. In particular, the report stated that Roma and Egyptian communities, among the poorest and most socially marginalised in Albania, are highly represented among victims of trafficking. The report further reasoned that this “highlights the acute vulnerability of ethnic minorities and the need for prevention and protection efforts aimed at the specific needs of this profile of victim”.

The report also discussed patterns of trafficking in Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo, Macedonia, Moldova, Montenegro, Romania, and Serbia. In all the countries examined, minorities were found to be among the most vulnerable to trafficking and Roma, in particular, were often victimised. The full text of the report is available at: [http://www.iom.int/DOCUMENTS/PUBLICATION/EN/Second\\_Annual\\_RCP\\_Report.pdf](http://www.iom.int/DOCUMENTS/PUBLICATION/EN/Second_Annual_RCP_Report.pdf).

According to an 8 November 2005 article on the UN News Centre website, in order to address the issue of trafficking of children, the Govern-

ment of Albania must develop a national child protection system aimed at combating the poverty that leads to exploitation. The recommendation came in a statement by Juan Miguel Petit, the UN Special Rapporteur on the sale of children, child prostitution and child pornography, during his visit to Albania from 31 October 2005 to 7 November 2005.

Mr. Petit attributed the problem to a lack of opportunities and social services for stigmatised minorities, as well as discrimination against women, and an inadequate educational system. He emphasized the need for “a strong child protection system...with a firm investment in education and social services, together with strengthened child protection component of police, health and justice”. Noting that child trafficking is a global problem, the independent expert also singled out Greece and Italy as destination countries in their obligations to protect the rights of victims of trafficking. (IOM, UN News Centre, ERRC)

### ✧ Roma Left Out of Media Coverage Surrounding Albanian Elections

According to the King Baudouin Foundation (KBF) 1 November 2005 Newsletter, Romani issues were largely ignored in media coverage of the 3 July 2005 Albanian elections despite attention paid to difficulties ex-

perienced by the Greek minority in the country. The findings came from monitoring activities undertaken as part of the Minority Rights in Practice in South-Eastern Europe programme by various NGO’s including the Human Development Promotion Centre (HDPC). Two local television channels, two national newspapers and two local newspapers were monitored during the three months leading up to the election.

While the findings of the monitoring activities point to some progress in the way of minority issues, the KBF carefully noted that discussions focused solely on the Greek minority and no mention was made of the Roma minority, “despite the fact that the economic and social hardship suffered by the Roma is incomparably greater than that suffered by other minorities”. Additionally, where minority issues were debated, discussions tended to be largely political and did not address specific local minority problems.

KBF continued by stating that the findings were well-received and prompted a proposal to hold debate on national television, in which representatives of political parties as well as MPs from minority regions could discuss minority issues. For information on the situation of Roma and Egyptians in Albania, visit the ERRC website at: [www.errc.org](http://www.errc.org) (The King Baudouin Foundation).

## **BELARUS**

### ❖ **Anti-Romani Hate Speech on National Television**

In an interview posted by the Dzeno Association on 29 November 2005, Mr Nicolas Kalinin, head of the Belarussian Roma Lawyers Group reported the broadcasting of a discriminatory documentary entitled “The Tabor Is Living for the Zone” [“zone” is the popular name of labour camps and similar penal colonies in Russian]. The Belarussian government TV channel *ONT* broadcast the documentary during November 2005. Kalinin believed that the director of the film, Mr Victor Chamkovsky, intended to present negative perceptions in his representation of Roma to the public. The

film pointedly suggested that all Romani people in Belarus are criminals and all Romani children are involved in drug trafficking from childhood on, according to Mr Kalinin, and the director declares that all Roma are enemies of the law. Mr Kalinin testified that that Chamkovsky’s attempts to incite racial hatred of Roma have not only been successful, but have exceeded expectations.

The International Convention on the Elimination of all forms of Racial Discrimination (ICERD) bans such propaganda in Article 4 which states that state parties must “condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of

persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form” and “declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination.” Belarus ratified the ICERD on 8 April 1969.

On 17 November 2005, the Belarussian Roma Lawyers Group reportedly prepared a reference to the Head of the Committee on Affairs of Religion and Nationalities, and to the Chairman of the Commission of Human Rights in the parliament of Belarus, in which they asked the authorities to prosecute the authors of the film. (Dzeno Association, ERRC)

## **BOSNIA AND HERZEGOVINA**

### ❖ **Renewed Calls for Reform of Discriminatory Electoral System**

In a press release issued on 17 November 2005, on the eve of the 10<sup>th</sup> anniversary of the Dayton Peace Agreement, Minority Rights Group (MRG) appealed for minority rights and reform of a discriminatory electoral system, during negotiations over the new Bosnia and Herzegovina Constitution. Presently, only individuals from the three “constituent peoples” – Bosniacs, Croats, and Serbs – can stand for office. This policy excludes Roma, Jews and other minorities, violating their right to participate equally in public life while institutionalis-

ing politics along ethnic lines. Elections are further restricted by ethnicity as only a Serb may be elected from Republika Srpska and only a Bosniac or Croat from the Federation. Individuals who do not identify themselves as belonging to a single constituent group are restricted from full political participation, thereby violating the rights of minority groups as well as individuals of mixed ethnicity.

These policies violate international law as it effectively denies the right of minorities, who are not among the constitutionally defined “constituent peoples” to freely express their self-identity without suffering the consequence of being ex-

cluded from political participation. The Council of Europe Framework Convention on the Protection of National Minorities, which Bosnia and Herzegovina ratified on 24 February 2000, states that “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”. The United Nations International Covenant on Civil and Political Rights, which Bosnia and Herzegovina ratified on 1 September 1993, states that “every citizen shall have the right and the opportunity... to take part in the con-

duct of public affairs, directly or through freely chosen representatives” and “to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”

ERRC, in partnership with the Benjamin N. Cardozo School of Law in New York is campaigning to change the electoral system and establish minority rights in the Constitution of Bosnia and Herzegovina. Bosnia and Herzegovina’s discriminatory electoral system is the cen-

tral theme addressed in the ERRC Country Report, *The Non-Constituents: Rights Deprivation of Roma in Post-Genocide Bosnia and Herzegovina*. The full text of the report is available at: <http://www.errc.org/db/00/06/m00000006.pdf>. (ERRC, MRG)

## **BULGARIA**

### **❖ European Court of Human Rights Finds Bulgaria Liable for Police Abuse of Roma on Two Separate Occasions**

On 26 February 2006, the European Court of Human Rights announced its judgment in two cases, *Tzekov vs. Bulgaria* and *Ognyanova and Choban vs. Bulgaria*. The applicants in both cases, Mr Tzeko Tzekov and Ms Zoya Ognyanova and Giulfero Choban, all Bulgarian Roma, were represented by lawyers from the European Roma Rights Centre, in cooperation with the Human Rights Project.

In the first case, *Tzekov v. Bulgaria*, Mr. Tzekov who was 29 at the time was travelling in a horse-drawn cart full of maize and was ordered to stop. When he did not stop, the police chased the cart and then fired four shots, one of which hit the applicant in the back. The applicant was arrested and taken to the hospital to undergo surgery. No criminal charges were ever brought against the applicant or the officers. The applicant brought a civil action which was dismissed on the basis that the shooting was in conformity with law. The application before the European Court of Human Rights was lodged in 1998.

The Court found a violation of the positive obligation of the Government to adopt adequate legislation under Article 3 of the Convention. The Court was concerned that regulations of the use of firearms under domestic law allowed use of a firearm to arrest a suspect even for minor non-violent offences. Therefore, at the time, the legal framework of Bulgaria was insufficient. Further, in the specific case there was no evidence that the police believed the persons had done any violent crime or were dangerous; therefore, the use of firearms was not justified. The court also held that the investigation into the incident by the government was not thorough and effective because the authorities only looked at whether the police complied with the legislation not whether the legislation complied with human rights. Thus Article 3 was violated both in substance and procedure.

In the second case, *Ognyanova and Choban v. Bulgaria*, the applicants were the wife and mother of Mr Stefanov who was arrested for allegedly participating in thefts and burglaries. Mr Stefanov died on the following day, allegedly from a fall from the third floor of the police station. In the investigation and autopsy, numerous injuries were

found on his body. The application was lodged with the European Court of Human Rights on 17 November 1998.

The court found a violation of Article 2 (right to life) as the Government failed to provide a plausible explanation of the incident that caused Mr Stefanov’s death. There were inconsistencies and unanswered questions in the medical reports, witness testimony was not reliable and there was no reason to believe that Mr Stefanov had committed suicide or been drunk. The investigation was also inadequate because of possible pressure on witnesses and omissions in the work which indicated a lack of objectivity and thoroughness.

The court likewise found a violation of Article 3 (freedom from torture and inhuman and degrading treatment) because it was unlikely that the injuries were caused only from the fall nor were they accounted for in the medical reports. Since the government could not explain the injuries obtained after taking Mr. Stefanov into custody, there was a violation of Article 3.

The court found a violation of Article 5(1) (right to liberty and

security of person) because there were no facts or documents about why Mr Stefanov had been taken into custody in the first place. Since there was no effective criminal investigation, there was no effective remedy and therefore Article 13 was also violated. Unfortunately the court did not find a violation of Article 14 (discrimination) finding that no concrete indication of racist attitudes had been shown. (ERRC)

#### ✧ **Court Awards Romani Victim Full Compensation for Discrimination by Employer**

On 16 November 2005, with ERRC support, a young Romani man won a judgment by the Sofia District Court, finding that the refusal of a private business to hire him constituted direct discrimination based on his ethnicity. The court has awarded Mr Metody Assenov the full amount of compensation he sought for non-pecuniary damages -- the approximate equivalent in Bulgarian Leva of 300 EUR. The ruling, which is based on Bulgaria's Protection Against Discrimination Act, is the first to find discrimination by inference, in accordance with the special rule of the shifting of the burden of proof in discrimination cases.

In December 2003, the claimant, 22 year old Mr Metody Assenov, sought to apply for a job as a food production worker with the respondent, Lubimka Ltd. In response to a job advertisement in a newspaper, he placed a telephone call to Lubimka Ltd. to inquire about the terms and conditions for applying. An employee told him that there was no re-

quirement other than to be a male below the age of 30. She also told him, explicitly, that no Roma need apply as no Roma would be hired. In February 2004, the job advertisement reappeared and Mr Assenov called again, making no mention of his ethnicity. He was invited for an interview, at which the employees of Lubimka Ltd. treated him less favourably than other job applicants present by trying to ignore him and by discouraging him from expecting to be hired. Several weeks later, upon inquiry, he was told that he had not been hired. He was not offered any explanation of the reason for the refusal.

In court, representatives of Lubimka Ltd. argued that their refusal to hire Mr. Assenov was not race-based, but for a legitimate reason; namely, the claimant's lack of proper qualifications. The court did not consider this sufficiently established as there was no evidence that Mr Assenov had lesser qualifications than the applicants who had been hired. The court found that there was enough circumstantial evidence to point to a causal link between Mr Assenov's ethnicity and Lubimka Ltd.'s refusal to hire him. The court's reasoning includes express language on the principle of the shifting of the burden of proof in discrimination cases, in line with established case law in the European Union. (ERRC)

#### ✧ **Bulgarian Court Finds the National Prosecutor's Office Discriminated Against Roma**

On 3 February 2006, a Sofia court ruled that a Bulgarian

prosecutor violated domestic and international law by humiliating Roma in a decree. With ERRC support, Ivelin Iliev, a young Romani man, secured a positive decision from the court in a lawsuit against the Prosecutor's Office of Bulgaria. The Sofia first-instance court found the National Prosecutor's Office liable for racial discrimination committed by a prosecutor of the Razgrad Prosecutor's Office, as a result of expressions of strong anti-Romani sentiments in official prosecutorial decrees issued by the public official in question.

The racist statements at issue were included in decrees terminating the investigation into the death of Mr. Iliev's brother, killed by a landslide while collecting mine refuse for an entrepreneur. In the accident, Ivelin and his mother were seriously injured as well. In his decrees, the prosecutor used the following statements to describe the mentality of Roma, whom he refers to as "persons of Gypsy origin":

"The collection... was done by... persons of Gypsy origin. Taking into account the psychology of this population, they [violations of workplace safety specifications] were, from the beginning, universal and daily. Everyone was seized with the urge to collect as much garbage as possible, so as to earn as much money as possible. It was therefore impossible to restrain. Their plunder was ubiquitous, and their transgressions were constant. Moreover, these people were constantly changing, responding to rumours that it was possible to make money there... Mr. Iliev himself caused

the landslide... aiming to earn more money.” (unofficial translation by the ERRC)

The court held that from these words of the prosecutors it can be concluded “that, in his view, Romani people are undisciplined, unruly, irrational, greedy and uncivilised.” This expression of “a slighting attitude” constitutes an act of discrimination, as – in the court’s view – “if another ethnic group

were referred to, no such generalisations would be made ... It is namely their Romani ethnicity which caused the prosecutor to characterise thus the mentality of this community’s members, in particular that of the victims – the claimant and his family.”

The court held the Prosecutor’s Office liable for a breach of the Constitution and International Convention on the Elim-

ination of All Forms of Racial Discrimination (ICERD), and ordered it to pay Ivelin Iliev BGN 500 (approximately EURO 250), the full amount sought in compensation for his non-pecuniary damages sustained as a result of the discriminatory acts in question. Counsel for claimant was ERRC Sofia-based consultant on race discrimination litigation, Margarita Ilieva. The judgment is not final. (ERRC)

## **CROATIA**

### ✧ **Racist Hate Speech in Reaction to Roma Winning Big Brother Croatia TV Contest**

According to a 14 February 2006, article by the Prague-based Dzeno Association (Dzeno), racist hate speech appeared online following the announcement that a Muslim Roma man had been chosen by

viewers as the winner of the popular TV show Big Brother. The shows broadcasters reportedly commented in a BBC broadcast that they believe that the win by Hamdijia Seferović, the only Roma contestant, is very significant proof of progress in Croatia and the Balkans region with respect to racial tolerance. Unfortunately, as the Dzeno article points out, shortly after the

announcement and the following BBC broadcast, racist hate speech of a disturbingly violent nature began appearing online on Stormfront.org, a white supremacist forum. The forum members posted three pages of racist commentary including comments accompanied by photos. As of 9 March 2006, the comments were still posted online. (ERRC, Dzeno)

## **CZECH REPUBLIC**

### ✧ **Three Youths Imprisoned for Attacking Romani Couple**

According to a 4 November 2005, article by the online newspaper Romano Vodi, three youths were sentenced, on the same day, to imprisonment for a brutal attack on a Romani couple in Jeseník. The Jeseník court sentenced Martin Stiskala, Petr Blajze and Martin Jas to three years, three and a half years, and four and a half years respectively. According to the indictment, the youths broke into

the couple’s apartment, early one morning in June 2003, under the false pretext that they were police officers. They then proceeded to attack the couple, hitting the pregnant woman and stabbing her male partner with a knife. Background information can be found at: <http://www.errc.org/cikk.php?cikk=1864&archiv=1>.

The regional court returned the case to Jeseník for more expert reviews. Expert Ilja Sin reportedly told the court that the woman suffered permanent

bodily harm, in particular seriously impaired vision. The three youths were punished previously by the court in January 2004, but only given suspended sentences. The increased sentence in the 4 November 2005 verdict caused a number of public protests. The judge ruling on the case, Mr Dusan Jedlicka, defined the attack as racist: “The defendants deliberately caused them severe bodily harm due to their ethnic group. They committed the criminal activity in a brutal and hideous way.” (Romano Vodi)

### ✧ **Romani Family Assaulted in Their Home by Drunken Man with an Axe**

According to a 12 December 2005 article by the Prague Daily Monitor (PDM), a Romani family in Moravsky Beroun, in the northwestern Bruntal region of the Czech Republic, were assaulted by a drunken man wielding an axe, who entered their apartment in search of a Japanese sword which he believed had been stolen from him. The perpetrator, aged 53, first damaged the exterior of their apartment, yelled racist slurs and threatened to kill the family. Fearing for their lives, the family, a 50-year-old woman, her 54-year-old husband and their 25-year-old son, called the police.

PDM reported that the perpetrator proceeded to enter their apartment and search for the sword, all the while threatening the family with the axe. Though the perpetrator could not find the sword, he refused to accept the Romani family's explanation that they did not have it. The family finally managed to disarm the drunken assaulter and force him into a chair, where he remained until the police arrived on the scene. According to PDM, the perpetrator was accused of breaching the peace, extortion, violation of the privacy of others, and violence against a group of people in accordance with the Czech Criminal Code. As of 20 March 2006, the ERRC was unaware of any legal action taken. (ERRC, Prague Daily Monitor)

### ✧ **European Court Fails to Find Romani Children Victims of Discrimination in Education**

On 7 February 2006, by a vote of six to one, a panel of the European Court of Human Rights found, in the case of *D.H. and Others v. the Czech Republic*, that 18 Roma children who sought legal redress for discriminatory schooling, had not sustained their claims. The case originated with the unsuccessful filing of complaints in the Czech courts in 1999 on behalf of eighteen children represented by the European Roma Rights Center (ERRC) and local counsel. In 2000, the applicants turned to the European Court of Human Rights, alleging that their assignment to "special schools" for the mentally disabled contravened the European Convention. Tests used to assess the children's mental ability were culturally biased against Czech Roma, and placement procedures allowed for the influence of racial prejudice on the part of educational authorities.

Evidence before the Court, based on ERRC research in the city of Ostrava, demonstrated that school selection processes frequently discriminate on the basis of race:

- Over half of the Romani child population is schooled in remedial special schools.
- Over half of the population of remedial special schools is Romani.
- Any randomly chosen Romani child is more than 27 times more likely to be placed in

schools for the mentally disabled than a similarly situated non-Romani child.

- Even where Romani children manage to avoid the trap of placement in remedial special schooling, they are most often schooled in sub-standard and predominantly Romani urban schools.

At the European Court of Human Rights, on 7 February 2006, the majority acknowledged that the applicants' complaint "is based on a number of serious arguments." In particular, "Council of Europe bodies have expressed concern about the arrangements whereby Roma children living in the Czech Republic are placed in special schools and about the difficulties they have in gaining access to ordinary schools." Moreover, the majority affirmed that, "if a policy or general measure has disproportionately prejudicial effects on a group of people, the possibility of its being discriminatory cannot be ruled out even if it is not specifically aimed or directed at that group." Nonetheless, the panel held, as "the system of special schools was not introduced solely to cater for Roma children," the applicants had not proven a violation of Article 14 of the European Convention of Human Rights (prohibiting non-discrimination), taken together with Article 2 of Protocol No. 1 (the right to education).

Concurring with the majority "only after some hesitation," Judge Costa of France observed that, "generally speaking, the situation of the Roma in the States of Central Europe ... undoubtedly

poses problems.” When it comes to the special school system at issue in this case, “the danger is that, under cover of psychological or intellectual tests, virtually an entire, socially disadvantaged, section of the school population finds itself condemned to low level schools, with little opportunity to mix with children of other origins and without any hope of securing an education that will permit them to progress.” Judge Costa noted that the Court’s Grand Chamber might be “better placed than a Chamber” to revisit the case-law applicable in this area.

In dissent, Judge Cabral Barreto of Portugal noted that the Czech Government had previously conceded that, at the time relevant to the applications before the Court, “Romany children with average or above-average intellect were often placed in [special] schools on the basis of results of psychological tests”; “the tests were conceived for the majority population and do not take Romany specifics into consideration”; and in some special schools, “Romany pupils made up between 80% and 90% of the total number.” Taken together, these concessions amounted to “an express acknowledgement by the Czech State of the discriminatory practices complained of by the applicants.” Pursuant to Rule 73 of the Rules of Court, the applicants have three months to request that the case be referred to the Grand Chamber.

Racial segregation in education remains widespread throughout the Czech Republic and in neighboring countries. ERRC field research in five countries has consistently documented the separate and discriminatory education of Roma, as well as additional practices by educational authorities that result in the segregation of Roma in schools.

An ERRC report, *Stigmata: Segregated Schooling of Roma in Central and Eastern Europe*, describes the most common practices of segregating Romani children in education based on their ethnicity. These include segregation in so-called “special schools” for children with developmental disabilities, segregation in Romani ghetto schools, segregation in all-Romani classes, denial of Romani enrolment in mainstream schools, as well as other phenomena. Whatever the particular form of separate schooling, the quality of education provided to Roma is invariably inferior to the mainstream educational standards in each country. The full text of the ERRC Report is available at: <http://www.errc.org/cikk.php?cikk=1892>.

