

# WRITTEN COMMENTS

BY THE EUROPEAN ROMA RIGHTS CENTRE

Written Comments by the European Roma Rights Centre to the European Commission concerning the application of Directive 2000/43/EC on Racial Equality

CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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## ERRC COMMENTS TO THE EUROPEAN COMMISSION CONCERNING THE APPLICATION OF DIRECTIVE 2000/43/EC ON RACIAL EQUALITY

The European Roma Rights Centre (ERRC) is a Roma-led international public interest law organisation which monitors and protects the human rights of Roma in Europe and provides legal defence in cases of human rights violations. The ERRC is active in fifteen countries across Europe within the EU and the Enlargement Area.

This submission refers to Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the Racial Equality Directive). The ERRC's comments are in response to questions 2 and 4 listed in the call for inputs from civil society by DG Justice & Consumers on 3<sup>rd</sup> April 2020.

*What is your view on the application of Article 12 of Directive 2000/43/EC and Article 14 of Directive 2000/78/EC on the encouragement of a dialogue with non-governmental organisations?*

Article 12 of the Directive is somewhat redundant in Member States which are actively involved in persecuting non-governmental organisations and waging hostile propaganda campaigns against them. In some EU Member States, government hostility has created an 'enabling environment' for far-right non-state actors and, as a consequence, NGOs and human rights activists in the EU face physical and verbal attacks, harassment, and intimidation. So grave is the situation that FRA published the following opinion:

“Member States should refrain from the stigmatisation of human rights CSOs and their members. Moreover, they should actively condemn any crimes – including hate crimes – committed against CSOs and their members and fully implement their positive obligations under international law and applicable EU law to protect CSOs and their members. Data on hate crimes against human rights CSOs should be collected and published.”<sup>1</sup>

This is most notable in Poland and Hungary where governments hostile to civil society have engaged in targeted actions against organisations and individual activists.

In Poland, the creation of the National Freedom Institute-Center for the Development of Civil Society, effectively controls civil society organisations by administering funding, and financially starving those who do not share the values of the ruling Law and Justice Party (PiS).<sup>2</sup>

The decade-long attacks on civil society organisations in Hungary by the Orbán regime has been exhaustively documented and widely condemned.<sup>3</sup> Just last month, the Court of Justice of the European Union (CJEU) ruled that the 2017 Hungarian law requiring non-governmental organisations receiving at least HUF 9 million in grants from outside Hungary to register in a special registry and label themselves as a “foreign-funded organisation” on their website and publications are stigmatizing, harmful, and in breach of EU law.<sup>4</sup> There is considerable scepticism that this will herald any change in the attitude of the ruling party, especially in light of the continued failure of the EU to take any effective action to defend NGOs against these authoritarian excesses in the past ten years. The failure of the Commission to function effectively as ‘guardian of the treaties’, has only served to embolden leaders of EU Member States who openly champion the notion of ‘illiberal democracy’.

The consequence is that, as far as ‘the fight against discrimination on grounds of racial and ethnic origin’ goes, meaningful dialogue with ‘appropriate non-governmental organisations’ has long since ceased in certain Member States. Furthermore, government and opposition politicians have been complicit in delegitimizing the work of human rights organisations and creating a hostile environment for rights defenders and exposing them to

1 EU Agency for Fundamental Rights (2018) *Challenges facing civil society organisations working on human rights in the EU*, FRA Opinion 8, page 7, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-challenges-facing-civil-society-summary\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-challenges-facing-civil-society-summary_en.pdf).

2 Politico (2017) *Warsaw grabs purse strings of Polish NGOs*, 12 August, <https://www.politico.eu/article/pis-polish-ngos-fear-the-governments-embrace/>.

3 HCLU (2017) *Timeline of Governmental Attacks against Hungarian NGO Sphere*, 22 February, [https://tasz.hu/files/tasz/imce/timeline\\_of\\_gov\\_attacks\\_against\\_hu\\_ngos\\_22022017\\_1.pdf](https://tasz.hu/files/tasz/imce/timeline_of_gov_attacks_against_hu_ngos_22022017_1.pdf).

4 Euractiv (2020) *Top EU court strikes down Hungary's NGO financing law*, 18 June, <https://www.euractiv.com/section/freedom-of-thought/news/top-eu-court-strikes-down-hungarys-ngo-financing-law/>.

violence and intimidation. In the face of all this, the EU failure to take any effective action that might act as a deterrent to these governments has even further weakened the operation of the Racial Equality Directive.