✧ **European Court of Human Rights Finds that Czech Government Violated Right to Fair Trial**

On 1 March 2006 the European Court of Human Rights found the Czech Government

in violation of the right to a fair trial (Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms) in the case of *Krasniki v. the Czech Republic*. The European Roma Rights Centre along with Czech attorney David Strupek filed an action to the court on behalf of Hasan Krasniki on 2 September 1999. Krasniki was found guilty of production and possession of narcotics in 1997 through the testimony of two anonymous witnesses who did not use their true names and who testified behind a curtain, one of whom did not testify at the final hearing, and one of whom claimed fear of violence. Czech authorities based their approval of these tactics on Czech law which has since been changed. The Czech court ignored the fact that the defendant was not even in the Czech Republic much of the time claimed.

The Court found that while anonymous witnesses may be compatible with the Convention, in this case they were not. Any such use of anonymous witnesses must be counterbalanced to test the witnesses’ reliability and no conviction should be based solely or decisively on anonymous statements. Since this was the case, the Court found a violation of Article 6.1 and 6.3(d) (right to a fair trial) and awarded the applicant 2,500 EUR. (ERRC)

## **FRANCE**

### ✧ **French National Assembly Proposes Property Tax for Travellers**

According to a 23 November 2005 article in the French national newspaper *Le Monde*, the French National Assembly voted on and adopted, on the night of the 22<sup>nd</sup>, an amendment that would create a property tax on 'mobile residences', essentially intended to target travelers. The amendment was introduced by Jérôme Chartier, member of the *Union pour un Mouvement Populaire* party, during an examination of the budget for 2006 and it plans to base the property tax on square metres of surface in each mobile residence, imposing a 75 EUR charge for each square metre additional to the minimum tax-free space of 4 square metres. The National Assembly also adopted a sub-amendment which foresees that the product of this tax be reinvested in the communities which 'respect their material obligations to provide settlement areas' for Travellers.

*Le Monde* reported that this is the third consecutive year that Mr. Chartier had proposed the amendment. Jean-Pierre Brard, affiliated with the *Parti Communiste Français*, noted that it would be difficult to collect this tax since 'de facto these families are insolvent'. According to him, 25 EUR could be 'realistically collected, not 75'. Indeed, while all French citizens pay property tax varying based on size, location and income, such tax is rarely as much as 75 EUR per square metre. An apartment in Paris measuring about 60 square metres, for example, is taxed ap-

proximately 250 EUR, while one in Strasbourg measuring about 90 square metres is taxed approximately 850 EUR. Revenue from property taxes is intended to cover cost associated with city services and many travelers who will be forced to pay such high property taxes do not have access to these services. Even with the property tax in place, travelers' caravans are still not considered 'houses' for the purposes of French social security benefits.

As of 20 March 2006, the ERRC was informed that the new tax legislation was subsequently approved by the Senate and published in the "Journal Officiel" on 31 December 2005. The legislation, Article 92 of the Financial Project Act 2006, will take effect on 1 January 2007 creating a property tax on "mobile residences" of 25 EUR per square metre. (ERRC, *Le Monde*)

### ✧ **European Roma Rights Centre Releases France Country Report**

The European Roma Rights Centre, on 2 December 2005, announced the release of the Country Report Series publication "Always Somewhere Else: Anti-Gypsyism in France", a comprehensive report on the human rights situation of Gypsies, Travellers and Romani migrants in France.

Since 2003, the ERRC has been engaged in intensive monitoring on the situation of Gypsies, Travellers and Romani migrants in France. This research indicates that hundreds of thou-

sands of Gypsies and Travellers are denied the right to equal treatment, and experience regular denial and interference with almost all fundamental civil, political, social, economic and cultural rights. They have long been subjected to laws, policies and practices aimed at their control, repression, exclusion and assimilation. These affect almost all aspects of their daily life. Recently, a number of new laws have severely constricted possibilities for the expression of key elements of Gypsy and Traveller identity, while simultaneously providing racist local officials with legal justification for repressive and draconian measures aimed at – and succeeding in achieving – the exclusion of Gypsies and Travellers from nearly all elements of French public life and services.

Discrimination against Gypsies, Travellers and Roma hinders the ability of individuals to exercise rights as fundamental as the right to vote; due to specific racist legislation, many Gypsies are unable to vote under the same conditions as other French citizens. Many Gypsies and Travellers also need to carry specific circulation documents, and present these documents for regular visa by police or gendarmes. These persons risk penal sanctions, fines and imprisonment if they travel in the country without these documents or neglect to have these documents regularly renewed or updated. Discrimination frequently begins with first contact with the education system. A very high percentage of Traveller and Gypsy children receive no education, drop

out before reaching the secondary level, and/or attend segregated schooling arrangements that provide only minimal education. Gypsies and Travellers all too often receive a substandard education, often not even equipping them with basic literacy skills.

Many Gypsies and Travellers are driven from municipality to municipality, unable to halt for more than very short periods at a time, before being subjected to the next forced eviction. Most of French territory seems, in fact, to be off limits for Gypsies and Travellers. Those areas available for settlement are often unhealthy, polluted and segregated areas well-hidden from the view of other residents. A great number of Gypsies and Travellers believe that the full apparatus of the state is being brought against them, possibly to end key elements of their culture, or more likely for no reason other than to

try to force them away from French society altogether.

Likewise, several thousands of Romani migrants on French territory are subjected to policies the basic aim of which is to make them leave France. They live in indecent slum conditions and find themselves repeatedly evicted from their precarious camps and squats, chased to the next municipality – from which they are in turn evicted. In addition, they are subjected to various forms of violence, abuse, harassment and neglect that result in extreme violations of their rights in almost all fields of life.

Public expressions of anti-Gypsyism are a regular and widespread feature of French public life. French officials, from Senators and Deputies to local mayors regularly propagate anti-Gypsyism, often to garner political cap-

ital. Portrayed as dirty and uncivilised criminals, social leeches and public nuisances, Gypsies, Travellers and Roma are singled out as a dangerous and unwanted subclass of French society.

Recent riots in France, primarily by excluded members of France's recent immigrant communities, have caused extensive attention to be paid in the media as well as in French policy circles, to the situation of immigrants in France. The situation of France's Gypsies, Travellers and Roma requires similar urgent attention if the promise of equality is to be realised for all. The full text of "Always Somewhere Else: Anti-Gypsyism in France", including a detailed series of recommendations to French authorities, is available in both French and English versions at: [http://www.errc.org/Countryrep\\_index.php](http://www.errc.org/Countryrep_index.php). (ERRC)

## **GERMANY**

### ✧ **German Police Officer Disciplined for Publishing Hate Propaganda**

According to a 4 November 2005 article posted by the online newspaper Expatica, a German police officer was suspended and faces disciplinary action after publishing a text stating that Gypsies in Germany live like insects.

The text, published in 'Der Kriminalist', a magazine of the Federation of Criminal Police, described the Romani community as "like a 'maggot in fat' in Germany's wealthy society". The article further alleged that Roma

in Germany were responsible for far more crime than other citizens and that they felt justified in stealing and illegally taking social welfare payments because of their persecution under the Nazi Third Reich. The author of the text questions "Is it really prejudice when citizens complain that Gypsies drive to the social welfare offices in a Mercedes?"

According to Expatica, the Central Council of German Gypsies and Roma condemned the article as "race-baiting". In response, the Bavarian State Ministry of the Interior issued a statement informing the

Council that the officer had been suspended and that state prosecutors were in the process of investigation. The ministry reportedly continued in their statement by saying "A general criminalising of a single part of the population, as here with the Gypsies and Roma, is totally unacceptable". As of 20 March 2006, the ERRC was unaware of the progress of the investigation or of any legal action taken against the police officer. Additional information on discrimination against Roma in Germany can be found at: [www.errc.org](http://www.errc.org). (ERRC, Expatica)

**GREECE****✧ UN Special Rapporteur Urges Greece to Protect the Rights of Minors**

According to a 16 November 2005 article by the UN News Centre, Mr Juan Miguel Petit, the UN Special Rapporteur on the sale of children, child prostitution and pornography, warned that the Greek government must create a national policy to protect the rights of minors. At the conclusion of his six-day visit to Greece, Mr. Petit presented his preliminary findings in Athens on 15 November 2005, in which he concluded that ‘the country still needs a comprehensive approach to child protection’. The independent expert noted that Greece has a continued obligation to protect minors and victims of trafficking.

The Special Rapporteur noted a decisive link between poverty and trafficking. During his visit, Mr. Petit was accompanied by the non-governmental organization Greek Helsinki Monitor (GHM) to Romani communities in Votanikos, in the centre of Athens, where the Special Rapporteur noted the critical situation of Romani children. He later voiced concerns about their situation, saying many live “in unacceptable conditions without adequate access to education and basic services”. Mr Petit called upon the Greek Government to uphold its duty to “give Roma children alternatives other than street work or prostitution as survival strategies”.

A joint case study by GHM and Minority Rights Group – Greece (MRG-G), published

in November 2005, confirms Mr. Petit’s findings regarding Romani children being denied access to education. The case study documents, over the period of a year and a half, efforts to assist children in the Psari Roma community, in the Aspropyrgos municipality (near Athens), to register and attend school. The findings indicate that access to education for the Roma in Greece is often impossible due to reactions by racist non-Roma neighbors and reluctance on the part of local, regional and central state authorities to implement the legal framework ensuring positive state obligations.

The Special Rapporteur’s visit to Greece immediately followed a visit to Albania, and Mr. Petit noted that the purpose of visiting the neighbouring countries consecutively was to gain a better understanding of the transnational dynamics of the issue. He emphasized that trafficking is a global issue that requires collaborative efforts and recommended the creation of a commission made up of Greek and Albanian authorities to resolve the case of some 500 children who disappeared from the Aghia Varvara children’s institute, between 1998-2002. According to a GHM press release on the same day, to date, only 4 of the 500 missing Albanian street children, mostly Roma and Egyptian children who were taken by authorities to the Aghia Varvara children’s institution, have been located in Albania. (GHM, UN News Centre)

**ERRC and IHF Urge Greek Education Minister to End Roma School Segregation**

On 10 February 2006, the European Roma Rights Centre (ERRC) and the International Helsinki Federation for Human Rights (IHF) sent a letter to Greek Minister of Education Marietta Yannakou, expressing concern about the placement of Romani pupils in segregated classes in Aspropyrgos on the outskirts of Athens, following an initial refusal of enrolment and highly inadequate responses by Greek authorities.

The letter noted a range of actions undertaken by various agencies – and in particular by IHF member Greek Helsinki Monitor – aiming to try to secure enrolment in equal quality, integrated classes for Romani children in the Psari settlement in Aspropyrgos. The letter observes that authorities have been aware of the exclusion of Roma from schooling and/or efforts at their segregation into separate, substandard schooling arrangements, since at least 2002. Efforts at securing integrated education for these children have not yet met with success, and indeed have provoked a backlash by local non-Romani parents. The letter noted that these issues are not confined solely to schools in Aspropyrgos, and cited examples of school segregation of Roma in other parts of Greece.

The letter urged Minister Yannakou to take all measures available to her office to remedy, without delay, the situation in the primary schools at

issue in Aspropyrgos, and indeed throughout the country. The joint ERRC/IHF letter was copied to, among others, the Council of Europe's Commis-

sioner for Human Rights, as well as to the Permanent Representative of the Permanent Mission of Greece to the Organization for Security and

Co-operation in Europe. The full text of the letter is available at: <http://www.errc.org/cikk.php?cikk=2230>. (ERRC)

### ✧ **ERRC Hosts Consultation with UN Special Rapporteur on the Right to Adequate Housing**

In November 2005, the European Roma Rights Centre hosted the Central-Asia/Eastern Europe Regional Consultation on Women's Right to Adequate Housing, in collaboration with Office of the High Commissioner for Human Rights (OHCHR) and the UN Special Rapporteur on Adequate Housing, Mr. Miloon Kothari. This was the sixth regional consultation that has been organised with the objective of providing an opportunity for civil society to have input into the Special Rapporteur's report to the UN Commission on Human Rights and to provide information to contribute to the advancement of women's rights.

The consultation took place between 20 and 23 of November 2005 in Budapest, where 15 women's rights activists delivered testimonies to the Special Rapporteur on women's right to adequate housing in their respective countries. The participants, four of whom were Romani, collectively represented 14 countries in Central Asia and Eastern Europe, including Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Russia,

Serbia and Montenegro (Kosovo), Slovakia, Tajikistan, Turkey and Ukraine.

The consultation consisted of a two-day pre-consultation training on the monitoring of housing rights violations, followed by two days of testimonies under the following themes: Legal and cultural obstacles to land inheritance and property rights of women; Forced evictions, discrimination and racial segregation in the field of housing; Multiple Discrimination; Roma and the right to adequate housing; Armed/ethnic conflict, militarism and fundamentalism; and Domestic violence.

The participants, through their testimonies and interaction during the consultation, identified several cross-cutting themes that affect women in many countries in the region. Violations of the right to adequate housing in the form of forced evictions, substandard housing, and segregation make women vulnerable to other abuses. Women belonging to disadvantaged groups often face multiple discrimination as they are discriminated against on the basis of gender as well as on the basis of their membership in these groups. Minority women are often victims of discriminatory traditions, in subordinated roles within their families and communities, while also living in segregated

housing and suffering discrimination by the greater society as a whole. Segregated housing presents barriers to education and, by extension, employment. Lack of income is then a barrier to secure adequate housing, which renders women further dependant on men, as well as vulnerable to abuses such as domestic violence, trafficking and sexual exploitation. Laws lacking gender components and inadequate implementation of the law, as well as sexist attitudes and corruption by officials at all levels, perpetuates and further exacerbates the non-fulfillment of women's right to adequate housing.

The consultation also generated recommendations regarding how activists can take action locally, nationally, and internationally, to address the complex issues linked to violations of women's right to adequate housing. The Special Rapporteur, commissioned by the Commission on Human Rights to globally investigate situations concerning Women's Right to Adequate Housing, will incorporate his findings into his second report on Women and the Right to Adequate Housing, which he will submit to the Commission on Human Rights in April 2006, during the Commission's 62<sup>nd</sup> session. The report will be available online at: <http://www.ohchr.org/english/issues/housing/annual.htm>. (ERRC)

### ✧ **UN Committee on the Rights of the Child Concerned about the Situation of Romani Children in Hungary**

On 3 February 2006, the UN Committee on the Rights of the Child released its Concluding Observations on Hungary's compliance with the International Convention on the Rights of the Child, one of the central instruments of international human rights law. The UN Committee on the Rights of the Child convened in January to review Hungary's second periodic report on measures to implement the Convention.

The Committee praised progress achieved by Hungary in the area of children's rights citing numerous examples. The Committee was however concerned about the situation of Romani children, and brought recommendations in a number of areas. With respect to issues on which the European Roma Rights Centre submitted documentation, the Committee took the following positions: "The Committee is concerned that discriminatory and xenophobic attitudes, in particular towards the Roma population, remain prevalent and that especially Roma children suffer from stigmatisation, exclusion and socio-economic disparities, notably related to housing, unemployment, access to health services, adoption and educational facilities because of their ethnic status."

On this basis, the Committee recommended that the government of Hungary:

- Initiates campaigns to change widespread discriminatory behaviour of exclud-

ing members of the Roma community from services that have to be accessible to all citizens regardless of their ethnicity or any other status;

- Strengthen and expand programmes that assist disadvantaged children whose development was impeded by poor socio-economic conditions during young childhood;
- Systematically abolish all institutional settings which segregate children based on discriminatory grounds; and
- Expeditiously terminate the practice of withdrawing public responsibility for the education of certain children by assigning them "private" student status.

The Committee recommended that the Hungarian government continue measures towards social integration of minority children, emphasizing that additional measures are needed to ensure the full enjoyment of the rights enshrined in the Convention by Roma children, particularly with respect to their access to education and adequate standard of living.

The Committee expressed concerns about the overrepresentation of Romani children in child care institutions and reports of poor conditions in these institutions, noting that not enough efforts have been made to return children to their families in a timely manner. The fact that children in state care are subsequently overrepresented among the homeless was also raised as a serious concern by the Committee in its Concluding Observations. In the view

of the Committee, institutionalisation should be only a measure of last resort, taking into account the best interests of the child, and the State should provide maximum support for child protection services and undertake further preventative efforts to address the root causes of poverty, with a view to prevent and reduce placements in institutions and separation of children from parents.

Regarding Romani children in institutions, while some of them might benefit from adoption, the Committee noted that the central regulating authority should be provided with sufficient financial and human resources in order to comply with its mandate. The Committee suggested that particular attention be paid to the right of children to know their origins. The Committee urged Hungary to identify children who might benefit from adoption and initiate the adoption process, taking into consideration the cultural background of these children in accordance with article 20 of the Convention.

While recognising certain efforts to reduce segregated education, the Committee expressed concern over the many Romani children that are still arbitrarily placed in special institutions or classes, the poor quality of schools resulting from regional disparities, and the limited access to preschools in regions where poverty is high and the Romani community is dominant. With a view to ending these disadvantages suffered by Romani children, the Committee recommended particular attention be paid to abolishing segregation

in schools and introducing obligatory human rights education components in curriculum.

On the issue of administration of juvenile justice, the Committee stated that the overrepresentation of Romani children within the administration of juvenile justice remains a serious concern and recom-

mended that Hungary ensure that the principle of non-discrimination is strictly applied, in particular with regards to children of vulnerable groups such as Roma.

The ERRC provided written comments to the Committee in the run-up to its review of Hungary's compliance

with the children's rights Convention. The ERRC now urges Hungarian authorities to implement the Committee's recommendations in full. The full text: Committee on the Rights of the Child Concluding Observations on Hungary is available at: [http://www.ohchr.org/english/bodies/crc/docs/co/CRC\\_C\\_HUN\\_CO\\_2.pdf](http://www.ohchr.org/english/bodies/crc/docs/co/CRC_C_HUN_CO_2.pdf) (ERRC)

## **IRELAND**

### **✧ Farmer in County Mayo Receives Reduced Sentence of Manslaughter after Killing Traveller**

According to a 26 November 2005 article by London-based newspaper The Guardian, in a court decision of the same month, Mr. Pádraig Nally, a farmer from County Mayo who killed a Traveller whom he believed was breaking in to his farmhouse, was cleared of murder and convicted of manslaughter for which he was sentenced to six years imprisonment. In October 2004, Mr. Nally reportedly caught John Ward trespassing on his farm and shot him in the hip and the hand, repeatedly beat him with a piece of wood, and then shot him dead at close range.

The judge ruling on the case commented that it was the "most socially divisive case" he has tried in his history as a judge. Some believe that Mr. Nally was sentenced too harshly by the court, arguing that Travellers must be made responsible

for their involvement in crime. A rally was even organised in support of Mr. Nally, but was postponed due to accusations that it was racist against Travellers, an allegation its organisers denied. Mr. Ian O'Donnell, of the Institute of Criminology at University College Dublin, countering arguments by Nally supporters, noted that the idea that Travellers are disproportionately involved in rural crime is unsubstantiated and attempts to imply the contrary amount to 'scapegoating'. Such scapegoating has the effect of further marginalization. Many Travellers report living in constant fear, a fear that is not unfounded as demonstrated by the death of a 26-year old Traveller who was chased into an ally, beaten and stabbed to death with a pool cue.

Approximately 30,000 Travellers live in Ireland, which amounts to less than 1% of the population. While Irish Travellers are recognized as a minority in Great Britain and Northern Ireland, they have not been

afforded the same recognition in the Republic of Ireland. Mr. Martin Collins, assistant director of the Travellers group Pavee Point, argues that this lack of recognition prevents the hatred Travellers face on a daily basis being properly addressed as racism. Mr. Collins sees the Nally case as an example of the "blatant and institutionalised racism" that exists against Travellers in the Republic. None of the jury members were Travellers. Commenting on the case, Collins said: "I am the first to admit that John Ward had no right to be where he was, but this was cold-blooded murder and now the farmer is being glorified and portrayed as a national hero. This is akin to what once happened in Alabama, Georgia and Mississippi." The ERRC is currently involved in a joint project with the Irish Traveller Movement and the Italian Helsinki Committee, supported by the European Commission, aiming among other things to challenge discrimination against Travellers in Ireland. (The Guardian)

**ITALY**

❖ **Council of Europe  
Commissioner for Human  
Rights Reports on the  
Situation of Roma**

The Commissioner for Human Rights of the Council of Europe, Mr Alvaro Gil-Robles, presented his report on Italy, based on findings from his visit in June 2005, to the Committee of Ministers on 14 December 2005, noting in particular the lack of access to employment, housing, healthcare, and education for Roma.

During his time in Italy, the Commissioner visited the unofficial Romani camp Casilino 900 in Rome. He noted inadequate living conditions of Roma in this camp and others: “minimum access to water and electricity, and no roads, lighting, sewers or drainage. People live in broken-down caravans or homes knocked together out of salvaged materials. The camp, in other words, is best described as a shanty-town”. The Commissioner pointed out in his report that the problem is widespread, reflected in the collective complaint concerning the problem of systematic substandard housing for Roma, recently declared admissible by the European Committee of Social Rights, brought against Italy by the ERRC.

Mr Gil-Robles’ report noted that doctors from the mobile medical centre that visits the camp reported that “extremely harsh living conditions, added to poverty and integration problems, have serious effects on the health of Roma” evidenced in

“chronic diseases, ... (and) skin and respiratory conditions.” The doctors further reported that medical monitoring and treatment is complicated by the fact that Roma have little or no access to medical care outside of visits by the mobile medical centre. The Commissioner noted that the specific situation of Roma at the Romani camp Casilino 900 was exemplary of Roma living throughout Italy: “In theory, they have the same rights as other people, but direct access to medical treatment is impeded by various factors, including lack of papers and ignorance of the system. Poverty also prevents them from consulting doctors when they need to, and access to treatment too often takes the form of last-minute hospital intervention.”

The Commissioner also noted that access to education for Romani children is limited by the distance inherent in segregated housing and the precarious financial situations of most Romani families due to lack of employment opportunities. Further barriers to education exist with respect to registration as many Roma lack personal documentation. Schooling is mandatory up to the age of 13 but beyond that, registration can become increasingly difficult for most Romani children who are without residence permits. Without schooling, Romani children stand very little chance of finding work in Italy where qualifications are becoming increasingly important; and without work, they can neither integrate nor obtain papers. With respect to education, the Com-

missioner reported that “solutions allowing young Roma to attend school normally are urgently needed”.

The inadequate living conditions and poor access to healthcare and education are exacerbated by the poverty Roma face as a direct result of barriers in access to employment. Social change and failure by authorities to implement certain legislation make it difficult for Roma to practice some traditional occupations. Non-Italian Roma have difficulty in obtaining residence permits or acquiring nationality as legislation requires a valid employment contract. Even though many Roma have lived in Italy for several decades, without formal work, they remain unable to regularise their lives and integrate into Italian society.

The report estimates that some 120,000 Roma live in Italy without the protection provided for by special minority status. Italian authorities believe Roma are nomads who prefer to live in camps and common prejudice labels them as foreign despite the fact that much of the Roma community in Italy is of Italian origin and citizenship.

In his recommendations to the Italian authorities, the Commissioner noted that actions should be taken to “provide easier access to residence permits and, when appropriate, Italian nationality for foreign members of the Roma community who have been residents in Italy for many years; continue programmes designed to help Roma to enter the labour

market; implement, as a matter of priority, a national programme to provide Roma in shanty-towns with decent living conditions; and

allow children without papers, including Roma children, to continue their schooling upon reaching the age of 13". Further infor-

mation regarding the situation of Roma in Italy is available at: <http://www.errc.org/db/00/0F/m0000000F.pdf>. (ERRC)

## **KOSOVO**

### ✧ **European Court of Human Rights Has No Jurisdiction in Kosovo Lead Poisoning Case**

On 20 February 2006, the European Roma Rights Centre filed an application with the European Court of Human Rights in Strasbourg on behalf of 184 Romani residents of camps for Internally Displaced Persons (IDPs) in northern Kosovo. On 21 February 2006, the Court faxed a letter to the ERRC declining to review the case stating that it did not have jurisdiction to do so. Specifically, the Court claimed it was not competent to review the case since the United Nations Mission in Kosovo (UNMIK) is not party to the Convention.

In 1999, the camps were built on land known to be highly contaminated. Although the camps were intended as temporary housing for victims of the 1999 looting and burning of the Romani settlement in southern Mitrovica, today they continue to exist under the United Nations supervision, despite known and documented extreme health hazards arising from toxic lead contamination.

The United Nations Mission in Kosovo (UNMIK) has known of the scale of the health emergency since as early as 2000, when the World Health Organization (WHO) issued its first report analyzing the effects of

lead pollution on the Mitrovica region. The report found that all children and most adults living around the industrial site had blood lead concentrations exceeding the permitted limits. Specifically, the researchers found higher than average lead concentrations among the Roma, as compared with the non-Romani population. By October 2004, the WHO had declared the area in and around the IDP camps uninhabitable, issuing a report that revealed that the lead concentration in the soil in Zitkovac camp was 100.5 times above recommended levels, while in the Cesmin Lug camp, the levels exceeded by 359.5 times those considered safe for human health.

A WHO analysis of numerous studies has shown that increases in blood lead from 10 to 20 micrograms/deciliter ( $\mu\text{g}/\text{dl}$ ) were associated with a decrease of 2.6 IQ points. In 2004, WHO sampled 58 children living in the IDP camps, of whom 34 were found to have above acceptable blood lead levels. None of the Romani children sampled had a blood lead level below 10  $\mu\text{g}/\text{dl}$ . Twelve of the Roma children were found to have exceptionally high levels, with six of them possibly falling within the range described by the United States Agency for Toxic Substances and Disease Registry ("ATSDR") as constituting a medical emergency ( $\Rightarrow 70\mu\text{g}/\text{dl}$ ). At the time of the re-

port, in the summer of 2004, the WHO recommended urgent action for the twelve children mentioned above, including immediate diagnostic testing, aggressive environmental interventions and ongoing evaluation according to ATSDR guidelines. They did not receive that treatment. By October 2004, the WHO recommended the immediate removal from the camps of children and pregnant women and called the case of the Roma "urgent". They were not removed, save for a few women, for two days.

On 19 October 2005, the Society for Threatened Peoples based in Goettingen, Germany, brought Dr. Klaus-Dietrich Runow to Kosovo to test for toxic heavy metals in the three IDP camps near Mitrovica. Hair samples were collected from 48 children between the ages of 1-15. The readings range from 20 to 1200  $\mu\text{g}/\text{g}$  while "normal" readings would be in the range 3-15. In spite of the volume of evidence indicating the extreme harms to the inhabitants of the camps caused by their continued residence there, the Roma concerned have still not been moved to a safe place after 6 years.

The application to the European Court of Human Rights alleged violations of the right to life (Article 2), prohibition of torture and inhuman or degrading treatment (Article 3), right to a fair hearing (Article 6), right

to respect for private and family life (Article 8), right to an effective remedy (Article 13), and discrimination (Article 14). In addition, the application asked for interim measures or emergency action due to the immediate need for removal of the victims from the lead-contaminated camps and medical treatment.

The application was filed against UNMIK as the acting government or “state” in Kosovo. While UNMIK has granted itself immunity in Kosovo and the UN has certain immunities, the ERRC argued that the situation in Kosovo is unique and calls for an examination of the application of immunity in terms of international human rights norms. In this specific case, UNMIK has accepted that the European Convention for the Protection of Human Rights and Fundamental Freedoms applies to it and that it will abide by it. The UN has also accepted that international human rights laws apply to United Nations officials in the course of UN operations. The UN has a legal personality and the concomitant rights and responsibilities that go with that. The right to life and the right to freedom from torture are universal norms, *jus cogens*, from which no derogation is permitted. These obligations apply to States as well as organizations and individuals. No one is exempt from universal norms.

In Kosovo, UNMIK is acting not only as an international organization, but also as a surrogate state authority. It administers the territory, enters into international contracts, appoints judges, and makes law. As the “government” it cannot avail itself of wholesale immunity but rather, as every sovereign, must be answerable for its conduct under the law. Further, human rights flow to individuals, not to States. Residents of Kosovo are citizens of Serbia and Montenegro, a party to the Convention. At present, however, the authorities of Serbia and Montenegro do not have authority over the territory of Kosovo, and thus their ability to guarantee implementation of the Convention on the territory of Kosovo is limited. Individuals in Kosovo cannot be denied their human rights because a different government is in charge.

In a related action, during the week of 2 December 2005, the ERRC sent letters asking the United Nations Secretary General, the United Nations High Commissioner for Human Rights, and four Special Rapporteurs (on Housing, Toxic Wastes, Refugees, and Health), to take immediate action for the preservation of the lives and health of children in three Romani IDP camps

in Kosovo. In the letters, the ERRC called on the U.N. High Commissioner for Human Rights to take immediate action in this medical emergency and asked the Secretary-General Kofi Annan to assist in rectifying this human rights tragedy, as well as commencing an internal investigation to ascertain how this dereliction of duty was allowed to continue for more than six years.

Additionally, on 13 February 2006, the ERRC filed a third-party complaint under the United Nations General Assembly Resolution A/RES/52/247 in which the UN agrees to compensate those who have been injured in their missions. On 5 March 2006, the ERRC filed a complaint with the UN Oversight Body under standards listed in two Secretary General’s Bulletins, ST/SGB/1997/5 and ST/SGB/2002/7, requesting an investigation into the mismanagement of the IDP camps in Kosovo. Other legal actions are being considered.

The ongoing human rights violations suffered by Roma in Kosovo is the central theme in ERRC’s Roma Rights Quarterly Journal Number 3 and 4, 2005 titled Justice for Kosovo. The full text of the journal is available at: <http://www.errc.org> (ERRC).

## MACEDONIA

### ✧ **Private Lawsuit Filed after Public Prosecutor Ended Investigation into Police Brutality in Kicevo**

According to information provided to the ERRC by the Kumanovo-based non-governmental organisation National Roma Centrum (NRC), a private lawsuit has been filed at the Primary Court of Kicevo, after investigation into the involvement of two police officers in an incident of brutality against three men ended when the Public Prosecutor refused to proceed.

On 30 June 2005, two police officers, Kire Bogoeski, Medin Letniku, in their capacity as officials, took three men, Ramadanovski Idaver, Imerovski Juksen, and Mamudovski Abdi, into custody without providing justification or informing the men of their legal rights. While in police custody at the station, the men allegedly suffered cruel and degrading treatment including insults and beatings inflicted with rubber truncheons. Medical reports confirm that the three men sustained injuries to the head, neck, shoulders and back, resulting in bruising, lacerations and blood loss. After approximately one hour, the men were reportedly released.

The three injured persons pressed criminal charges against the officers through the Public Prosecutor's office in Kicevo, in accordance with Article 143 of the Macedonian Criminal Code (maltreatment while on duty). The Public Prosecutor dropped the investigation on the basis that the stated facts and ev-

idence suggest the injuries did not occur while in police custody but rather at another time. The injured persons were notified that the investigation had been dropped and that they could further pursue the case, if they so wished, by initiating a private lawsuit at the Primary Court in Kicevo. Subsequently, the three men submitted, within the proper timeframe, a Subsidiary Accusation Act to the Primary Court of Kicevo. The hearing was set to take place on 9 March 2006. As 20 March 2006, NRC reported that the proceedings have been delayed because the accused officers did not show up at the hearing.

The ERRC is currently involved with local partners in a project challenging racial discrimination in Macedonia and Croatia, funded under the EU CARDS programme, with matching funding from the Swedish International Development Agency (SIDA). (ERRC, NRC)

### ✧ **Romani Boy Beaten After School in Tetovo**

According to reports submitted to the ERRC by the Kumanovo-based non-governmental organization National Roma Centrum (NRC), Sojozer Ramadani, a Romani student in the first grade at an agricultural high school in Tetovo, testified that at around 1:00 pm on November 21, 2005, he was attacked by a group of Albanian students from a nearby medical high school while waiting for the bus with his cousin, Emran Rama-

dani, and their friends, also Romani students. Sojozer and his friends were speaking Macedonian among themselves when a group of Albanian students began to provoke Romani girls, cursing and insulting them. Sojozer, in defense of his friends, asked the Albanian boys, in Albanian, why they were provoking the girls. The group responded with further insults and asked Sojozer why he was speaking Macedonian.

A fight reportedly broke out between the two groups, during which 6 Albanian students attacked Sojozer, striking him on the head and body until he was on the ground covered in blood. One of the boys then removed a metal box from his pocket and began beating Sojozer with it. Neviija, one of the girls, trying to protect Sojozer, was pushed to the ground and kicked repeatedly. The Albanian students then escaped by car and Sojozer's friends took him home in a taxi.

Once home, his mother and grandfather called his father and they took him to the hospital. Doctor Miomira Neskoska examined Sojozer, and after finding that he had sustained injuries to his head and body and had a fractured nose, prompted the family to report the incident to the police. Sojozer's family was reluctant to report the incident. Doctor Neskoska then reported the incident to the police who subsequently interviewed Sojozer and his family. According to Sojozer's father Ismail, Inspector Dimce took a description of the boys from Sojozer and his cousin. One of the

boys was apprehended the day after the incident. Police visited the school in search of information but none of the other students would testify to having witnessed the incident.

According to Mr Ramadani, Sojozer stayed home from school to recover for several days and his parents were reluctant to send him to school because they fear for his security. Sojozer's family lives in the Potok settlement amongst Roma, Macedonian and Albanian families, in the same settlement where most of the boys' families live. Two of the boys' fathers reportedly approached Sojozer's father to discuss the incident. As of 9 March 2006, Sojozer still does not attend school out of fear and investigation against attackers has not been completed. (ERRC, NRC)

#### ✧ **UN Women's Rights Committee Highlights Romani Women's Issues in Macedonia**

On 20 February 2006, the Roma Centre of Skopje (RCS), the European Roma Rights Centre (ERRC), and the Open Society Institute's Roma Women's Initiative (RWI) welcomed the Concluding Comments of the UN Committee on the Elimination of Discrimination against Women on Macedonia's compliance with the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The Committee convened in January to review Macedonia's Initial, Second and Third periodic report on measures to implement the Convention.

The Committee expressed specific concern about the situation of Romani women, as well as Albanian women and rural women, stating that "rural women, as well as ethnic minority women, particularly Roma and Albanian women, remain in a vulnerable and marginalized situation, in particular with regard to access to education, health, employment and participation in political and public life." The Committee also expressed particular concern over "high school dropout rates among Roma girls and girls living in rural areas."

In their Concluding Comments, the Committee urged the State Party to:

- "implement effective measures to eliminate discrimination against rural women, as well as ethnic minority women, in particular Roma and Albanian women, and to enhance their enjoyment of human rights through all available means, including temporary special measures";
- "implement measures to decrease dropout rates among Roma girls and girls living in rural areas and to reintegrate them into the educational system";
- provide, in its next report, "a comprehensive picture of the de facto situation of rural women, as well as of ethnic minority women, in particular Roma women, in the areas of education, health, employment and participation in political and public life, and of the efforts of the government to eliminate discrimination against these women" as well as "concrete projects

directed at Roma women under the Decade of Roma Inclusion 2005-2015."

After welcoming legislative changes taken to combat violence against women, the Committee also expressed concern about the "high prevalence of violence against women, including domestic violence." The Committee then urged the Government to:

- "give priority to putting in place comprehensive measures to address all forms of violence against women, including domestic violence, recognizing that such violence is a form of discrimination and constitutes a violation of women's human rights under the Convention";
- "further elaborate and effectively implement legislation on violence against women, so as to ensure that perpetrators are effectively prosecuted and punished, and that victims receive adequate protection and assistance";
- "provide shelters for women victims of violence";
- and "implement educational and awareness-raising measures that highlight the unacceptability of all forms of violence against women and that it aim such efforts at law enforcement officials, the judiciary, health providers, social workers, community leaders and the general public."

In the run-up to the review, the RCS, the ERRC and OSI, with financial and technical assistance from UNIFEM's Bratislava office, submitted a parallel report to the Committee highlighting

key areas of concern for Romani women in Macedonia, including discrimination in access to education, employment and health, and issues related to domestic violence.

The RSC, the ERRC and OSI now urge Macedonian authorities to implement the Committee's recommendations in full. The full text of the Commit-

tee's Concluding Comments is available at: <http://www.un.org/womenwatch/daw/cedaw/cedaw34/concludingcomments/FYROMcc.pdf> (ERRC)

## **ROMANIA**

### **✧ ERRC Presses for Reform of Romanian National Council for Combating Discrimination**

On 25 November 2005, the ERRC sent a letter to Romanian Prime Minister Calin Popescu-Tariceanu, urging him to consider a series of recommendations related to the reform of the national anti-discrimination body, the National Council for Combating Discrimination (NCCD). The recommendations included in the letter are based on ERRC expertise in EU and international anti-discrimination law matters, as well as on direct experience with the Council, as a result of supporting a number of Romani victims of discrimination in filing complaints with the Council in recent years. The letter provides details of the fate of one such complaint, decided upon recently by the Council, which illustrates a number of the shortcomings of the Council's present mode of operations.

The letter highlights a number of weaknesses related to the Council's current mandate, status and practice, such as excessive length of the investigations; inability of the NCCD staff to recognize clear instances of discrimination; lack of

transparency of the investigations undertaken by the NCCD; and inability to provide meaningful redress to victims of discrimination. The letter continued in stating that these issues are related to more fundamental deficiencies that undermine the activity of the NCCD, such as the lack of independence from the executive arm of the government and the lack of sufficient resources and staff.

The letter concluded in providing six recommendations to Prime Minister Calin Popescu-Tariceanu regarding measures that should be taken to render the NCCD more effective:

1. The NCCD should be granted real independence from other state bodies, especially from the executive arm of the government, to which it is presently subordinated. In this context, the ERRC supports the proposal put forward by members of civil society that the Council be placed under parliamentary supervision.
2. Appointment of members of the board should reflect the independent mandate of the NCCD. The selection process should involve representatives of NGOs, trade unions, social workers and journalists.

3. The NCCD should be given the power to apply a wider range of sanctions aimed at achieving, to the largest extent possible, 'restitutio in integrum' for victims of discrimination.
4. Legal aid should be provided to victims of discrimination, in conformity with Article 13(2) of the Race Equality Directive and Article 6 of the European Convention on Human Rights. The practical modality in which this is achieved should not, however, endanger the neutrality and/or impartiality of the NCCD.
5. The six months time that the NCCD has at its disposal for investigating and sanctioning the complaints brought to its attention should be extended.
6. Sufficient staffing and adequate resources should be allocated to the NCCD under parliamentary supervision so that it is able to fulfil its mandate. Regionally based branches of the NCCD should be established, to ensure greater efficacy in undertaking its work. To view the full text of the letter, see: <http://www.errc.org/cikk.php?cikk=2422> (ERRC)

### ✧ **Romanian Equality Watchdog Rules Anti-Romani Speech by Romanian Politician is Discriminatory**

In a decision dated 17 January 2006, and communicated to the ERRC on 14 February 2006, the National Council for Combating Discrimination has ruled that an anti-Romani speech made by the leader of the extreme right Greater Romania Party was in breach of Romanian anti-discrimination law. The ruling was brought in response to an open letter sent by the European Roma Rights Centre to the Romanian Prime Minister Calin Popescu-Tariceanu and other high governmental officials on 26 August 2005. The letter had been forwarded by the Prime Minister's Office to the National Council for Combating Discrimination, the Romanian administrative body charged with implementing anti-discrimination law in Romania, which then decided to launch an investigation into the allegations.

The ERRC letter referred to the outbreak of hate speech in relation to Roma in a large segment of the Romanian media, as well as by prominent politicians, following the release by the European Court of Human Rights of the two judgments in the *Moldovan and others v. Romania* case in July 2005. That case concerned the 1993 pogrom in the village of Hadareni, during which three Romani men were killed and eighteen Romani houses were destroyed. The Strasbourg Court held on that occasion that the Romanian government was in breach of a number of articles of the European Convention.

The ERRC referred in particular to a speech made by Corneliu Vadim Tudor, the leader of the extreme right Greater Romania Party, the third largest party in Romania, which was aired on a public radio station and published in the party's newspaper and on its Internet website. In that speech, Mr. Vadim Tudor stated that during the 1993 pogrom the Romanians were just defending their "honor" against the "gypsy rapists and thieves" who wanted to "slaughter" them. Mr. Vadim Tudor accused the state authorities of failing to protect the "peaceful villagers" against the "bloody anger of a few brutes". He continued by calling on all Romanians to "protect [their] brothers in the wounded heart of Transylvania" against "the gypsy attacks and raids". The ERRC asked the Romanian Prime Minister to initiate legal action against Mr. Vadim Tudor for incitement to racial hatred in accordance with applicable domestic and international legislation.

In a very elaborate decision in which it made extensive use of arguments drawn from international human rights law, the National Council for Combating Discrimination held that Mr. Vadim Tudor's utterances constituted "discriminatory acts" in the sense of the Romanian anti-discrimination law. To reach this conclusion, the Council noted that "the right to free speech is not an absolute right and that its exercise must be in accordance with certain conditions, especially in view of the consideration and protection due to human dignity". The use by Mr. Vadim Tudor of derogatory terms in relation to persons

of Roma ethnicity was in breach of their human dignity and it created a 'humiliating atmosphere towards a group of persons or a community, based on their appurtenance to the Romani ethnicity'. Mr. Vadim Tudor has been however shielded from any sanction by his parliamentary immunity.