*Are there in your view any particular challenges and/or concerns regarding the application of the Directives relevant to your area of activity you would like to share? If so, please specify and please structure the reply in the order of the relevant provisions of the Directives.*

## THE DIRECTIVE IS INEFFECTIVE AS A LEGAL TOOL TO PROTECT THE RIGHTS OF ROMA

When it comes to protection of the rights of Romani people in the EU, the application and scope of Directive 2000/43/EU demonstrates that it is unfit for purpose as a legal tool to genuinely challenge racial discrimination. The ERRC refers to the opinion of the Commission's own Fundamental Rights Agency, which concludes that:

“The existing evidence of wide-spread discrimination against Roma suggests that the Racial Equality Directive (2000/43/EU) is not effective – at least with respect to that particular group. Critical assessment by both the EU and the Member States is needed of why this is the case and what measures are required to remedy the existing situation.”<sup>5</sup>

A recurring point common to many of the Roma Civil Monitor (RCM) country reports was that full transposition of the Race Equality Directive (RED) into domestic law has not translated into effective action against anti-Roma discrimination. The reports found that official bodies responsible for combating discrimination in those countries with significant Roma populations are circumscribed in terms of independence, resources, and mandate. There remains a dearth of ethnically disaggregated data, and a low level of rights-awareness among many marginalised Roma communities, compounded by a widespread and well-founded scepticism concerning enforcement of judgements, the very possibility of justice, and effective remedy to combat discrimination.<sup>6</sup>

## THE SCOPE OF THE DIRECTIVE IS TOO NARROW

Article 3, relating to the scope of areas in which the Directive applies, is not sufficiently broad as to allow for the Directive to be used in a way that challenges the most common forms of discrimination against Romani people, namely: forced evictions, discriminatory actions by law enforcement, and discriminatory actions by health and social institutions; all of which may be considered as relating to the provision of public services.

In 2019, the ERRC had 147 active legal cases across 13 EU Member States and 5 Enlargement Countries. The majority of these cases (67%) were concerning police misconduct (48%) or access to housing issues (19%) against Roma. These are the most common forms of discrimination Roma face at the hands of the state in most countries in Europe: discrimination in the provision of law enforcement, and denied access to housing through forced evictions.

In 2016, the Council of Europe Commissioner for Human Rights, Nils Muižnieks, also emphasised forced evictions as a particular form of discrimination faced by Roma:

“Many Roma continue to face serious forms of discrimination and human rights violations by authorities at both national and local levels. In particular, forced evictions without due process and provision of adequate alternative housing continue unabated across Europe, in violation of member states’ international human rights obligations.”<sup>7</sup>

5 EU Agency for Fundamental Rights (2018) *A persisting concern: anti-Gypsyism as a barrier to Roma inclusion*, FRA Opinion 1, page 10, <https://fra.europa.eu/en/publication/2018/roma-inclusion/fra-opinions>.

6 Roma Civil Monitor Initiative (2017), *Roma Civil Monitor Reports*, <https://cps.ceu.edu/article/2019-02-11/roma-civil-monitor-all-country-reports-and-synthesis-report-are-published-2017>.

7 Council of Europe (2016) *European Countries Must Stop Forced Evictions of Roma*, 16 February, <https://www.coe.int/en/web/commissioner/-/european-countries-must-stop-forced-evictions-of-roma>.

We believe the Directive's scope should be extended to cover actions of misconduct by law enforcement, who are providing a state public service, and forced evictions as part of the housing provision.

## THE APPLICATION OF THE DIRECTIVE HAS BEEN SLOW AND LACKING TRANSPARENCY

In terms of the application of the Directive, the progress of the three infringement procedures opened against Member States for violating the rights of Romani citizens has been so protracted as to no longer constitute an effective remedy against the violations in question.

The length of proceedings, without any observable action, allow Member States to keep financial penalties via the European Court of Justice at bay seemingly indefinitely. This makes infringement proceedings via the Directive more of an inconvenience than a threat for Member States which discriminate against their Romani citizens.

The infringement procedures against the Czech Republic, Slovakia, and Hungary were brought after significant reporting over many years on the side of civil society, only for these procedures to move behind closed doors. The process from this point forward is totally opaque with little accountability for those involved, nor does it offer any indication that it is productively solving the segregation issue which was brought to the attention of the Commission in the first place.

Far from the situation improving, things have actually worsened for Roma in Hungary, with the Hungarian government taking an ideological stance against the notion of infringement proceedings. Regarding the procedure against Hungary relating to asylum regulations, the Prime Minister's office claimed the European Commission was taking punitive measures against Hungary as revenge for contesting mandatory refugee quotas.<sup>8</sup> Regarding the procedure relating to school segregation, the former head of Prime Minister Orbán's Office, János Lázár, described it as "absurd" when it was launched. Minister of Human Resources Zoltán Balog also remarked that they "do not understand what the European Commission's specific problem is."<sup>9</sup>

Since infringement proceedings were opened the placement of Romani children in segregated schools has remained commonplace in Slovakia and Hungary, with signs in the latter that the government have actually exacerbated school segregation, rather than complying with the recommendations of the Commission.