While saluting the decision given by the National Council for Combating Discrimination, the ERRC wishes to draw attention to the fact that the Romanian authorities have thus far failed in their duty to implement the Moldovan judgments of the Strasbourg Court. The community development strategy initiated by the Government in accordance with its obligations arising from the friendly settlement in the case has reportedly been shelved. Furthermore, the legal suits regarding the damages due to the victims of the pogrom are still pending in domestic courts, and that issue therefore remains unresolved thirteen years after the incidents took place. Finally, a significant number of the perpetrators of the pogrom, including law enforcement officials, as well as those authorities who for over a decade obstructed justice, still remain unpunished despite the July 2005 ruling by the Strasbourg Court. (ERRC)

### ✧ **Romani Victims of Police Abuse Bring Lawsuit at European Court of Human Rights**

On 24 January 2006, the European Roma Rights Centre (ERRC) filed an application with the European Court of Human Rights

against Romania, concerning a case of excessive and unjustified use of force by the police against a Romani family, as well as the subsequent failure of the authorities to conduct an effective investigation into the incidents.

The case involves the Pandelescu family, a Romani family of four – two spouses and their two sons – living in Targu Frumos, a small town situated in north-eastern Romania. The Pandelescus used to own a fruits and vegetables stand in the food market of Targu Frumos, which was built on a space leased from the municipality. Before the police intervention at issue took place, the municipality agreed to extend the lease contract for twenty-five years. For obscure reasons, however, the municipality decided to cancel the lease contract shortly after having agreed to extend it. Legal procedures concerning the abusive cancellation of the lease are pending domestically in Romania.

On 19 August 2003, four days after the lease contract had been terminated, the municipality decided to evict the Pandelescu family from the food market. To this end, some workers hired by the municipality were contracted to tear up the foundation of the applicants' kiosk. The Pandelescus, together with a number of their relatives and friends, staged a protest against the decision of the municipality. Among the protesters, there were a number of other Romani tenants whose stalls were also facing forcible expulsion from the food market. Extensive evidence shows that the protest was peaceful, despite official allegations to the contrary.

Responding to calls made by employees of the municipality, a number of agents of the Police Detachment for Rapid Intervention (“the DPIR”) arrived at the scene and started beating the applicants. The DPIR is the police department in charge of special interventions, dealing in particular with organized crime. At the time when the incidents took place, the DPIR officers concerned were wearing black uniforms and head masks, and were equipped with shotguns and “Kalashnikov” assault rifles. The agents of a private security company hired by the town council, who had already taken up positions in the market, joined the police in beating the applicants. All of the applicants were brutally beaten with rubber truncheons, baseball bats, fists and boots, and were threatened with firearms. Two of the applicants were then taken to the Targu Frumos police station where they were again physically abused and threatened. They were also fined for “disturbing the public order” and eventually released.

On 15 September 2003, Ms. Roxana Prisacariu, the applicants' legal representative, filed a complaint with the Prosecution Service of the Iasi Court of Appeal asking for an investigation into the case and for the punishment of those responsible for the beating. The prosecutor charged with the investigation summarily dismissed the complaint and gave a non-indictment decision, stating that the use of force by the police officers was lawful. That decision was upheld through a series of appeals and became final in May 2005.

On behalf of the four Romani applicants, the ERRC has taken this case to the European Court of Human Rights, alleging violations of Article 3 (prohibition of torture and inhuman and degrading treatment), Article 6 (right to a fair trial), Article 10 (freedom of expression), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination).

The case at hand is a particularly egregious instance of a widespread problem in Romania – that of disproportionate and unjustified use of force by police, frequently in cases in which the victims are Romani. In related proceedings, the abusive cancellation by the Targu Frumos town council of the Pandelescus' lease contract has recently been held to be discriminatory in a decision by the National Council for Combating Discrimination. In addition, since the incidents took place, the applicants have been subjected to continuous harassment by local officials. Thus, for example, the Targu Frumos town council has repeatedly refused to grant the applicants social allowances to which they are entitled by law. Moreover, in September 2004, one of the two sons of the family was beaten and his car was destroyed by a group of unknown individuals without any apparent reason. The investigation into these events was inconclusive, and the perpetrators are yet to be identified. Additional information on the situation of the Roma in Romania is available at <http://errc.org>. (ERRC)

**RUSSIA****✧ Arson Attack Resulting in Death of a Child in Russia**

According to Boris Kreyndel in a 13 November 2005 article posted on the Russian website Citizen's Control, on 10 November 2005 in the town of Iskitim, in Russia's Novosibirsk region, two Romani houses were burned in apparent arson attacks. One Romani woman sustained severe injuries and her 7 years-old child died three days later due to the arson attack.

The incident is the culmination of a wave of violence against Roma that has remained without efficient law enforcement response to date. In particular, on 14 February 2005, approximately twenty individuals attacked and burned a number of Romani houses in the same town. According to reports, the assailants managed to destroy entirely ten dwellings in the course of the attack. After the incident, the Romani inhabitants were forced to leave their houses. Similar acts of violence had reportedly also taken place in January and April 2005. Further information about attacks of this kind and human rights abuse of Roma in Russia is available in the ERRC's Country Report titled *In Search of Happy Gypsies: Persecution of Pariah Minorities in Russia*. The full text of the report is available at: <http://www.errc.org/db/01/9A/m0000019A.pdf>.

The ERRC has been informed by local human rights activists that a number of criminal investigations on violent incidents have been opened and seven

perpetrators have been detained. However, it can be assumed that law enforcement bodies and the local municipality did little or nothing to prevent further arson attacks on Romani houses and racial violence against Romani people. While the authorities have taken some steps, they have been inadequate as the attacks continued and, moreover, resulted in a death of a child.

On 17 November 2005, the ERRC sent a letter of concern to Mr Vlamidir Tokarev, Prosecutor of the Novosibirsk Oblast, copied to the Prosecutor-General of the Russian Federation and to the Human Rights Ombudsman in the Russian Federation, following up on a similar letter sent in February 2005. In March, the deputy prosecutor of Novosibirsk, Mr Afanasiev, responded promising to act on ERRC's concerns. In the 17 November 2005 letter, the ERRC called upon Mr Tokarev to ensure that all perpetrators involved in the recent violent arson attacks on the homes of Roma in Iskitim are swiftly brought to justice, and that the victims be protected from further abuse. The complete text of the letter is available at: <http://www.errc.org/cikk.php?cikk=2417>. (ERRC)

**✧ Kaliningrad Governor Urged to Stop Inhuman Treatment of Romani Families**

On 24 February 2006, the European Roma Rights Centre sent a letter to the Governor of Kaliningrad region, Mr Georgiy Boos,

urging him to intervene and stop the demolition of Romani houses Dorozhny village of Kaliningrad. The ERRC expressed concern that the actions of the Kaliningrad authorities had exposed Romani families to homelessness in violation of international human rights law. The letter responded to reports from the International Roma Union of Baltic States and the CIS, in February 2006, that city authorities of Kaliningrad sent bulldozers to demolish houses of Romani families. The forced evictions undertaken by the authorities exposed 4 Romani families, including children and women, to homelessness aggravated by severe weather conditions in the Kaliningrad region at this time of the year.

The ERRC noted in the letter that the actions of the city administration are in breach of a number of international as well as domestic human rights provisions, in particular the International Covenant on Economic, Social and Cultural Rights, to which the Russian Federation is a party, and the Constitution of the Russian Federation.

In the letter's conclusion, the ERRC urged the Governor to immediately cease the demolition of the Romani houses in the Dorozhny village and start consultations with the Romani families to find an appropriate solution to their housing situation. Further, the ERRC promised to continue monitoring the actions of the Russian authorities with respect to the housing rights crisis affecting the Romani families in the Dorozhny vil-

lage and reporting to domestic and international human rights

bodies as well as media. The full text of the letter is avail-

able at: <http://www.errc.org/cikk.php?cikk=2520> (ERRC)

## **SERBIA AND MONTENEGRO**

### ✧ **United Nations Committee on the Elimination of Racial Discrimination first finding against Serbia and Montenegro**

On 8 March 2006, the United Nations Committee on the Elimination of Racial Discrimination (“the Committee”) adopted a decision against Serbia and Montenegro, whereby it held that the state failed to conduct a prompt, thorough and effective investigation into an arguable case of discrimination (article 6 of the Convention on the Elimination of All Forms of Racial Discrimination). The petitioner, Mr. Durmic, was jointly represented by the European Roma Rights Centre (ERRC) and the Humanitarian Law Center (HLC). Mr. Durmic, a young Romani man had been denied entry into a local discotheque because of his ethnicity in 2000.

In February 2000, the HLC, along with the Democratic Union of Roma, responded to numerous complaints about the widespread denial of access to Roma to clubs, discotheques, restaurants, cafes and swimming pools solely on the basis of their race by conducting “tests” of several establishments.

One such establishment was a local discotheque, “Trezor”, located in downtown Belgrade. The HLC sent one Romani couple, one non-Romani cou-

ple, and one non-Romani man as testers to Trezor. All of the testers were neatly dressed and well-behaved – thus the only apparent difference was the color of their skin. The Romani testers, including Mr. Dragan Durmic, tried to enter the club but were stopped by the bouncer. The bouncer told them there was a private party in progress and that they could not enter without an invitation. The non-Romani male tester stood close enough to hear the conversation. He explained to the bouncer that he did not have an invitation and asked whether he could enter. He was allowed in without any problems. Similarly, the other non-Romani testers were allowed to enter with no questions asked, no mention of a private party, and no need for invitations. The Serbian authorities never conducted an appropriate investigation nor responded to either the criminal complaint or the constitutional court petition lodged by the victim.

Consequently, in April 2003, the ERRC and the HLC jointly filed a complaint with the UN Committee on behalf of Mr. Durmic. The complaint sought a declaration that Serbia and Montenegro had violated the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), requested a comprehensive criminal investigation into the incident, sought just compensation for the victim for humiliation and degradation suf-

fered from the discrimination, and requested that Serbian authorities take effective measures to ensure an end to racial discrimination in admission to the discotheque.

On 8 March 2006, the Committee issued its final consideration on the case, in which it upheld the petitioner’s argument “that the investigation was neither conducted promptly nor effectively, as nearly 6 years after the incident [...] no investigation, let alone a thorough one has been carried out”. Although the Committee unequivocally stated that the Serbia “failed to establish whether the petitioner had been refused access to a public place, on grounds of his national or ethnic origin, in violation of article 5 (f), of the Convention” it fell short of finding a separate violation under this heading. Instead, it opted to assert a violation of article 6 which provides that “States parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention.”

Concluding, the Committee held that the Serbian authorities failed to examine Mr. Durmic’s arguable claim of a violation of article 5(f) and it established that Serbia violated article 6 of

the Convention by failing to investigate his claim promptly, thoroughly and effectively.

The Committee recommended that the State party provide the petitioner with just and adequate compensation commensurate with the moral damage he has suffered. It also recommended that the State party take measures to ensure that the police, public prosecutors and the Court of Serbia and Montenegro properly investigate accusations and complaints related to acts of racial discrimination, which should be punishable by law according to article 4 of the Convention.

The Committee's findings come only weeks after in Decision 2006/56/EC of the European Council of the European Union, in which EU authorities established as a priority for Serbia and Montenegro, the need to "adopt comprehensive anti-discrimination legislation". Serbia and Montenegro currently lacks such a law. (ERRC, HLC)

#### ✧ **UN Torture Committee Instructs Government to Investigate Police Abuse of Roma**

On 16 November 2005, the United Nations Committee against Torture determined that Serbia and Montenegro violated the UN Convention against Torture and other Cruel, Inhuman, and Degrading Treatment or Punishment, in the case of Mr. Dani-

lo Dimitrijevic vs. Serbia and Montenegro. Mr. Dimitrijevic was jointly represented by the Humanitarian Law Center (HLC) of Belgrade, and the ERRC.

On 14 November 1997, at around noon, Mr. Dimitrijevic was arrested at his home in Novi Sad and taken to the police station on Marka Kraljevića Street. The police presented no arrest warrant, nor did they offer any explanation as to why he was being taken into custody. Since a criminal case was pending against him at the time, Mr. Dimitrijevic did not question the arrest. Upon arrival at the police station, he was locked in a room where, around half an hour later, an unidentified man in civilian clothes entered the office and ordered him to strip to his underwear, handcuffed him to a metal bar attached to a wall, and proceeded to beat him with a police truncheon for over an hour. Mr. Dimitrijevic spent the next three days tied to the metal pole in the same room, and was denied food and water, as well as the possibility to use the lavatory. Although he requested medical attention, and his injuries visibly required such attention, Mr. Dimitrijević was not provided with any. Following a January appearance in court, Mr. Dimitrijevic was released.

On 24 November 1997, Mr. Dimitrijevic filed a criminal complaint with the Municipal Public Prosecutor's Office in Novi

Sad. Despite many inquiries as to the status of his complaint, he received no response from the authorities. Consequently, in August 2000, the ERRC and the HLC jointly filed a communication with the Committee on behalf of Mr. Dimitrijevic.

On 16 November 2005, eight years after the incident at issue took place, the Committee found that the police brutality to which Mr. Dimitrijevic had been subjected amounted to torture. The Committee also found Serbia and Montenegro in violation of its obligation to carry out a prompt and impartial investigation of the victim's complaint of torture and in addition held that by failing to investigate the criminal complaint, the State had in effect also deprived Mr. Dimitrijevic of the possibility of filing a successful civil suit for compensation. In conclusion, the Committee established violations of Article 2 taken together with Articles 1, 12, 13 and 14 of the Convention and requested that the authorities conduct a proper investigation into the abuses of Mr. Dimitrijevic, and to inform the Committee of progress made within 90 days.

This is the third ruling by this body in less than a year to address the same issue in the same country. In Serbia and Montenegro, police impunity is still widespread and Roma continue to suffer disproportionately from such abuse. (ERRC, HLC)

## SLOVAKIA

### ✧ **Helsinki Commission Statement Against Sterilisation without Consent**

According to a press release by the United States Commission of Security and Cooperation in Europe (the Helsinki Commission) dated 23 November 2005, Mr Christopher Smith, Co-Chairman of the Commission submitted a statement on 18 November 2005 to the United States House of Representatives regarding sterilisation without informed consent in the Czech Republic and Slovakia.

Mr Smith began his statement by highlighting the very important achievement secured in the Czech District Court in Ostrava deciding in favour of Ms Helena Ferencikova in her precedent-setting case against Czech medical practitioners. Mr Smith commended Ms Ferencikova for her courage in bringing forward the case, and stated that both the decision by the District court and the ongoing investigations by the Czech Ombudsman into similar cases are signs of progress.

The statement continued by pointing out that coerced sterilisation is ongoing in both the Czech Republic and Slovakia and that unfortunately, in the case of Slovakia, the situation is met with persistent denial and stonewalling by government officials. The Slovak Government, in 2003, investigated allegations that, even after the fall of communism, some Romani women had been sterilised without informed consent. According to Mr Smith, the investigation was

deeply flawed, compromised by such actions as the Minister for Human Rights threatening imprisonment for anyone bringing forward allegations.

The Co-Chairman informed the House of Representatives that both the investigations that took place in the Czech Republic and in Slovakia revolved around the same 1992 Czechoslovak law on sterilisations, put in place before the two countries split. Significantly, while Czech authorities have interpreted that law as requiring that sterilisations be requested by the person to be sterilized and that there be evidence of meaningfully informed consent by that person, Slovak authorities maintained that consent did not have to be informed. Accordingly, Slovak investigators examined numerous cases where there was a lack of informed consent but concluded nonetheless that there was no violation of the 1992 law because, according to their legal interpretation, consent did not have to be informed.

To this, Mr Smith added that in recent months, Slovak Government officials have made misleading statements, going so far as to declare that “illegal sterilisations of Romani women never happened in Slovakia”. The Co-Chairman closed with a warning: “when the institutions of justice are perceived to follow one set of rules for the majority and another for the minorities, this is a recipe for social unrest ... Romani mistrust of government institutions will only deepen if the Slovak Government persists in denying the wrongs perpetrated against their community”.

In related news, acting in response to the publication by the Slovak General Prosecutor’s office of extremely misleading information concerning the coercive sterilisation of women, including Romani women, in Slovakia, the ERRC sent a letter on 3 October 2005 to Slovak Prime Minister Mikulas Dzurinda, urging him to undertake a number of actions including: (1) publicly correct the information issued by the Slovak General Prosecutor; (2) affirm that the Slovak government remains committed to justice for any and all identified victims; and (3) in light of the evident bad faith demonstrated by members of the Slovak Attorney General’s office, to demonstrate leadership in matters related to providing justice to victims of coercive sterilisation in Slovakia.

The letter was copied to the Committee on the Elimination of Discrimination Against Women, which remains in the course of the most recent very disturbing developments in Slovakia described above. Further information on the coercive sterilisation of Romani women in Slovakia, as provided in a number of public statements by the ERRC and partner organisations, is available at: <http://www.errc.org/> (ERRC, Helsinki Commission)

### ✧ **Winter without Heating or Hot Water for Roma in Lunik IX**

According to a 31 October 2005 article by the daily Slovak SME, more than 5,000 people living in Lunik IX, a

segregated Romani housing settlement in Košice, eastern Slovakia, were without heat and hot water after the housing estate with 650 apartments was disconnected from public heating and hot water supplies. Since the disconnection earlier in the month, inhabitants had reportedly resorted to heating their apartments using whatever they have available, ranging from electric and gas heaters, to wood from a nearby forest. The estate-wide disconnection occurred despite the fact that some residents pay for heating and hot water supplies as part of their monthly fees to the housing company.

According to the Bratislava SME, the previous week, 4 year-old girl died and an 18-month boy was severely burned in a fire that occurred in the settlement. Many blame the municipal authorities and the housing company as the tragedies may not have occurred if the heating had been working. Chairman of the Roma Initiative of Slovakia, Alexander Patkolo, has accused the Košice Mayor of racism in connec-

tion with the halting of heat and hot water supplies in the housing settlement, which, according to him, resulted in the tragic fire.

Košice Mayor, Zdenko Trebula, denied any responsibility in the matter: "We are sorry about the tragedy that happened due to the fire at Lunik IX, but it was not the fault of the city. It is the result of the attitude of a majority of people living in this city ward toward duties of every citizen."

SME reported that the housing company claimed that it could not heat the apartments because the inhabitants have disconnected and sold several thousand radiators. Members of the municipal riot service, who accompanied the housing company employees during an inspection, however, denied these claims, stating that, in fact, only a few radiators were missing. Mr Trebula was quoted as having stated that the city is trying to find possible solutions, but it is unable to permanently pay losses caused by defaulters. The

city plans to partially mitigate the problem by supplying hot-air electric converters to those tenants who do not have any payment arrears.

According to reports from Mr Laco Oravec of the Bratislava-based Milan Šimečka Foundation, as of 20 March 2006, the situation in Lunik IX has worsened as the settlement has been disconnected from water supplies in addition to the disconnection from public heating. While some efforts have been made to resolve the situation, inhabitants still suffer from a lack of heating and water. Košice Mayor, Zdenko Trebula, began a collection throughout the neighbourhood towards paying down the debt accumulated. However, the 1000 crowns (approximately 30 EUR) collected from each family has not proven to be enough towards payment of the total of approximately 500 000 crowns (13 000 EUR). Other solutions have been discussed but as of yet none have proven sustainable. (ERRC, SME, Milan Šimečka Foundation)

## **TURKEY**

### ✧ **Police Raid Romani Community**

According to the Romani Cultural Research, Solidarity and Development Association of Edirne (EDCYNKAY), on 9 February 2006, police undertook raids targeting Roma, who were subsisting on scrap-iron collection, in Kemikçiler quarter of the city of Edirne, northwest of Istanbul. The raids reportedly occurred after residents of Kiyık quarter in

Edirne lodged a complaint about the Roma of Kemikçiler quarter, claiming that they were involved in burglary. Under the instruction of Security Director Hanefi Avcı, police raided the Kemikçiler quarter and also stopped two carriages leading towards the quarter. Police fired shots after Roma in the carriage ran away out of fear, killing one horse and heavily wounding the other as well as shooting someone on the foot. Police forces later sur-

rounded the Kemikçiler quarter in anti-riot 'panzer' vehicles, firing shots in the air.

During the raid, six Roma men, who allegedly took scrap-iron from Trakya University, were taken into custody and referred to the Edirne Public Prosecutor's Office. After taking statements from the men, the Prosecutor's Office arrested the men by court order for allegations of 'qualified extortion, resistance to police

authorities, and damaging state property'. Subsequently, on February 11, 2006, the mayor of Edirne, Hamdi Sedefçi, confirmed in a written statement that the six scrap-iron shops operating without a license were closed down by some thirty police officers.

As of 20 March 2006, the ERRC was unaware of further developments in the situation.

The ERRC is currently implementing projects with local partners (Helsinki Citizens' Assembly, Bilgi University, Roma-

ni Cultural Research, Solidarity and Development Association of Edirne) in a project challenging racial discrimination in Turkey funded under the European Initiative for Democracy and Human Rights (EIDHR). (ERRC, EDCYNKAY)

## **UNITED KINGDOM**

### **✧ Travellers in West Sussex seek Permanent Home in Action Taken to the High Court**

According to a 3 February 2006 article by BBC News online, Travellers living on an unauthorised site in West Sussex have taken their case to the High Court after two proposed travellers' site were rejected by the Crawley borough council. Having been continuously evicted from

illegal sites for many years, the Travellers from Dalewood Gardens, Crawley began their action last year to seek a permanent home, preferably on a site in town.

In January 2006, proposals for a permanent site in the Pound Hill area and a transit site at Rowley Farm, off of James Watt Way were debated by the borough council. More than 1000 people attended the debate on

19 January 2006 which ended in the rejection of the proposals following fierce community opposition from the rowdy crowd. Members of the Traveller community of Crawley said they felt let down by the decisions and some held peaceful protests outside the meeting. The council has said that alternatives will be sought. As of 20 March 2006, the ERRC was unaware of further developments in the situation. (ERRC, BBC)



## Groundbreaking Report by Czech Ombudsman Recognises “Problem” of Coercive Sterilisation and Calls for Far-Reaching Changes to Law, Policy and Society

*Claude Cahn*

**O**N 23 DECEMBER 2005, the Czech Public Defender of Rights (“Ombudsman”) published a report on investigations into allegations of the coercive sterilisation of Romani women in the Czech Republic. The report is the result of more than a year of research by the Ombudsman and his staff, on the basis of complaints brought by victims, as well as on various other documentary evidence. Its publication is among the most significant developments in the history of efforts to challenge these extreme harms in Central and Eastern Europe.

From the 1970s until 1990, the Czechoslovak government sterilised Romani women programmatically, as part of policies aimed at reducing the “high, unhealthy” birth rate of Romani women. This policy was decried by the Czechoslovak dissident initiative Charter 77, and documented extensively in the late 1980s by dissidents Zbynek Andrs and Ruben Pellar. Helsinki Watch (now Human Rights Watch) addressed the issue as part of a comprehensive report published in 1992 on the situation of Roma in Czechoslovakia, concluding that the practice had ended in mid-1990. A number of cases of coercive sterilisations taking place in 1990 or before then in the former Czechoslovakia have also been recently documented by the ERRC. Criminal complaints filed with Czech and Slovak prosecutors on behalf of sterilised Romani women in each republic were dismissed in 1992 and 1993. No Romani woman sterilised by Czechoslovak authorities has ever received justice for the harms to which they were systematically subjected under Communism.

During 2003 and 2004, the ERRC and partner organisations in the Czech Republic undertook a number of field missions to the Czech Republic to determine whether practices of coercive sterilisa-

tion have continued after 1990, and if they were ongoing to the present. The conclusions of this research indicate that there is significant cause for concern that until as recently as 2001, Romani women in the Czech Republic have been subjected to coercive sterilisations, and that Romani women are at risk in the Czech Republic of being subjected to sterilisation absent fully informed consent.

During the course of research, researchers found that Romani women have been coercively sterilised in recent years in the Czech Republic. Cases documented include:

- ✧ Cases in which consent had not been provided at all, in either oral or written form, prior to the operation;
- ✧ Cases in which consent was secured during delivery or shortly before delivery, during advanced stages of labour, i.e. in circumstances in which the mother is in great pain and/or under intense stress;
- ✧ Cases in which consent appears to have been provided (i) on a mistaken understanding of terminology used, (ii) after the provision of apparently manipulative information and/or (iii) absent explanations of consequences and/or possible side effects of sterilisation, or adequate information on alternative methods of contraception;
- ✧ Cases in which officials put pressure on Romani women to undergo sterilisation, including through the use of financial incentives or threats to withhold social benefits;
- ✧ Cases in which explicit racial motive appears to have played a role during doctor-patient consultations.

In April 2004, the ERRC submitted the results of this research confidentially to the UN Committee Against Torture, on the occasion of that body's review of the Czech Republic's compliance with the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Czech government reacted badly to this move, complaining that the ERRC had not presented the material to a domestic authority before internationalising it. Members of the Czech government urged us to work with the Czech Ombudsman to address the matter, suggesting that that authority was best placed to investigate the matter well.

In June 2004, the ERRC met with the Ombudsman and his staff to discuss proceedings. At that point, it was our position that the burden of action lay with the state, since reports concerning these practices dated back to 1978, and Czech authorities had never acted sufficiently on them. In addition, at the time, we did not yet have the permission of victims to bring individual complaints to any authority.<sup>1</sup> We also had a range of concerns about respect for the safety, comfort and privacy of the victims, should complaints ultimately be filed, based on experiences of challenging these practices in Slovakia (on that issue, more below). Despite these reservations, we agreed to return to the field and to facilitate complaints by victims to the Ombudsman.

During the summer months of 2004, together with partner organisations IQ Roma Service (Brno), League of Human Rights (Prague and Brno), and Life Together (Ostrava), we gathered evidence for complaints to the Ombudsman. The first ten of these were filed in September 2004.

Although we had not intended to publicise these complaints, information leaked, and in beginning in mid-September 2004, Czech media gave extensive coverage to the matter. With a few exceptions, this coverage was cautiously sympathetic to the victims. A number of women gave interviews to television and the press, with their faces blacked out and names concealed. As a result of this media attention,

a number of other victims came forward and filed complaints on their own to the Ombudsman.

During Autumn 2004, we continued to document the matter, visiting sites such as the Chanov housing settlement outside Most in Northern Bohemia, where during the 1980s, Romani women were sterilised in a systematic campaign organised by a social worker named Machacova and her colleagues. Using threats to withhold social benefits and to take children into state care, Machacova bullied an estimated well over one hundred women into submitting to sterilisation.

Eighty-seven victims of coercive sterilisation – all but one of them women and the overwhelming majority of them Romani – submitted complaints to the Czech Public Defender of Rights (“the Ombudsman”) in the period to September 2005. Following discussions in late 2004 with the Ombudsman, the Czech Ministry of Health established a commission to review files of alleged victims and to provide answers to questions submitted by the Ombudsman. The commission met a number of times, and provided answers to the Ombudsman as to whether the complainants had provided full and informed consent at the time they were sterilised.

In early 2005, about 25 Romani women coercively sterilised by Czech medical officials established a victim advocacy group called the Group of Women Harmed by Sterilisation to press authorities to press for justice. This development – in which the victims themselves have organised, come out in public, and taken control of the process of pressing for change – has been among the most important dimensions of the action.

The Ombudsman's report published in December 2005 concludes that “The Ombudsman is convinced that in the Czech Republic, the problem of sexual sterilization – carried out either with unacceptable motivation or illegally – exists, and that Czech society stands before the task of coming to grips with this reality.”<sup>2</sup> Measures undertaken

<sup>1</sup> *Indeed, the ERRC had previously submitted a list of hospitals at issue to the Ombudsman, but this information was deemed not sufficient for investigation by the Ombudsman.*

<sup>2</sup> *The report is not yet available in English, but the original Czech version can be downloaded at: <http://www.ochrance.cz/documents/doc1135861291.pdf>.*



*Members of the Ostrava-based Group of Women Harmed by Sterilisation, March 2005.*

PHOTO: ERRRC/ANDREEA ANCA-STRAUSS

by the Czech Ministry of Health are seen as to date grossly inadequate. The Ombudsman was evidently extremely dissatisfied at responses provided by the Ministry of Health commission to the Ombudsman's questions concerning the contents of the medical files and evidence as to whether consent had been secured and whether it met the standard of full and informed. Law and procedural safeguards were not followed in the overwhelming majority of the cases. In discussions with the Ombudsman's staff, it has been noted that while under Communism in the main policy and law was followed, following the official end of policies fostering a climate conducive to coercive sterilisation in 1991, a number of doctors have apparently acted fully outside the law to continue the practice. At a press conference launching the Ombudsman's report, Deputy Ombudsman Anna Sabatova spoke of this phenomenon as "fully deformed praxis in the Czech medical community".

Three areas of recommendations are brought by the Ombudsman in his report:

- 1) Changes to Czech domestic law to better anchor the principle of informed consent in these areas;
- 2) Supplementary measures to ensure a change of culture with regard to informed consent in the medical community, as well as among users;
- 3) A simplified procedure for compensation to victims, where social workers have been involved in implementing coercive sterilisation policy.

Pages 25-59 (i.e., approximately 1/3 of the report in total) concern "Sterilization and the Romani Community" and reach the conclusion of racial targeting. Case summaries included in the report highlight events in which, for example, the medical files reveal that social workers and doctors



*Ms. Helena Ferencikova, Ostrava, Czech Republic, March 2005.*

PHOTO: ERRRC/ANDREEA ANCA-STRAUSS

recommended caesarean section births in order to manufacture “indicators” through which sterilisation would appear legitimate and necessary.

The text of the report also includes detailed summaries of Czechoslovak state policies toward Roma in the 1970s and 1980s, in which social workers were enlisted in the task of controlling the Romani birth-rate – regarded as too high by policy-makers – and creating a culture of invasive control over Romani families which endures to today. The report also includes a separate section on the history of eugenics in Czechoslovakia, which the report’s authors evidently regard as key for the policies and practices detailed in the report.

Finally, the report notes that during 2005, the Ombudsman filed a number of criminal complaints in the cases at issue in his investigation. As of January 2006, those investigations were still open.

The Ombudsman’s report followed the decision of the District Court in Ostrava on 11 November 2005 that it would find violations of law concerning the coercive sterilization of Ms. Helena Ferencikova by Czech medical practitioners in 2001.

On 10 October 2001, Ms. Ferencikova gave birth in the Vitkovicka hospital in the eastern Czech city of Ostrava to her second child, a son named Jan. The child was born at 4:45 AM, by caesarean section birth. Ms. Ferencikova’s first child had also been born via caesarean section.

At the time of her second birth, Ms. Ferencikova was also sterilized by tubal ligation. Although her files indicate that “the patient requests to be sterilised”, procedures set out under Czech and international law to ensure that, for the extremely invasive and in most cases irreversible sterilisation procedure, consent must

meet the standard of full and informed, were not followed by doctors at the Vitkovicka hospital. Although it had been foreseen well in advance of labour that she would give birth by caesarean section, Ms. Ferencikova's "consent" to the sterilisation was apparently secured by doctors several minutes before the operation, and when she was already deep in labour. As a result, Ms. Ferencikova emerged from her second birth traumatised and irrevocably harmed by the doctors to which she had entrusted herself for care.

Ruling on 11 November 2005, the Ostrava court recognised that Ms. Ferencikova's sterilisation was coercive and therefore illegal, and ordered the Vitkovicka hospital to apologize in writing because the act "seriously encroached into your most intimate sphere, and caused you durable physical and psychological harms".

At the time it was believed that this was the first time a court had ever ruled favourably on these issues, but it later transpired that in 2000, a court in the western Czech town of Plzen had awarded 100,000 Czech crowns in damages (approximately 2500 Euro) to a woman sterilised there in 1998. She had repeatedly explicitly refused to be sterilised. Czech doctors had performed the operation anyway.

The publication of the report by the Ombudsman, as well as the decision by the District Court in Ostrava in the matter of *Ferencikova v. Vitkovicka Hospital*, are among the most important developments in Central and Eastern Europe to date in efforts to end the practice of coercive sterilisation and secure justice for victims of this practice. The humiliating treatment Ms. Ferencikova suffered is similar to that of countless other Romani women in the Czech Republic and elsewhere in Central Europe, where as a result of fundamental contempt for Romani women and their ability to make informed choices about matters related to their own bodies, doctors and social workers have, for at least the past three decades, routinely and regularly overridden their free will as individuals and subjected them to debasing bodily invasion, with irrevocable consequences. These specific practices targeting Romani women are made possible by a general culture of paternalism among medical practitioners in the re-

gion, resulting in threats of abuses of fundamental human rights to any persons entering medical care, and to women generally.

It has therefore been disappointing that the Czech government has not yet visibly welcomed the report, nor has it made clear how or when it intends to act on its recommendations. The following measures are now needed to give substance to the measures proposed by the Ombudsman in his report:

- That the Prime Minister issue, as a "Decision of Government", public apology to the victims of the practices described in the Ombudsman Report.
- That the Legislator act without delay to adopt the legislative changes necessary to establish the criteria for informed consent in the context of sterilisation set out in the recommendations of the Ombudsman Report (Recommendations Section A – "Legislative Measures").
- That the Ministry of Health act without delay to implement in full the recommendations on "Methodological Measures" set out in section B of the Ombudsman Report.
- That the Legislator act without delay to establish by law the compensation mechanism proposed in the Ombudsman Report (Recommendations Section C – "Reparative Measures").
- That the Government establish a fund to assist victims of coercive sterilisation in bringing claims under the compensation mechanism or, where relevant, before courts of law, such that all victims of coercive sterilisation practices have access to justice. Such a fund should be able to: (i) provide compensatory damages to victims, in such cases where the mechanism established pursuant to the Ombudsman Report may not be able to; (ii) support the work of advocates in bringing claims to court; (iii) where relevant, ensure payment of court fees and other relevant costs arising in the course of establishing coercive sterilisation claims before courts of law and/or other instances.

- That the Government seek, in cooperation with the Council of Europe, legal opinion as to the best method for providing compensation to victims of coercive sterilisation practices during the period post-1991 (i.e. those not necessarily covered by the measures included in Recommendations Section C – “Reparative Measures”), but possibly beyond relevant statutes of limitations, such that the Czech government is in full compliance with its obligations under the European Convention on Human Rights and other relevant international law.
- That in cases in which hospital records of relevance to establishing claims of coercive sterilisation have been destroyed, the Government make public criteria by which individuals shall establish the veracity of claims for compensation for practices of coercive sterilisation.
- That the Czech General Prosecutor monitor investigative proceedings in the matter of criminal complaints filed in the course of the Ombudsman’s investigation into these practices, and report to the Czech government’s Human Rights Committee the findings of these investigations.
- That the Ministry of Foreign Affairs raise with the Slovak Government the issue of compensation for persons who are currently Czech citizens but who have been coercively sterilised in the Slovak Republic.

Finally, there remains the matter of the coercive sterilisation of Romani women in Slovakia. ERRC work to challenge the coercive sterilisation of Romani women in Czech Republic began in large

part as a result of similar efforts in Slovakia. There, following publication of a report by the Center for Reproductive Rights and the Advisory Centre for Citizenship and Human and Civil Rights,<sup>3</sup> and supported by documentation undertaken by the ERRC,<sup>4</sup> significant international attention was focussed on this issue beginning in early 2003.

In 2003, the Council of Europe’s Commissioner for Human Rights Mr. Alvaro Gil-Robles stated, following visits to Slovakia: “[...] on the basis of the information contained in the reports referred to above, and that obtained during the visit, it can reasonably be assumed that sterilizations have taken place, particularly in eastern Slovakia, without informed consent. The information available to the Commissioner does not suggest that an active or organized Government policy of improper sterilizations has existed (at least since the end of the communist regime). However, the Slovak Government has, in the view of the Commissioner, an objective responsibility in the matter for failing to put in place adequate legislation and for failing to exercise appropriate supervision of sterilisation practices although allegations of improper sterilizations have been made throughout the 1990’s and early 2000.”<sup>5</sup>

The Commissioner further concluded that “The issue of sterilizations does not appear to concern exclusively one ethnic group of the Slovak population, nor does the question of their improper performance. It is likely that vulnerable individuals from various ethnic origins have, at some stage, been exposed to the risk of sterilization without proper consent. However, for a number of factors, which are developed throughout this report, the Commissioner is convinced that the Roma population of eastern Slovakia has been at particular risk.”<sup>6</sup>

<sup>3</sup> *Center for Reproductive Rights and the Advisory Centre for Citizenship and Human and Civil Rights, “Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia”, on the Internet at: [http://www.crlp.org/pub\\_vid\\_bodyandsoul.html](http://www.crlp.org/pub_vid_bodyandsoul.html).*

<sup>4</sup> *See for example “Joint Statement of the European Roma Rights Center (ERRC), the International Helsinki Federation for Human Rights (IHF) and the Slovak Helsinki Committee (SHC) on the Issue of Coercive Sterilizations of Romani Women, on the Occasion of the OSCE Supplementary Human Dimension Meeting on Roma and Sinti”, on the Internet at: <http://www.errc.org/cikk.php?cikk=312&archiv=1>.*

<sup>5</sup> *“Recommendation of the Commissioner for Human Rights Concerning Certain Aspects of Law and Practice Relating to Sterilization of Women in the Slovak Republic”, paras. 51 and 52, at: [http://www.coe.int/T/E/Commissioner\\_H.R/Communication\\_Unit/CommDH%282003%2912\\_E.doc](http://www.coe.int/T/E/Commissioner_H.R/Communication_Unit/CommDH%282003%2912_E.doc).*

<sup>6</sup> *Ibid., Para. 35.*

Similarly, an independent study mission of the Inter-European Parliamentary Forum on Population and Development (IEPPFD) concluded, “Participants did find, that in most cases Romani women were sterilized without sufficient information to make an informed consent. This is due to the fact, that hospital doctors do not consider it their duty to inform the woman, even when they should have realised that the patient has not attended prenatal care, where this information is supposed to be given and will also not attend post natal care. In cases of emergency the patient is also not informed. This is open to very strong criticism.”<sup>7</sup>

In dramatic contrast to the actions of the Czech Ombudsman, Slovak authorities have expended extensive efforts to deny the problem, to thwart justice, and to harass and threaten the advocates of victims, as well as the victims themselves. To name only a few actions undertaken by Slovak authorities in response to these issues:

- Authorities including the Slovak Human Rights Commissioner and the Slovak ambassador to the Organization for Security and Co-operation in Europe threatened “the authors of the Body and Soul report” that they would be prosecuted. If the issues raised in the report were true, they would be prosecuted for failing to report a crime; if the issues in the report were false, they would be prosecuted for spreading false alarm. Both are crimes in Slovakia;
- The Slovak Ministry of Health directed hospitals not to release the records of the persons concerned to the legal representatives of the victims;
- Slovak prosecutors – despite extensive advice not to do so – opened investigations for the crime of genocide, a crime so serious that evidentiary standards could not be met, and they then predictably concluded that this crime had not been committed, ending their investigation into the matter. The same authority has repeatedly released misleading information to the media, deliberately perpetuating a state of delusion about the matter currently prevailing among the Slovak public.
- Slovak police investigating the issue urged complainants to testify, but reportedly warned a number of them that their partners might be prosecuted for statutory rape, since it was evident that they had become pregnant while minors; under this pressure, a number of victims withdrew testimony.
- Other.

A number of legal complaints are pending with respect to these issues in the Czech Republic and Slovakia. One complaint is pending concerning these issues in Hungary. Since no authority in any country in Central and Eastern Europe has yet provided the kind of just satisfaction the governments of Norway and Sweden have managed on coercive sterilisation issues, these efforts will continue. There are also reasons for believing that the time is right for a pan-European or even global initiative to examine the issue and to provide guidance on ways forward.

<sup>7</sup> See: [http://www.ieppfd.org/index.asp?ID=360&id\\_sous\\_menu=14](http://www.ieppfd.org/index.asp?ID=360&id_sous_menu=14).





# Litigating Discrimination in Access to Employment in Hungary

*Bea Bodrogi and Anita Danka<sup>1</sup>*

*In January 2003, a company in Nógrád County, Hungary, advertised job openings at a local paper for female machine operators, packers and storekeepers. At about 8 am on the first working day following the ad, two Romani women, Mariann P. and István T. called the company for an interview. Since no one answered the telephone, they visited the company in person. The security guard stopped the two women at the entrance and asked them whether they had an appointment. When the women told him that they were there to apply for the positions advertised in the paper, the security guard telephoned the company's office, and then told the women that the positions have already been filled. Mariann P. got upset and she told the guard: "Why aren't you telling us the truth? We cannot go in because we are Roma!"*

*The two women did not leave the place, and, while they were waiting at the entrance, they saw other women entering the building. They left the scene humiliated and went to a local legal defence bureau for Roma and made a complaint. One of the bureau's employees called the company and asked about the job advertisement. After a short conversation, she was told that the company was still accepting applicants. She was subsequently informed of the working conditions, and the salary ranges for the advertised positions. Two other Romani women (Anna S. and Rozália Sz.) visited the legal defence bureau the same morning with similar complaints. They said that they*

*went to the company to apply for the jobs, but only Anna S.'s data were registered. Rozália Sz. was told that the positions were already filled. Unlike Rozália Sz. and the two other women who had made the previous complaint to the defence bureau, Anna S. is not recognisably Romani.*

The case of Mariann P. and István T. is presumably not unique in Hungary. Both Romani women had worked in a factory for numerous years. However, following the political transition in Hungary, which resulted in mass dismissals from enterprises, they both lost their jobs. They have subsequently taken every opportunity to find a job.