What piecemeal concessions or promises are made by Member State governments to the Commission are not known, so it is difficult to measure progress. We are however able to measure this by the messages we receive from the governments themselves. We can see senior figures of governments talking of increasing segregation. In 2017, Hungarian Minister of Human Resources Zoltán Balog said:

"In the case of the Roma, the decision must be made, we have to think about the education system we build from Budapest.... It's necessary to decide whether an integrated school is good or whether there should be separate schools for Romani children, with a separate educational program for them."<sup>10</sup>

In Slovakia, two years after the infringement procedure was launched, the ERRC and Amnesty International launched a report revealing that little had changed in the routine practice of placing Romani children in separate classrooms or schools. The report revealed Romani children were still routinely being assessed as having "mild mental disabilities" and sent to special schools where the quality of education is inferior.<sup>11</sup>

<sup>8</sup> European Parliament (2015) *Parliamentary Questions*, 18 December, [https://www.europarl.europa.eu/doceo/document/E-8-2015-015993\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-8-2015-015993_EN.html).

<sup>9</sup> ERRC (2016) *Segregation in Hungary: The Long Road to Infringement*, 30 May, <http://www.errc.org/news/segregation-in-hungary-the-long-road-to-infringement>.

<sup>10</sup> The Budapest Beacon (2017) *Minister Balog suggests officially segregating Roma schools*, 25 July, <https://budapestbeacon.com/minister-balog-suggests-officially-segregating-roma-schools/>.

<sup>11</sup> ERRC & Amnesty International (2017) *A Lesson in Discrimination: Segregation of Romani Children in Primary Education in Slovakia*, 1 March, *A Lesson in Discrimination: Segregation of Romani children in Primary Education in Slovakia*.

The Anti-Discrimination Act<sup>12</sup> and the amendments to the School Act<sup>13</sup> explicitly prohibited all forms of discrimination, and especially segregation, in education. However, the ban on discrimination, particularly concerning segregation, has not been accompanied by concrete measures to guarantee effective enforcement in practice. Consequently, *de facto* discrimination and segregation of Romani children persists across Slovakia.

These indications imply that whatever negotiations are ongoing between the Commission and segregationist Member States have, at the very least, not managed to overturn policies of segregation, never-mind begin the process of desegregation.

## **DE JURE V DE FACTO SYSTEMIC DISCRIMINATION**

Article 14 sets out the terms on which Member States must ensure equal treatment is guaranteed in their laws, regulations, and administrative provisions. As demonstrated above in the case of the infringement procedure against Slovakia for school segregation of Romani children, *de facto* discrimination continues despite legislation stating otherwise. The presence of institutionalised antigypsyism, especially at local government level, means systemic discrimination can often continue in countries with laws complying with the principle of equal treatment.

Aside from *de facto* discrimination continuing in Slovakia and Hungary in access to education, the continued presence of segregated ‘nomad camps’ in Italy is contrary to promises made in their 2012 National Strategy for Roma Inclusion. While the Strategy promised to “overcome camps”, stating that “the liberation from the camp as a place of relational and physical degradation of families and people of Romani origin, and their relocation to decent housing, is possible”, very little action has been taken by the authorities to this end. In fact, since then authorities have constructed new segregated camps for Roma to access as social housing.<sup>14</sup> Segregation in provision of housing continues at a municipal level across Italy, despite government assurances of desegregation.

The commitment of the European Commission to effectively deal with discrimination in this area in Italy was seriously called into question when it was revealed that the European Commission repeatedly blocked publication of a report recommending sanctions against Italy for mistreatment of its Roma minority in the camps and systemic discrimination in housing, in an attempt to avoid a damaging public row.<sup>15</sup>

Finally, in December 2019, the European Commission decided that the authorities have no case to answer concerning a decade of virulent anti-Roma discrimination; and that the situation in the squalid segregated camps does not breach the Race Equality Directive (RED). Closing the case confirmed for many observers that, as far as Roma are concerned, the RED is plainly unfit for purpose; and that for too many people, antigypsyism remains the ‘last acceptable form of racism in Europe’.

12 The Anti-Discrimination Act transposed the Equal Treatment Directives of the European Union – Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (“Race Equality Directive”) and Council Directive 2000/78/EC on equal treatment in employment and occupation – and introduced the principle of equal treatment and a prohibition of discrimination on grounds including race, nationality, and ethnic origin in education, as well as other areas, including social security, employment, health care, and the provision of goods and services. Slovak anti-discrimination law not only prohibits direct and indirect discrimination but also imposes a duty to adopt measures that will protect individuals from discrimination.

13 Act No. 245/2008 Coll. on Education (School Act), para 3(d). The School Act entered into force in September 2008, replacing the 1984 Act and its various amendments. In response to the launch of the EU infringement, the government introduced the 2015 amendment of the School Act. The amendment did not come with the requisite financial and human resources to make it actually work; it has not addressed the plight of children already placed in such settings, and failed to introduce concrete measures to tackle segregation in mainstream primary schools.

14 ERRC, Associazione 21 Luglio, Amnesty International (2016) *Italy: The National Strategy for Roma Inclusion: a short-lived hope for Roma in Italy*, 26 February, <https://www.amnesty.org/download/Documents/EUR3035202016ENGLISH.pdf>.

15 Financial Times (2017) *Brussels blocks report on Italy's mistreatment of Roma minority*, 6 April, <https://www.ft.com/content/4c2f83d8-1a11-11e7-bcac-6d03d067f81f>.