## **Challenges to the Application of the Non-discrimination Provisions of the Hungarian Labour Code**

Prohibition of discrimination in labour relations and reversal of the burden of proof in discrimination cases were introduced in the Hungarian Labour Code as early as 1992.<sup>2</sup> Thanks to the 2001 amendment of the law, the definition of indirect discrimination was introduced as well and the sphere of the law extended to the procedures preceding the establishment of labour relations.<sup>3</sup> The legal representative submitted a claim on behalf of Mariann P. and István B. against the company on grounds of discrimination in the establishment of a working relationship under Article 5,

<sup>1</sup> *Bea Bodrogi is the Director of the Budapest-based Legal Defense Bureau of National and Ethnic Minorities. Anita Danka is a Staff Attorney of the European Roma Rights Centre.*

<sup>2</sup> *Act of 1992:XXII.*

<sup>3</sup> *This was an extremely important step as previous regulations did not make it possible to sanction the most common form of discrimination, i.e. in cases when a person is not employed due to his/her ethnic affiliation. As no working relations were established in these cases, the system of sanctions of the Labour Code did not apply.*

sections 1 and 2 of the Labour Code, and asked for non-pecuniary damages.<sup>4</sup>

The legal representative of the company claimed that the rejection of the two Romani women was simply the result of a misunderstanding. The company submitted that the head of the company arrived to the premises at 8:30 am on the day in question, and following clarification, the company started interviewing applicants. The company's legal representative also argued that, pursuant to Article 174 paragraph (1) of the Labour Code, the plaintiffs were not entitled to apply for compensation given that they were not in an employment relationship with the company. During the first hearing, even the judge was unsure as to whether or not the complaint fell within the labour court's sphere of competence.

However, the judge accepted the plaintiffs' arguments, namely that in accordance with the amendments of the Labour Code, the law clearly provides for the possibility to challenge discrimination which had occurred during an application procedure aimed at employment. The reasoning attached to Article 5 paragraph (3) of the Labour Code provides: *"Given that the discrimination of employees, based on their gender, age, etc. mainly occurs prior to the formation of an employment relationship, in order to support uniform application of the law, the new paragraph (3) stipulates that the provisions, which prohibit discrimination shall be applied to procedures preceding formation of an employment relationship."* It was also submitted, that pursuant to Article 5, paragraph 7 of the Code, the consequences of discrimination should be remedied.

## Reversal of the Burden of Proof

Under Article 5, paragraph 8 of the Labour Code, in cases of disputes relating to the discriminatory nature of an employer's procedure, it was for the employer to prove that it did not violate the prohibition of discrimination. Plaintiffs were only required to propose their presumption that they have been discriminated against during an application procedure and, from this point on – unlike under the general rules of evidence – it was for the employer to prove that the procedure did not constitute discrimination prohibited by the Labour Code.<sup>5</sup>

The respondent argued that in the early morning hours of the day in question, the only person in the company's premises was a secretary who was unaware of the job advertisement, and this was why she requested the security guard to tell the Romani applicants to leave. According to the secretary's witness statement, the entrance is not visible from the window of her office, therefore she had no way of knowing about the ethnic origin of the applicants. She further claimed that once a senior official of the company had arrived at about 8:30 am, her misunderstanding was clarified, and from then on, all applicants were allowed to enter the building for an interview.

Upon a motion made by the plaintiffs, a local woman was called to make a witness statement before the court. The woman had also applied for one of the advertised positions at the company earlier the same morning as Mariann P. and István T. She was at the entrance between 8 am and 8:15 am, and she was allowed to enter without a problem. When her interview finished, she

<sup>4</sup> *Bea Bodrogi, in the capacity of a licensed attorney, represented the plaintiffs within the ERRC/NEKI joint litigation project.*

<sup>5</sup> *In the new law on equal treatment (Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities) the issues of giving proof are regulated in compliance with the EU Race Equality Directive (2000/43/EC). The party whose rights have been violated has to prove that he/she has suffered damages and that at the time of this violation he/she really was or the violator presumed that he/she was characterised by one of the prohibited grounds (racial affiliation, skin colour, etc). Only after this can the burden of proof be reversed according to the law. From this point on it is the other party's task to prove that he has met or, depending on the respective legal provisions, was not obliged to meet the requirements of equal treatment. The new equal treatment law lays down the prohibition of discrimination for the whole legal system in general, sets down basic definitions, gives specific regulations for certain areas (employment, social security and healthcare, housing, education and training, the trading of goods and services), and names the procedures that can be initiated upon violation of the equal opportunity principle.*

left the premises and saw the two Romani women by the entrance, and also heard the security guard telling them that no interviews were being held. The fact that the plaintiffs also remember seeing the same woman leaving the premises indicates that her witness statement clearly contradicts the respondent's version of the events.

Other witnesses substantiated that on the day in question, Rozália Sz. and Anna S. had indeed approached the company in order to apply for a job. Some testified, that even though Rozália Sz. was sent home without having been interviewed, later the same day applicants were told over the telephone that interviews were still held for the positions.

The respondent submitted before the court a list with the names of the people who had applied for the advertised positions. The company claimed that, among the seventy names included in the list, the names of all people who applied for a job on the day in question, as well as the names of all others who contacted the company that month in search of employment, could be found. Allegedly, the company registered the names and contact details of everyone who had applied for a job so that, in the event that an opening would be available, they could immediately choose someone from the list. However, this argument raises the question why the company had sent the three plaintiffs home if, on other occasions, people could enter the company's premises and have their data registered even when no job opening was advertised.

The respondent also submitted three written statements in order to support its claim that the company did not discriminate against its employees. The statements highlighted that the witnesses themselves were of Romani origin, that they were employed by the company, and that they had signed the statements by their own will. However, the subject matter of the labour suit was not whether or not Romani employees of the company were discriminated against, but rather, whether the three plaintiffs had been discriminated against during the application procedure. As such, the mere fact that the company did indeed employ Roma did not relieve the company from having to prove that it did not discriminate against the plaintiffs.

The nature of the three aforementioned statements was also questionable, given that under the current laws, people have the freedom to identify as belonging to any minority group, including the Romani minority, and the validity of such statements may not be questioned. The presumption that a factory worker would one day knock on the director's door, stating that he had heard about the unjust court proceedings against the company and was willing to help by writing a statement declaring his/her Romani origin, was doubtful.

Furthermore, the self-identification with one or another minority is irrelevant in view of the definition of discrimination provided by the Hungarian Law on Equal Opportunities, which specifies that „direct discrimination occurs when a real or alleged member of a group, (...) due to his/her real or alleged characteristics receives different treatment that is worse than that of members or groups of people in the same situation.”

### The Court Decisions

On 9 February 2004, the Labour Court, as a first instance, established a violation of the ban on racial discrimination in the process of establishing employment relationship in the case of the three Romani women. The court awarded a compensation of 150.000 HUF (approximately Euro 600) for each of the Romani women. When calculating the amount of the compensation, the court took the minimum wage for the probation period – which is usually 3 months – as a basis. However, there was no word in the reasoning of the decision about the violation of the human dignity and the humiliation suffered by the victims of discrimination, but only about the financial loss due to the loss of future income. Therefore, the damage the court awarded was pecuniary in nature in spite of the fact that the plaintiffs requested non-pecuniary damages for the discrimination suffered.

The failure of the first instance court to award non-pecuniary damages was challenged before the county court as a second instance. In its decision of 8 June 2004, the county court ruled that due to the humiliation suffered by the victims they were awarded non-pecuniary damages. The

second instance court, however, overruled partly the first-instance decision. It declared that the fact that the third plaintiff's (Rozália Sz.'s) name was found in the company's database provided sufficient evidence that the plaintiff did go to the office of the respondent and her data were duly registered. Indeed, the first-instance court established that the company's 2003 database did include Rozália Sz.'s name. It could not be established however when exactly her data were registered. The respondent could not prove that the data was registered in the course of an interview on 20 January 2003 – the date on which Rozália Sz. claimed she was not admitted for an interview by the respondent company. The data could have been recorded earlier, for example as a result of the employment bureau transferring data of people looking for employment opportunities or at the time when Rozália Sz. inquired about job openings herself. Therefore, the lack of proof should be evaluated to the detriment of the respondent. Instead, the second-instance court based its decision only on the claim of the respondent related to the database of the prospective employees. It did not evaluate Rozália Sz.'s statement that before the date at which she claimed the respondent company refused to admit her for an interview, she had been sent to the respondent company by an employment bureau, therefore her data could have been accessible for the respondent earlier. The witness statements supporting Rozália Sz.'s claim were also ignored together with the fact that in the cases of the other two plaintiffs (Mariann P. and István T.) the second-instance court upheld the first-instance judgment establishing racial discrimination. The county court refused to apply the reversal of the burden of proof principle and asked the plaintiff to provide evidence to support her claims instead.

On 2 September 2004, at a judicial review procedure before the Supreme Court as an extraordinary remedy against the otherwise legally binding second-instance decision, the plaintiffs claimed that failure to apply the reversal of the burden of proof principle under Article 5 paragraph (8) of the Labour Code lead to the unlawful evaluation of the merits of the case by the second-instance

court. On 5 September 2005 the Supreme Court annulled the second-instance judgment and ordered retrial in the case of Rozália Sz.

The Court reasoned that under Article 5 paragraph (8) of the Labour Code, in cases of disputes relating to the discriminatory nature of an employer's procedure, it was for the employer to prove that it did not violate the prohibition of discrimination. Therefore the employer has to bear the burden of proof, which means that the employer would be released from responsibility only if they prove that they adhered to the equal treatment obligation.<sup>6</sup> The presumption that the plaintiff was discriminated against is not enough, but based on the reversal of the burden of proof principle, it suffices if the party whose rights have been violated proves that he/she has suffered damages then it was for other party to prove that it did not act in a discriminatory way.

Since the courts did not conduct probative proceedings as to the well-founded nature of the discrimination resulting in non-pecuniary damages, it can be inferred that discrimination in itself already substantiates non-pecuniary damages, and only the amount of the damage is subject to probative proceedings.

*After this decision, the respondent company offered out-of-court settlement to the plaintiff, which led to the final resolution of the case.*

The European Roma Rights Centre submitted an amicus curie brief on the shifting of the burden of proof in discrimination cases. The content of this brief was approximately as follows:

#### ***A. What is the Shifting Burden of Proof?***

1. The concept of the burden of proof encompasses the court's authority to consider accomplished only those facts, which were proven, and to consider absent those facts, which were not proven, with the legal consequences flowing there from. The general rule for distribution of the burden of proof

<sup>6</sup> BH 2004.255, earlier decision of the Supreme Court.

- between the parties is that each party bears the burden of proof concerning the facts that it claims and that it derives favourable legal consequences for itself from.<sup>7</sup>
2. The shift of the burden of proof in antidiscrimination proceedings is a special rule for distribution of the burden of proof between the parties deviating from the general rule stated above. This special rule requires the court to consider the fact of discrimination accomplished where claimant proves this fact on the balance of probabilities, i.e. where claimant causes the court not to be convinced of this fact but merely to infer it, unless respondent rebuts this inference. In order for discrimination to be found, it suffices that claimant establish a probability that discrimination is at hand. Claimant in antidiscrimination proceedings may establish such a probability via inferences – by proving facts that are indications to the court that it may presume that discrimination is at hand. These inferences that the court may draw will be factual, ordinary presumptions based on experiential rules indicating that which is typical of the relationships between phenomena. Where respondent fails to rebut the presumption of discrimination thus established by claimant, the court will find discrimination proven.
  3. European Union law explicitly provides for a shift of the burden of proof. The European Union antidiscrimination directives, including the Racial Equality Directive,<sup>8</sup> the Framework Directive<sup>9</sup> and Directive 2002/73/EC,<sup>10</sup> explicitly provide for the prerequisites for a shift in the burden of proof from claimant onto respondent in antidiscrimination proceedings.
  4. Article 8 of the Race Equality Directive states that once claimant establishes “facts from which it may be presumed that there has been direct or indirect discrimination”, the burden of proof shifts to respondent to prove there has been no breach of the principle of equal treatment. For the burden of proof to shift, claimant is required to establish a *prima facie* case of discrimination.<sup>11</sup> Once the burden of proof shifts, it is for respondent to prove that the difference in treatment does not amount to discrimination.
  5. The approach on the shift of the burden of proof provided for by the Equality Directives matches the approach set out in the earlier Burden of Proof Directive,<sup>12</sup> and resonates with the jurisprudence of the European Court of Justice, the United Nations Human Rights Committee, the Inter-American Court of Justice,<sup>13</sup> and as of recently the European Court of Human Rights in Strasbourg.

<sup>7</sup> *On the concept of the burden of proof and the general rules on its distribution, see Stalev, Zhivko, “Bulgarian Civil Procedure Law,” Sixth completed and revised edition, CIELA, Sofia 2000 (Сталев, Ж., “Българско гражданско процесуално право,” Шесто допълнено и преработено издание, СИЕЛА, София 2000), p. 265-266.*

<sup>8</sup> *Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.*

<sup>9</sup> *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16.*

<sup>10</sup> *Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.*

<sup>11</sup> *See also paragraph 21 of the Preamble to the Race Equality Directive, which uses the prima facie language.*

<sup>12</sup> *Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex (Official Journal L 014, 20/01/1998 P. 0006-0008).*

<sup>13</sup> *See Velasquez Rodriguez, Inter-Am Ct. H.R., Judgment of July 29, 1988 where the court adopted an intermediate standard of proof, one that “established the truth . . . in a convincing manner.”*

**B. Why does the shifting burden of proof exist?**

6. The shift of the burden of proof from claimant onto respondent once claimant establishes *prima facie* discrimination is aimed at alleviating claimant's task in seeking legal protection against discrimination. Experience in legal antidiscrimination protection has indicated that, for substantive guarantees of non-discrimination to be effective and real, respondent must share claimant's burden of proof by establishing an objective justification for treating claimant differently. Para. 21 of the Preamble to the Race Equality Directive enunciates the policy objective behind the shift of the burden of proof:

“The rules on the burden of proof must be adapted when there is a *prima facie* case of discrimination and, for the principle of equal treatment to be applied effectively, the burden of proof must shift back to the respondent when evidence of such discrimination is brought.”

7. Very often, it is impossible for claimant to prove discrimination beyond a reasonable doubt because in most cases a victim of discrimination has no access to information needed to prove discrimination. Thus, for instance, an employee has no access to comparative information about decisions made by the employer concerning other employees, or about the reasons for those decisions, making it impossible for her/him to establish before a court that s/he was treated differently than other employees for no reason other her/his race or sex. Therefore, it is more reasonable for the employer to bear the burden to justify an employee's different treatment by proving there were objective reasons for this treatment unrelated to race or sex. It is more reasonable

to ask respondent to prove the existence of objective factors, unrelated to discrimination, explaining the different treatment than it is to ask claimant to prove the absence of such factors. If respondent had nondiscriminatory reasons to treat claimant differently, s/he is best placed to prove this by disclosing information that is only available to her/him.<sup>14</sup>

8. In its recent ruling in the case of *Barton v. Investec*<sup>15</sup> concerning sex discrimination, the U.K. Employment Appeal Tribunal held:

“17. The Courts have always acknowledged that it was rare for an applicant complaining of discrimination to have evidence of overtly discriminatory words or actions, therefore the affirmative evidence of discrimination will normally consist of inferences to be drawn from the primary facts. Having established those inferences, a concept of a shifting burden began to be developed whereby the employer was then called upon to give an explanation so as to negate those inferences. In *Khanna -v-Ministry of Defence* [1981] ICR 653 the Employment Appeal Tribunal [...] dealt with these evidential problems in the following way [...]:

“The right course [...] [is] for the Industrial Tribunal to take into account the fact that direct evidence of discrimination was seldom going to be available and that, accordingly, in these cases the affirmative evidence of discrimination would normally consist of inferences to be drawn from the primary facts. If the primary facts indicate that there has been discrimination of some kind, the employer is called upon to give an explanation and, failing clear and specific explanation being given by the employer to satisfaction of the Industrial

<sup>14</sup> *Ibid. Mukong. See also Imelda Higgins, “Enforcement and the New Equality Directives” in Equality in Diversity: The New Equality Directives, ed. C. Costello & E. Barry (Irish Center for European Law, 2003).*

<sup>15</sup> *Barton v. Investec Henderson Crosthwaite Securities Ltd., U.K. Employment Appeal Tribunal Decision No. EAT/18/03/MAA, judgment of 3 April 2003, available at [http://www.employmentappeals.gov.uk/judge\\_fr.htm](http://www.employmentappeals.gov.uk/judge_fr.htm). Claimant alleged she was discriminated against with respect to remuneration, comparing herself to a junior colleague whose salary and bonus appreciably exceeded hers. The court ruled in her favour, finding that respondent failed to rebut the inference of discrimination drawn by the court from the facts established by claimant.*

Tribunal, an inference of unlawful discrimination from the primary facts will mean the complaint succeeds [...].”

[Further] clarification was [...] obtained from the Court of Appeal in the case of King -v- GB China Centre [1992] ICR 516 [...]:

“[...] (3) The outcome of the case will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal. [...] a finding of discrimination and a finding of a difference in race will often point to the possibility of racial discrimination. In such circumstances the tribunal will look to the employer for an explanation. If no explanation is then put forward or if the tribunal considers the explanation to be inadequate or unsatisfactory it will be legitimate for the tribunal to infer that the discrimination was on racial grounds. This is not a matter of law but [...] “almost common sense”. [...] At the conclusion of all the evidence the tribunal should make findings as to the primary facts and draw such inferences, as they consider proper from those facts. They should then reach a conclusion on the balance of probabilities, bearing in mind both the difficulties which face a person who complains of unlawful discrimination and the fact that it is for the complainant to prove his or her case.”

9. In a matter involving breach of the International Covenant of Civil and Political Rights, the UN Human Rights Committee held:

“[...] the burden of proof cannot rest alone with the [plaintiff], especially considering that [the plaintiff] and the [defendant] do not always have equal access to the evidence and that frequently the [defendant] alone has access to the relevant information [...] Mr. Mukong has

provided detailed information about the treatment he was subjected to; in the circumstances, it was incumbent upon the State party to refute the allegations in detail, rather than shifting the burden of proof to the author.”<sup>16</sup>

10. Analogous to a certain extent to refutable legal presumptions, the shift of the burden of proof in antidiscrimination cases facilitates proving discrimination by releasing the party claiming discrimination from the burden of proving it beyond a reasonable doubt. The shift, similarly to refutable presumptions, is based on the ordinary, typical relationships between indications of discrimination established by claimant and the fact of discrimination. The evidential burden shifts based on this presumed relationship requiring respondent who is interested in the absence of discrimination to rebut the inference of discrimination drawn from such indications. Similarly to refutable presumptions provided for by legislation for purposes of establishing facts which are not easily proven, such as psychological facts, like awareness, intent, or guilt, the shift of the burden of proof in antidiscrimination cases facilitates proving discrimination as a fact not easily proven by a victim of discrimination. Without such facilitation, a victim of discrimination would be denied an effective remedy against breaches of the principle of equal treatment.

11. Thus, in its ruling in the case of *Enderby*<sup>17</sup> concerning sex discrimination in remuneration, the European Court of Justice held:

“13. It is normally for the person alleging facts in support of a claim to adduce proof of such facts. Thus, in principle, the burden of proving the existence of sex discrimination as to pay lies with the worker who, believing himself to be the victim of such discrimination, brings legal

<sup>16</sup> *Mukong v. Cameroon*, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994). See also *Bleir v. Uruguay*, Doc. A/37/40, p. 130 (1982) (state held liable where petitioner's testimony of ill treatment was supported by other eyewitnesses and further clarification depended on information in state's hands which was not produced); *Santullo (Valcada) v. Uruguay*, Doc. A/35/40, p.107 (1980) (state produced no evidence that allegations of ill treatment had been investigated; general denial not enough).

<sup>17</sup> Case C-127/92, available at [http://europa.eu.int/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=61992J0127&model=guichett](http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=61992J0127&model=guichett).

proceedings against his employer with a view to removing the discrimination. 14. However, it is clear from the case-law of the Court that the onus may shift when that is necessary to avoid depriving workers who appear to be the victims of discrimination of any effective means of enforcing the principle of equal pay. [...] 18. [...] Workers would be unable to enforce the principle of equal pay before national courts if evidence of a *prima facie* case of discrimination did not shift to the employer the onus of showing that the pay differential is not in fact discriminatory (see, by analogy, the judgment in *Danfoss*).”

12. In its recent ruling in the case of *Nachova v. Bulgaria*,<sup>18</sup> the European Court of Human Rights dealt squarely with the issue of the distribution of the burden of proof in discrimination cases under Article 14 of the European Convention on Human Rights (“the Convention”).

13. In *Nachova*, military police shot dead two Romani men, conscripts in the Construction Force of the Bulgarian army, who had escaped from prison and hidden in a relative’s house. The applicants alleged that prejudice and hostile attitudes towards people of Roma origin played a decisive role in the events leading up to the deaths and in the fact that no meaningful investigation was carried out, relying on Article 14 in conjunction with Article 2.

14. The Court ruled in favour of the applicants, taking into account evidence of widespread violence against Roma by law enforcement officials in Bulgaria. It held that the burden of proof in antidiscrimination cases under Article 14 of the Convention is to be shifted onto respondent, stating that this approach is consistent with the legislation and case-law of the European Union. The Court held:

“168. In addition, it has become an established view in Europe that effective implementation of the prohibition of discrimination requires the use

of specific measures that take into account the difficulties involved in proving discrimination (see paragraphs 74-76 above concerning anti-discrimination legislation, including evidentiary rules tailored to deal with the specific difficulties inherent in proving discrimination). [...]”

169. In the light of the above, the Court considers that in cases where the authorities have not pursued lines of inquiry that were clearly warranted in their investigation into acts of violence by State agents and have disregarded evidence of possible discrimination, it may, when examining complaints under Article 14 of the Convention, draw negative inferences or shift the burden of proof to the respondent Government, as it has previously done in situations involving evidential difficulties. [...]

171. In these circumstances, the Court considers that the burden of proof shifts to the respondent Government, which must satisfy the Court, on the basis of additional evidence or a convincing explanation of the facts, that the events complained of were not shaped by any prohibited discriminatory attitude on the part of State agents.”

### C. When does the burden of proof shift?

15. The burden of proof shifts to respondent once claimant has established a *prima facie* case of discrimination, i.e. once claimant proves facts from which the court may presume discrimination.<sup>19</sup>

16. When a *prima facie* case is established, will depend on the particular facts of the case. The possibility to infer discrimination is a factual issue to be decided by the court in each particular case on the basis of the entire evidence gathered. The court makes this decision while deciding the case when all the evidence has been gathered. Where the court finds that discrimination may

<sup>18</sup> *Nachova et al. v Bulgaria*, Nos. 43577/98 and 43579/98, judgment of 26 February 2004, available at <http://hudoc.echr.coe.int/Hudoc1doc2/HEJUD/200402/nachova%20et%20al%20-%2043577jv.chb1%2026022004e.doc>.

<sup>19</sup> Paragraph 21 of the Preamble to, and Article 8 of the EU Race Equality Directive.

be presumed from the evidence adduced by claimant, it will presume it. Then, the burden will shift to respondent, meaning that the court will consider whether the evidence adduced by respondent suffices to rebut the presumption of discrimination thus drawn.

17. In its ruling in the case of *Brunnhofner*<sup>20</sup> concerning inequality in pay, the European Court of Justice gave guidance on the scope of claimant's burden to prove *prima facie* discrimination:

"57. [...] It is therefore for the plaintiff [...] to establish before the national court that the conditions giving rise to a presumption that there is unequal pay [...] are fulfilled. 58. It is accordingly for the plaintiff to prove by any form of allowable evidence that the pay she receives [...] is less than that of her chosen comparator, and that she does the same work or work of equal value, comparable to that performed by him, so that *prima facie* she is the victim of discrimination which can only be explained by the difference in sex. [...]"

18. Accordingly, in order to establish *prima facie* discrimination and to shift the burden of proof to respondent, claimant has to prove 1) a difference in treatment between her/himself and a comparator (difference in pay), and 2) being in a comparable situation with the comparator (same work or work of equal value).

19. As a further illustration of what constitutes *prima facie* discrimination, in the case of *Endrby*,<sup>21</sup> the European Court of Justice said:

"16. [...] if the pay of speech therapists is significantly lower than that of pharmacists and if the former are almost exclusively women while

the latter are predominantly men, there is a *prima facie* case of sex discrimination, at least where the two jobs in question are of equal value and the statistics describing that situation are valid. [...]"

20. Further, in the case of *Barton v. Investec*<sup>22</sup> the U.K. Employment Appeal tribunal defined claimant's burden to prove *prima facie* discrimination in the following manner:<sup>23</sup>

"25. [...] it is for the Applicant who complains of sex discrimination to prove on the balance of probabilities facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the Respondents have committed an act of discrimination against the Applicant [...]. If the Applicant does not prove such facts he or she will fail. [...] (3) It is important to bear in mind in deciding whether the Applicant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in". (4) In deciding whether the Applicant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the Tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the Tribunal. (5) It is important to note the word is "could". At this stage the Tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a Tribunal is looking at the primary facts proved by the Applicant to see what inferences of secondary fact could be drawn from them."

<sup>20</sup> Case C-381/99, judgment of 26.06.2001. Available at: [http://europa.eu.int/servlet/portail/CuriaServlet?curiaLink=%26lang%3DEN%26ident%3D79989373C19990381%26model%3Ddoc\\_curia](http://europa.eu.int/servlet/portail/CuriaServlet?curiaLink=%26lang%3DEN%26ident%3D79989373C19990381%26model%3Ddoc_curia).

<sup>21</sup> See above, footnote 16.

<sup>22</sup> See above, footnote 14.

<sup>23</sup> The U.K. Sex Discrimination Act, Section 63A, provides: "[...] (2) Where, on the hearing of the complaint, the complainant proves facts from which the tribunal could, apart from this section, conclude in the absence of an adequate explanation that the respondent -(a) has committed an act of discrimination against the complainant which is unlawful by virtue of part 2, ... the tribunal shall uphold the complaint unless the respondent proves that he did not commit, or, as the case may be, is not to be treated as having committed, that act."

21. The appraisal whether there are grounds to shift of the burden of proof, i.e. whether claimant has adduced evidence from which discrimination may be inferred, is for the court hearing the particular case to make. In the case of *Royal Copenhagen*<sup>24</sup> the European Court of Justice held:

“27. It is for the national court to ascertain whether [...] the conditions for shifting of the burden of proof are satisfied [...]”

**D. What happens once the burden of proof shifts?**

22. Once the burden of proof shifts, it follows for the court to ascertain whether the evidence adduced by respondent is adequate to rebut the factual presumption of discrimination drawn from the evidence adduced by claimant. If it does not, the court is to consider discrimination proven. Thus, for discrimination to be found, claimant is not required to prove it beyond a reasonable doubt. If respondent fails to rebut the inference of discrimination, the claim will succeed on the balance of probabilities.

23. In the case of *Brunnhofner*,<sup>25</sup> the European Court of Justice defined the scope of respondent’s burden to rebut *prima facie* discrimination in the following manner:

“60. If the plaintiff [...] adduced evidence to show that the criteria for establishing the existence of a difference in pay between a man and a woman and for identifying comparable work are satisfied, a *prima facie* case of discrimination would exist and it would then be for the employer to prove that there was no breach of the principle of equal pay. 61. To [prove that there was no breach of the principle of equal pay] the employer could deny that the conditions for the application of the principle were met, by establishing by any legal means inter alia that the activities actually performed by

the two employees were not in fact comparable. 62. The employer could also justify the difference in pay by objective factors unrelated to any discrimination based on sex, by proving that there was a difference, unrelated to sex, to explain the payment of a higher monthly supplement to the chosen comparator. [...] 67. Furthermore, the grounds put forward by the employer to explain the inequality must correspond to a real need of the undertaking, be appropriate to achieving the objective pursued and necessary to that end (Case 170/84 *Bilka* [1986] ECR 1607, paragraph 36.)”

24. Thus, to rebut *prima facie* discrimination, respondent may assert 1) that there are no grounds to shift the burden of proof, i.e. that claimant failed to establish a *prima facie* case, and 2), that there is no discrimination because there were nondiscriminatory reasons for the difference in treatment, justifying that difference. Respondent would have to prove the existence of such nondiscriminatory reasons. To justify a difference of treatment, such reasons would have to be linked to a real objective, and be appropriate and necessary to achieve that objective. Reasons must be proportionate, not exceeding what is necessary in order to achieve the objective, and must not be related to any discrimination on grounds of race or sex, or other protected characteristics.

25. In *Brunnhofner*, the European Court of Justice said:

“68. [...] the employer may validly explain the difference in pay [...] by circumstances [...] insofar as they constitute objectively justified reasons unrelated to any discrimination based on sex and in conformity with the principle of proportionality.”

26. In *Enderby*, the European Court of Justice confirmed the burden on respondent to prove any nondiscriminatory reasons for the difference in treatment:

<sup>24</sup> Case C-400/93, judgment of 31.05.1995, available at: [http://europa.eu.int/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=61993J0400&model=guichett](http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=61993J0400&model=guichett).

<sup>25</sup> See above, footnote 19.

“18. Where there is a prima facie case of discrimination, it is for the employer to show that there are objective reasons for the difference in pay. 19. [...] where significant statistics disclose an appreciable difference in pay between two jobs of equal value, one of which is carried out almost exclusively by women and the other predominantly by men, Article 119 of the Treaty requires the employer to show that that difference is based on objectively justified factors unrelated to any discrimination on grounds of sex. [...]”

27. In *Barton*, the U.K. Employment Appeal Tribunal gave further clarification on respondent’s burden of proof in antidiscrimination proceedings:

“(8) Where the applicant has proved facts from which inferences could be drawn that the Respondents have treated the Applicant less favourably on the grounds of sex, then the burden of proof moves to the respondent.

(9) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed that act.

(10) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since “no discrimination whatsoever” is compatible with the Burden of Proof Directive.

(11) That requires a Tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not any part of the reasons for the treatment in question.

(12) Since the facts necessary to prove an explanation would normally be in the possession

of the respondent, a Tribunal would normally expect cogent evidence to discharge that burden of proof. In particular the Tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.”

28. In its recent ruling in *Porter-v-Lamvale*,<sup>26</sup> the U. K. Employment Tribunal applied the *Barton* guidance on the distribution of the onus in the following manner:

“3.1. [...] The burden of proof initially rests on the Applicant to prove matters from which the Tribunal may infer sex discrimination. If she does so, the Tribunal will infer that there was unlawful sex discrimination, unless the Respondent proves that the dismissal occurred for some reason not related to the grounds of sex [...].”

29. Accordingly, if the court can infer discrimination from claimant’s evidence, it will do so, unless respondent rebuts that inference. In *Porter*, the tribunal “conclude[d] by inference” that claimant’s dismissal was on grounds of sex.<sup>27</sup>

30. The appraisal whether the reasons put forth by respondent to explain the difference in treatment suffice to justify that difference is for the court in the particular case to make. In *Enderby*, the European Court of Justice said:

“25. The Court has consistently held that it is for the national court, which has sole jurisdiction to make findings of fact, to determine whether and to what extent the grounds put forward by an employer to explain the adoption of a pay practice which applies independently of a worker’s sex but in fact affects more women than men may be regarded as objectively justified economic grounds (Case 170/84 *Bilka-Kaufhaus*, at paragraph 36 and Case C-184/89 *Nimz*, at paragraph 14). [...]”

<sup>26</sup> *Porter-v-Lamvale Construction Ltd. U.K. Employment Tribunal Case No. 1102717/2003, judgment of 4 March 2004.*

<sup>27</sup> *Ibid.*, at paragraph 6.2.

## Conclusion

31. The ERRC is mindful of the fact that a special seriousness attaches to a claim of discrimination and that the applicable standard of proof must reflect the seriousness of the charge yet still allow for “establishing the truth of the allegations in a convincing manner.”<sup>28</sup> An approach is needed which would strike a fair balance between protecting the fundamental right involved and the avoidance of unrealistic burdens of proof on either claimant or respondent.<sup>29</sup>
32. In brief, when assessing the entirety of the evidence before them,<sup>30</sup> adjudicators have turned their minds to the following questions<sup>31</sup>:
- a. Has claimant established a *prima facie* case of difference in treatment on the basis of a prohibited ground? If not, the case fails. If so, then,
    - b. Has respondent established an objective justification for this difference in treatment (such as the pursuit of a legitimate aim and the institution of measures proportionate to this pursuit)?
  33. The shifting burden of proof standard is the result of over twenty years of progressive improvements and the liberalization that has evolved since the first EU gender directives in the mid-1970’s.<sup>32</sup> It seeks to strike a balance by enabling courts to summon all relevant evidence from both parties before making a finding on discrimination.
  34. The shifting burden of proof is a tool that assists the plaintiff in making a claim sufficient to trigger the defendant’s obligation to defend its actions. Consequently, it obliges both parties to put their best case forward for the consideration of the court.

<sup>28</sup> See *Velasquez Rodriguez Case*, *supra*, para. 129.

<sup>29</sup> See *Nachova at para. 166*.

<sup>30</sup> Consider the European Court of Human Rights writing in *Nachova at para. 166*: “It has been the Court’s practice to allow flexibility, taking into consideration the nature of the substantive right at stake and any evidentiary difficulties involved. It has resisted suggestions to establish rigid evidentiary rules and has adhered to the principle of free assessment of all evidence.” (Emphasis added.)

<sup>31</sup> See *Case 70/84 Bilka-Kaufhaus GmbH [1986] ERC 1607*; *Case 171/89 Rinner Kuhn v. FWW Spezial Gebaudereinigung GmbH [1989] ECR 2743*; and *Case 109/88, Danfoss, [1989] ECR 3220, para. 12*.

<sup>32</sup> *Beginning with Directive 76/207 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. (Official Journal L39, 14/2/1976 p. 40)*



# A Social Catastrophe: How Politics and Business Contrived to Expel Roma from Their Homes

Stephania Kulaeva<sup>1</sup>

The undemocratic political developments in modern Russia have made hate speech a winning political strategy during elections. In some parts of Northwest Russia local politicians use anti-Romani sentiments to catalyse public support in their election campaign. Plans for “cleaning” their cities of the “gypsies” featured among the most serious promises to be fulfilled after winning the elections. In their propaganda, presented by the mass media, politicians blamed the local Romani communities for earning a living on the drug trade. The problem of the growing numbers of drug addicts among the young Russians is persistently used as a justification to scapegoat Roma. However, in order to evict Roma officially, some other arguments were presented in the courts. The reactions in the mass media, most notably on internet fora, show extreme hatred and racism among the population and their support for the politicians in question.

In both cases described below – in the Northern city of Arkhangelsk and in Kaliningrad – the most Western part of Russia, Romani houses were declared illegal in court. However, as analysis shows, it was the claim of Romani criminality that had a decisive impact on public opinion and not the court decisions about the unlawful construction of the houses. Furthermore, the question whether the houses were built illegally is also dubious and difficult to prove. Nevertheless, the administration insisted on getting rid of the houses, apparently also

because the land on which the Roma houses were located – on the edges of big cities – became very expensive and attractive for local businessmen.

## Kaliningrad

The cruellest action of which we are aware was undertaken recently by the Kaliningrad authorities against a few hundred Roma living in the Dorozhny village in the Kaliningrad region. Among the elderly people of this community are ones who were forced to settle in this village in accordance with the 1956 decree “On engaging vagrant Roma in labour activities”. It was the first place for many of them to acquire official homes and registration. The Kaliningrad administration created the Dorozhny village especially for Roma, and since 1956, only Roma have lived there, some already for three generations. The social-economic structure of the village has been the worst in the region ever since – there has never been a good road, waste disposal is unavailable, the nearest school is five kilometres away, there has never been public transport, and for the last seven years the electricity in the whole village was shut off because of bad technical conditions. Since Russian law allows that individuals privatise housing previously owned by the state, in 2000-2001 many Roma applied to court to have their houses recognised as private property and they received positive decisions. The administration of the Guryevsky district of the Kaliningrad region

<sup>1</sup> *Stephania Kulaeva is director of the St. Petersburg-based non-governmental organisation Northwest Centre for Social and Legal protection of Roma. The organisation provides social and legal aid to Roma, through supportive education programs for children, mediation between Romani communities and local authorities, support and training of local Romani organisations and activities aimed at improving access to health care of Roma. She has been collaborating with the ERRC in Roma rights monitoring and advocacy work since 2000. Since October 2005 she is monitoring anti-Romani hate speech in the Northwestern region of Russia as part of a larger project implemented by the ERRC, with the financial support of the British Foreign and Commonwealth Office. The author can be contacted at: [stepan@netcourier.com](mailto:stepan@netcourier.com).*

offered the Romani community of Dorozhny to develop a general (re)construction plan for their village, which would include social facilities such as a waste disposal, electricity supply, etc. In March 2001, Roma presented this plan, which was paid for by them, to the administration. It was discussed on a special meeting and received general approval. It was decided to continue developing the plan.

Soon thereafter however, followed an order by the general prosecutor of the Kaliningrad region to stop the registration of Roma houses in Dorozhny motivated by what the prosecutor called the “criminogenic situation” in the village. As a result, all social development stopped and the majority of Roma did not receive a property ownership document for the houses, although most of them have completed the privatisation procedure in court as well as obtained official technical certificates for their houses. Moreover, in their passports, the Roma have stamps showing that they have residence registration in the Dorozhny village. Nevertheless, at the end of 2005, the governor of the Kaliningrad region, Georgi Boos, and the local branch of the Federal Drug Enforcement Agency (Gosnarkokontrol), moved to expel the Roma from the village of Dorozhny. Dozens of publications in the media described Dorozhny as a centre of drug dealing and it was proposed to destroy a number of houses in the village.

The local authorities undertook a series of quick court cases proving that the houses of Roma were illegal, which allowed them to obtain permission to demolish the houses. Most of the decisions were made in the absence of the defendants, and none of the court cases were postponed, despite the fact that some of the Roma had not received any summons for the court hearings and learned about the pending demolition of their houses only when the bulldozers arrived in the village.

The following are some examples of Roma who lost their houses:

Mr. Michail Andreevich Arlauskas was not in the village when his brother called him on 21 February 2006 and told him that his house was being demolished. When Mr. Arlauskas arrived, he found a ruin on the place where his home had

been. Mr. Arlauskas was the owner of the house and was officially registered in it. It had been the second attempt to destroy his house. During an earlier attempt in December 2005, Mr. Arlauskas had been at home and could prove his ownership rights with official papers. On February 21, however, he was not at home. Mr. Arlauskas commented: “There is only a well left on the place of my house. Am I registered in a well now?” Mr. Arlauskas as well as other Roma insisted on their innocence and stated they had nothing to do with any drug trade and therefore no prosecutor could make a criminal case against them. There are more houses that are to be demolished soon.

Ms. Tatyana Arlauskenia, who is taking care of seven grandchildren, some of them orphans, was in hospital on January 15, when she received the news that her house had been destroyed. Her neighbour Sophia Arlauskenia went to court to ask to postpone the destruction of her house until June 2006 so that she could survive the winter. She was refused and as of March 2006 is expecting the destruction of her house any day.

Roma in Dorozhny are also losing their residence registration in the village. Children are not registered with their parents and people who changed their old passports for new ones, did not get stamps proving their registration. That means that hundreds of people suddenly became officially homeless. No legal arguments were presented for the decision to cease the registration of the Roma in the village except the prosecutor’s claim that the situation was “criminogenic”.

The campaign for the destruction of the Romani houses in Dorozhny coincided with the local elections campaign in the Kaliningrad region and there are reasons to believe that the Kaliningrad authorities sought to gain electoral support by their anti-Romani actions. Roma from Dorozhny are also sure that the land of their village is attractive for investors as the city of Kaliningrad is expanding and the Dorozhny village can be turned into an elite suburb.

Activists of the Northwest Centre for Legal and Social Protection of Roma and the St. Petersburg-based organisation Memorial visited the Dorozhny

village and Kaliningrad city between February 26-28 and interviewed a number of Roma. They also tried to meet officials, including the Governor Georgi Boos and the regional administration, the head of Guryevski district, Mr. Karabakin, the local Ombudsman, Ms. Vershinina, and the officers of the Federal Drug Enforcement Agency, but none of them agreed to meet the human rights experts. In public statements, all officials denied that there was a problem in Dorozhny and insisted that no inhabited houses were destroyed yet.

If authorities in Kaliningrad region are allowed to continue with their actions, the Romani community of Dorozhny will soon become another group of homeless Roma, as is the case with the Romani community in Arkhangelsk. The Roma in Arkhangelsk have also become a target of political and economic interests and were subsequently coerced to leave the city of Arkhangelsk.

The group of Kelderash Romani families involved in the dispute arrived from Volgograd in 2004, following their leader, Khulupij Bakalaeovich Gomon. It is a tradition for Kelderash Roma to change location over long periods of time. Having lived in Arkhangelsk for several decades before, the community decided to return there once more after selling their homes and possessions in Volgograd. Before all the families made the move, however, Mr. Gomon began arranging the necessary permits and arrangements for them to do so, and by September 2004, the families obtained legal permission to rent land in the Noviposyolok district. The permit was signed by the Arkhangelsk mayor at the time, Nilov, and other local authorities.

The dispute over “allowing” the Roma to remain in Arkhangelsk began when mayor Nilov’s political opponent, the far-right candidate Danskoy, accused the mayor of corruption for permitting the Roma to settle, and accused the Roma themselves of illegally building homes on the land they had rented. The permit given to the families allowed them to settle on the land, but did not grant them permission to build houses, although the necessary legal provisions for them to do so were already underway at the time. Despite the fact that the Roma did not have permission to build, it was indispensable for them to begin constructing houses in order to provide

shelter for their large families during the approaching winter months (within their time in Arkhangelsk alone a total of nine children were born, adding to this necessity). In November 2004, however, mayor Nilov, apparently disturbed by the corruption charges against him by his opponent, initiated a lawsuit challenging the right of the Roma to live on the lands which he had himself granted them.

In his campaign speeches, Danskoy charged that corruption in Nilov’s administration made possible for the Gypsies to settle in Arkhangelsk. At the same time, he explicitly promised that he would do all that was necessary in order to rid Arkhangelsk of the Gypsies – not because of the legality of their homes, but because according to him, all Gypsies are “beggars, swindlers, and thieves [and] are incapable of doing anything else.” When Danskoy was elected mayor later that year, he kept his promises and demanded that the court not only permit the demolition of the Romani houses, but also order the expulsion of the Roma from their lands altogether. Had the mayor’s racist comments with regard to Roma been unclear before, he reiterated them during a round-table meeting on the issue, in which he openly stated in front of journalists that his “position has not changed,” and that such “criminals” cannot be allowed to remain in Arkhangelsk because no citizen “would want Roma for neighbours.” Thus, he made it clear that the suits which were brought against the Roma were not about the legality of housing but were a manifestation of racist politics which aimed to expel the Roma from the city. Regardless of the temporary nature of the houses built by the Roma, it is not disputed that they were illegally constructed. Nonetheless, the Russian legal system clearly stipulates that it is possible to legalise homes with a temporary status in order to protect their residents. The Northwest Centre for Social and Legal Protection of Roma has provided legal assistance to Romani families in the Novgorodskaya and Leningradskaya regions, whose homes were in a similar legal situation. Thus it is clear that there is a precedent for legalising the status of such homes.

In November 2004, attorneys Marina Nosova and Margarita Golenisheva, who represented the Roma, won the court case arguing that the con-

struction of illegal houses was not a sufficient reason to evict the Romani families, especially when they had a legal right to use the land on which the houses were built. Having realised that the case would be lost on the grounds of illegal construction alone, the mayor's legal team then changed its strategy. They proceeded to declare that the contract which granted lands to the Roma in the first place was not valid because it did not properly adhere to the legal procedures necessary in such an action. Furthermore, they claimed that although the administration itself was to blame for this mistake, it was still necessary for the Roma to abandon their land, since it was not obtained by means of a proper contract.

In the beginning of 2006, the Roma applied to the court claiming that it was the administration's fault that the contract which granted them the properties was invalid and requested that the old contract be replaced by a new, valid legal agreement. As stated earlier, Russian law clearly allows for the legalisation of homes in such situations.

A court hearing however did not take place because mayor Danskoy promised to pay the Roma for their trip from Arkhangelsk to the South if they left the city voluntarily. Since the community was so exhausted after two years of legal fights and living in temporary housing in the severe weather conditions, they decided to give in and leave.



## Judges Training in Ukraine

Larry Olomoofe

*“Testing! I know what this is. It is just provocation.....”*

*Participant at judges training workshop held in Kyiv, Ukraine, November, 2005.*

The European Roma Rights Centre (ERRC) conducted a series of European Commission (EIDHR)-funded workshops on the European Convention for Protection of Human Rights and Fundamental Freedoms (ECHR) in the context of the defence of Roma rights aimed at training Ukrainian county and high court judges in Kyiv, Ukraine, in November and December 2005. These unprecedented events were generally well-received initiatives by the local participants and provided the ERRC the necessary insights into major problems facing the judiciary in Ukraine. There was a marked difference in the attitudes between the judges who attended the first training and those that attended the second. The first group were more dynamic and engaging whilst the second group more reticent and unconvinced by the whole exercise. The attitude of the participants (with the notable exception of four judges) in the second training made the effect of the whole event quite dubious. But even with few participants who took genuine interest and requested more trainings of this kind, it was a worthwhile exchange with those most responsible for upholding the human rights principles. What follows below is a brief account of the two events and some of the vital lessons learned from the experience.

The quote at the beginning of this piece was made by a high court judge who attended the first training workshop. His view is mentioned here to indicate the overall sense of scepticism that the judges held towards the programme, generally, and the ERRC in particular. This scepticism was palpable on both sides, to be honest. We (ERRC CIS Officer Istvan Fenyvesi, the coordinator of the Ukraine project and myself) really did not know what to expect. We assumed that the judges

would wonder why a couple of non-lawyers from another country would have the temerity to come to Ukraine and provide “training” on the interpretation of the European Convention on Human Rights. It sounds absurd even now. Therefore, we anticipated some hostility from the judges and felt that they were only attending out of some begrudging necessity and were deeply sceptical about the whole thing. Furthermore, we knew, that some of the content of our respective presentations would be challenged by the judges (we were proven right) and that we needed to make watertight presentations on various human rights approaches to monitoring, advocacy, and strategic litigation. We also anticipated that the judges would hold us in a scornful light because of the reputation of the ERRC as “trouble-makers” and because of the anticipation that we were there to hoodwink them and cause trouble.

The overall sense of foreboding did not ease until the opening introductory sessions were completed. This was the opportunity for us all to place our credentials on the table and explain our expectations of the workshop/roundtable session. Although the project description indicated that this was a “training” for judges, we couched the session as a mutual exchange of information where we (the ERRC and local partners) were bringing to the attention of the judges present some of the issues related to the execution of legal mandates in various European countries and how some of these acts of law, were actually violating the rights of some Romani people and communities across Europe. The strategy to 1.) Minimise the emphasis on “training” and 2.) Provide a pan-European perspective was a wise one. This helped to disarm the judges somewhat,

but not entirely. There was still a significant amount of scepticism, a sentiment that was only really eliminated after a series of presentations by some Ukrainian lawyers, one of whom works at the European Court of Human Rights in Strasbourg. In these presentations, a number of issues were discussed and more importantly, explained highlighting their pertinence related to Ukrainian legal culture. Methodological approaches to collation of evidence in cases of discrimination and harassment were also explored, including the controversial (for judges) method of “testing” (explicated in more detail below).

Utilising a pan-European perspective entailed providing information to the participants about the situation of Romani communities throughout Europe and the fact that these communities often or always existed at the margins of society, as well as the fact that they also suffered entrenched forms of discrimination. The purpose of adopting this approach was to indicate that while Roma in Ukraine suffered intolerable levels of discrimination, it was not the only country in Europe that was guilty of this. In fact, to a greater or lesser degree, peoples and communities from the Romani diaspora, suffer some form of discrimination (institutionalised and personal) in every European country and it was important to indicate this to the participants at the workshop. Also, as a result of this entrenched discrimination, the European Union (EU) developed certain criteria for accession to the EU, including among others, legislative and policy measures to fight discrimination. This would be the condition that any subsequent application for membership to the EU by Ukraine would be considered under. Therefore, by addressing the issue at a relatively early stage in the proceedings, would mean that Ukraine could forestall any potential problems by making the necessary legislative revisions now instead of later. Also, the fact that a number of judges attended from different regions of the country, allowed them the opportunity for an exchange of

experiences and suggestions on how to address certain phenomena related to Ukraine’s Roma communities. Indeed, there was a variety of different opinions amongst the judges during the first workshop, and when one of them expressed avowedly racist comments about Romani people, he was quickly challenged and disavowed of this by colleagues (one in particular who abhorred the racist comments made by the judge in question). This was a positive outcome from the roundtable because of the fact that the views of this judge were challenged by a contemporary and he seemed to agree with the perceived wisdom of his colleague and they exchanged personal contacts so as to further collaborate/discuss, etc.

There was also the general acceptance that the situation in Ukraine needed to be addressed and that they (the judges) were to be actively engaged so as to facilitate the claims of Ukraine for EU membership. This, they felt, was their duty. Effective enforcement of good anti-discrimination law would set Ukraine apart from other EU countries that have as of yet failed to transpose the EU Race Directive (Germany for instance). Bearing all of this in mind then, we provided insights into methods that will allow for the effective enforcement of anti-discrimination legislation in Ukraine by highlighting the various principles of the EU Race Directive, paying particular attention to Article 8 (shifting the burden of proof to the respondent). In our presentations, we emphasised the importance of this legal provision and illustrated the point providing a recent example of a Romani man from Bulgaria who won a case for discrimination in employment relying on Bulgarian anti-discrimination law which had incorporated this provision.<sup>1</sup> Testing was presented as a useful method that could help judges determine whether discrimination had taken place. This suggestion drew the response from the judge that starts this article who suggested that he “knew of this method and that it was simply a mode of provocation”. Whilst not disagreeing with him

<sup>1</sup> *This is a reference to the Assenov vs Lubimka Ltd. ruling in Bulgaria in November 2005. This is a case of alleged discrimination against Mr. Assenov in his attempts to find employment at the Lubimka Ltd company. The judge ruled in favour of Mr. Assenov and stressed that his judgment was based upon the shift of the burden of proof. For more details about this case, please see [www.errc.org/cikk.php?cikk=2415&archiv=1](http://www.errc.org/cikk.php?cikk=2415&archiv=1).*

I stressed that bad testing could be a mode of provocation and entrapment and if that were the case, then as a judge, he had every right to rule against it. However, what we described was a method of testing that was conducted adhering to the principles of good data collation that could be independently verified and easily corroborated.

The discussion continued, drawing a number of responses from others present and the conclusion was that they could accept evidence in cases of discrimination where the method of testing had been used.

Despite this relative flashpoint, the workshop was ended in a convivial tone and the participants were happy that the event had taken place. The second workshop was very different and could be considered to be the complete inverse of the first. This was a rather chastening experience since the enthusiasm built up from the first workshop in November was completely dissipated during the second event in December. All the old perceptions that had been dispelled during the first workshop became current again and the efficacy of the training is/was debatable. It is true to say

that much work needs to be done in Ukraine involving judges and lawyers. Perhaps it is a good thing that we had the jolt of realism during the second workshop in December. Having been led into this somewhat false sense of security during the first workshop, we suddenly realised that things would not be that easy for us. And so it is proving. The sense of foreboding and scepticism prevails today and although the workshops were received very differently by both sets of judges, they still raise our hopes for the future.

Suspicion is the phrase that best characterises the nature of training initiatives such as the ones conducted last year among this group of legal professionals. This may have been the case at the outset, but at least in the case of the first training, not so at the conclusion. The first training was characterised by a sense of collegiality and camaraderie. The judges were pleased to have been invited to attend the session and requested more of the same in the future. This is a good precondition for carrying on this type of work in the upcoming months and years. It is always easier to work with allies from within than simply attempting to change things from the outside. This much is true in Ukraine.





## Challenges

*Erika Szyszczak*

I was invited to join the ERRC Board because of my experience in EU law, in particular anti-discrimination law, and I have been an academic lawyer at the Universities of Kent, London School of Economics and Nottingham and must have taught at least two generations of EU lawyers from all over the world.

Currently, I am at the University of Leicester where I hold a Jean Monnet Chair of European Community Law *ad personam* and I am also Professor of European Competition and Labour Law. I am the Director of the Centre for European Law and Integration (<http://www.le.ac.uk/law/cefi>). Originally, the combination of labour law and competition law would have seen a strange coupling of interests but today competition principles are being introduced as markets are liberalised in Europe and this has a number of consequences for public services such as education, healthcare, as well as employment conditions for workers, citizens and people who are legally resident in the EU.

I was one of the first generation of lawyers in the UK to study EU law and it has remained a life-long interest – if not a passion! It was a time when radical lawyers were making their mark. There was the emergence of what were then called civil liberties issues, but also the realisation, from the American experience, that lawyers' skills could be used effectively not just in the court room. The mixture of law and politics and economics made the subject of EU law appealing. EU law is dynamic, but it can sometimes be frustrating as well. It can take years, if not decades, to get a policy through, or a case involving EU law started in the local courts. Some equal pay cases, for example, have taken over a decade to reach a final conclusion. Then a new spin, a

change in policy or economic conditions can start the whole process rolling again.

I am also a practising barrister at Littleton Chambers in London. Throughout my academic career I have been involved in test case litigation, particularly discrimination issues, and given advice to individuals, the EC Commission and governments. Especially in the run up to enlargements of the EU I seem very busy! I was involved in training programmes for judges, civil servants and lawyers in Slovenia, Estonia and Poland. Now I am active in providing training programmes and legal updates for the ERRC. Roma rights present a different perspective, involving public and private attitudes, institutional and private factors. Quite often we are looking at a combination of factors, which cannot always be isolated, for example, issues of public measures, private attitudes, which have led to the role and position of Roma in Europe today. Untangling these webs is a challenge and also brings a new analysis to issues of fundamental rights.

Roma issues are regarded as an important aspect of the EU's social policy agenda and specific programmes and policies are being implemented at the EU level. The ERRC has an important part to play in shaping these policies as well as monitoring their impact. Alongside the change in the political climate there is also a huge shift in the fundamental rights and citizenship perspectives of EU law. A range of hard law measures in the shape of Directives adopted using Article 13 EC, alongside soft law measures, the creation of new monitoring agencies has made this an important time for the ERRC to engage with the potential that the EU has to offer for Roma living in Europe.

<sup>1</sup> *Professor Erika Szyszczak joined the ERRC Board in January 2005. She is married (to an economist) and has three children.*





# Chronicle

## Publications

**January 30:** *Published the first issue of the Russian version of Roma Rights (“Prava Tzigan”), covering 2005 activities and issues.*

## Campaigning, Conferences, Meetings and Training

**January 11:** Attended a press conference by the Czech Public Defender of Rights, announcing release of his conclusions following investigation into practices of coercive sterilisation in the Czech Republic, Brno, Czech Republic.

**January 13:** Convened a meeting of partners involved in an assessment of social assistance policies in the Czech Republic, Portugal and France, supported by the European Commission, Budapest, Hungary.

**January 16-17:** Hosted an anti-discrimination policy training for Romani activists, funded by the European Commission, in Brno, Czech Republic.

**January 18:** Presented Roma rights issues at a meeting convened by the Swedish Helsinki Committee, Budapest, Hungary.

**January 19:** Took part in a roundtable on the Final Status of Kosovo and the Position of Roma, Ashkali and Egyptian communities organised under patronage of Soros Kosovo Foundation for Open Society.

**January 23-24:** Provided training in policy matters to a group of Romani activists from the Czech Republic as part of a project supported by the European Commission, Brno, Czech Republic.

**January 27:** Provided comments to the UN Committee on the Elimination of Discrimina-

tion Against Women concerning compliance by Bosnia and Herzegovina and Romania with international gender discrimination law.

**January 27:** Provided oral testimony to the UN Committee on the Elimination of Discrimination Against Roma on Romani women’s issues in Macedonia, New York, USA.

**February 3:** Presented employment discrimination issues at a conference convened by the Federation of Gypsies in Spain, Madrid, Spain.

**February 3:** Hosted a training workshop for Croatian and Macedonian lawyers on strategic litigation for human rights, with partners Roma National Centrum and Croatian Law Centre and funded by the EC’s CARDS programme, in Kumanovo, Macedonia.

**February 7-10:** Presented a paper on Roma health issues at a conference by the Open Society Institute, Istanbul, Turkey.

**February 7:** Held a press conference together with partner organisations and Romani applicants in the law suit D.H. and others v. the Czech Republic challenging segregation of Romani children in special schools, filed before the European Court of Human Rights, following the decision of the Court, Ostrava, Czech Republic.

**February 17-18:** Convened a meeting between the partners implementing the two-year project

“Roma Rights in Turkey” to discuss the project activities during the first year, Istanbul, Turkey.

**February 21:** Presented Roma rights issues in Bosnia and Herzegovina for the UN Committee on the Elimination of Racial Discrimination, Geneva, Switzerland.

**February 21:** Met the Deputy Minister of Education and Science of Bulgaria to discuss the prospects of the implementation of the school desegregation policies.

**February 22:** Hosted a delegation of government officials, educationalists and non-governmental organisations from countries in the Western Balkans to discuss cooperation in a regional project on integration of Roma in education implemented by the Save the Children branch in Serbia and Montenegro.

**February 27-March 1:** Provided training in anti-discrimination law issues to a group of Romani activists from the Czech Republic as part of a project supported by the European Commission, Brno, Czech Republic.

**February 27:** Met the Deputy Ambassador of the United States in Bulgaria and discussed the situation of minority rights in the context of rising aggressive nationalism as well as the prospects of Roma political participation and policies for the integration of Roma.

**March 1:** Convened a roundtable on education policy issues with Romani activists and local and regional authorities in southern Moravia, Czech Republic, Brno, Czech Republic.

**March 2:** Attended a meeting convened by partners to discuss legal action to challenge hous-

ing rights abuses against Roma in Bulgaria and Slovakia, Bratislava, Slovakia.

**March 4:** Hosted a training workshop for Romani and Sinti activists on “Effective Advocacy at the National Level”, with partner Milan Simecka Foundation and Irish Traveller Movement and funded by the EC CAP Programme, Budapest, Hungary.

**March 6:** Provided materials to Council of Europe racism and minorities review bodies concerning Roma rights issues in Russia and Slovenia.

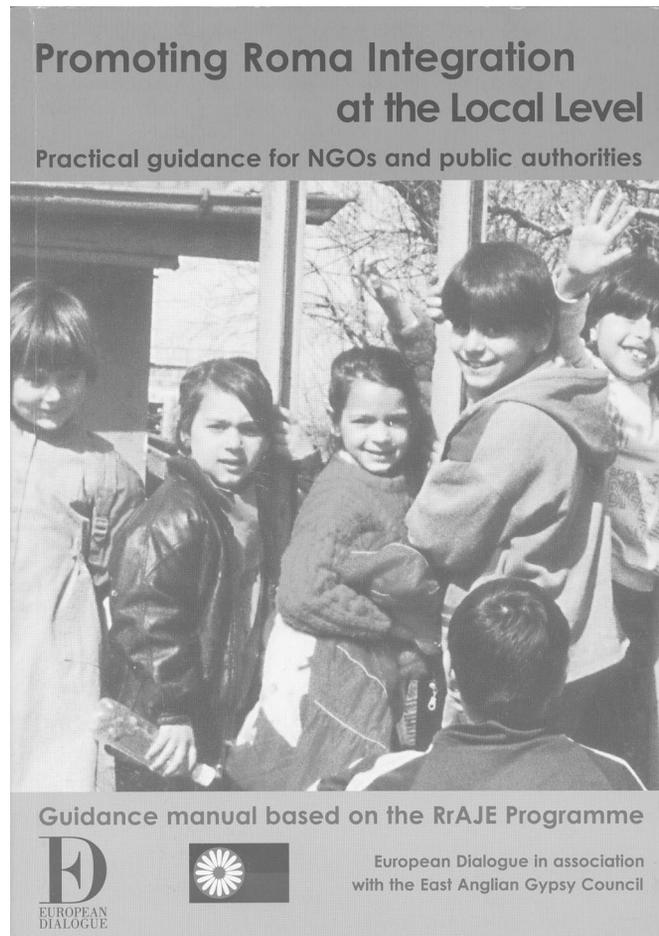
**March 7:** Hosted a visit to the ERRC by representatives of the Danish Red Cross, Budapest, Hungary.

**March 13:** Testified and provided written comments to the UN Human Rights Committee on human rights issues in Kosovo, 1999-present, New York, USA.

**March 17:** Participated in the conference “The Contribution of local and regional authorities to the protection of minorities and anti-discrimination policies”, organised by the Commission for Constitutional Affairs, European Governance and the Area of Liberty, Security and Justice of the Committee of the Regions in cooperation with the EUMC, Vienna, Austria.

**March 22:** Hosted representatives of the Swedish Foreign Ministry at the ERRC offices in Budapest.

**March 30:** Convened a roundtable on employment policy issues in Bratislava, Slovakia, under the auspices of the Slovak Minister of Employment and Social Affairs as part of a project supported by the European Commission.



A guidance manual “Promoting Roma Integration at the Local Level: Practical Guidance for NGOs and Public Authorities” has recently been published, providing practical advice for public authorities and NGOs on implementing strategies for integration of Roma specifically at the local level. The guidance is based on a three-year project carried out in six municipalities in countries of central/eastern Europe as part of the RrAJE Programme implemented by the London-based non-governmental organisation European Dialogue. The booklet draws out the key lessons from the RrAJE Programme about appropriate methods for promoting access to social rights and justice for Roma communities at the local level. The main body of the booklet consists of guidance relating to the four key areas: minority empowerment, partnership-building, the development and implementation of integrated local strategies, and ‘mainstreaming’ and institutional change. On each subject, general guidance is accompanied by practical examples drawn from the RrAJE Programme. Although the booklet is focused on the Central/Eastern European context, it is also relevant to the situation of Roma and related groups in countries more widely across Europe.

To obtain copies of the Practical Guidance Manual and further details about the RrAJE Programme, including details of partners and programmes in individual countries and municipalities, please see the website [www.europeandialogue.org](http://www.europeandialogue.org), or contact European Dialogue directly at 175 Goswell Road, London EC1V 7HJ; tel: +44-20-7253.3337; fax: +44-20-7253.5790; email: [info@europeandialogue.org](mailto:info@europeandialogue.org).

## 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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