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Setting up an active network of
independent non judicial human rights structures

*“The protection of the rights of Roma people
by national human rights structures”*

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WORKSHOP DEBRIEFING PAPER

University of Padua
Interdepartmental Centre on
Human Rights and the Rights of Peoples



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INTRODUCTION

The Joint European Union – Council of Europe Programme “*Peer-to-Peer Project*”, aims to empower national human rights structures (NHRSs) to help prevent and find solutions to human rights violations more effectively at domestic level. Through a series of workshops, where international legal norms are explained and participants discuss their respective experiences to implement these norms, specialised staff members of the NHRSs can strengthen their own human rights competences and increase their awareness of the possibilities for action at domestic level and for co-operation with international mechanisms.

In 2009, the first workshop of the “*Peer-to-Peer Project*” was organised on “*the protection of the rights of Roma people by national human rights structures*” on 24-25 February in Budapest (Hungary) at the European Youth Centre of the Council of Europe. The workshop focused on three specific aspects of the many problems affecting the Roma people.

During the first session, participants, with the help of experts’ presentations, identified obstacles and venues to combat the almost chronic social exclusion of Roma and lack of their participation in the decision making process, which put them on the fringe of the structured societies.

The second session aimed at giving an overview of the international legal standards and mechanisms concerning the housing rights. It was noted by participants that the patent absence of adequate standards of living among the Roma population is an unfortunate common denominator characterising Roma settlements throughout Europe. In this context, several Council of Europe (CoE) member States have been found by CoE monitoring mechanisms in breach of their treaties obligations regarding the housing rights of Roma.

The last session covered the issue related to the education of Roma children, in particular from the perspective of discrimination and segregation in the school system. The participants' discussion highlighted the link between lack of proper education and lack of proper documentation, as well as poor accommodation facilities, which very often are quite distant from school buildings.

The discussion, which took place after each expert's presentation, showed that this issue is of particular interest to NHRs. Despite difficulties experienced in successfully protecting the rights of this vulnerable group, the NHRs seem to have a potential advantage in tackling the specific problems addressed in the workshop. As a possible model for an inventory of measures to be adopted in the three specific workshop's themes, mention was made to the relevant recommendations given by the Commissioner for Human Rights of the CoE in his 2006 report on the human rights situation of Roma, Sinti and Travellers.

As a follow up to this event, it was decided to produce this workshop debriefing paper, which summarizes the findings of the workshop and provides practical information to the NHRs and references to documents concerning their role in protecting the rights of Roma people. Each chapter lists points most relevant to the topics and discussions of the workshop, including summaries of experts' contributions.

CHAPTER 1

General issues and problems

There are approximately twelve million Roma in Europe spread across practically all the Council of Europe's member States. In most of these countries the Roma populations face considerable obstacles to the enjoyment of basic rights, notably in the fields of access to health care, housing, education and employment, and are often disproportionately affected by poverty. Discrimination and racism, also resulting in violence, remain serious problems throughout Europe and present a major impediment to the full enjoyment of human rights.

Issues

A. TERMINOLOGY

The choice of terminology in this workshop does not do justice to the diversity of the various Roma and related groups. Evidently, the question of denomination of minority groups is not merely one of terminology, but first and foremost, one of identity. Many Roma-related groups identify themselves primarily under a denomination other than Roma. However, practical and linguistic reasons necessitated the use of the term "Roma" to refer to the various minority groups of Roma origin for the purpose of this workshop.

The Roma are not an homogeneous ethnic group: there are the Roma (85% of the total), the Sinté (often called Manouches in France, 4%) and the Kalé (or Gitans, 10%); then there are the Gypsies (or Romanichals in Great Britain, 0,5%) as well as the Kalé community: all this without counting the other diverse groups of Roma (much fewer in number but nevertheless Roma still like other Roma). In Europe, 80% of the Roma are sedentarised and do not carry out commercial nomadism. This is mainly because from their arrival in Moldavia and Walachia in the 14th century and up to 1856, the Roma were held in slavery and thus largely sedentary².

² <http://www.dosta.org>

B. IDENTITY

ROMA IDENTITY ISSUES IN SOME COE COUNTRIES AS HIGHLIGHTED BY PARTICIPANTS

Greece: “Roma want to be first considered as Greek and not as Greek Roma”.

Hungary: “Most Roma have double identity. They do not want to be forced by people to be categorized as Roma, but they want to decide by themselves”.

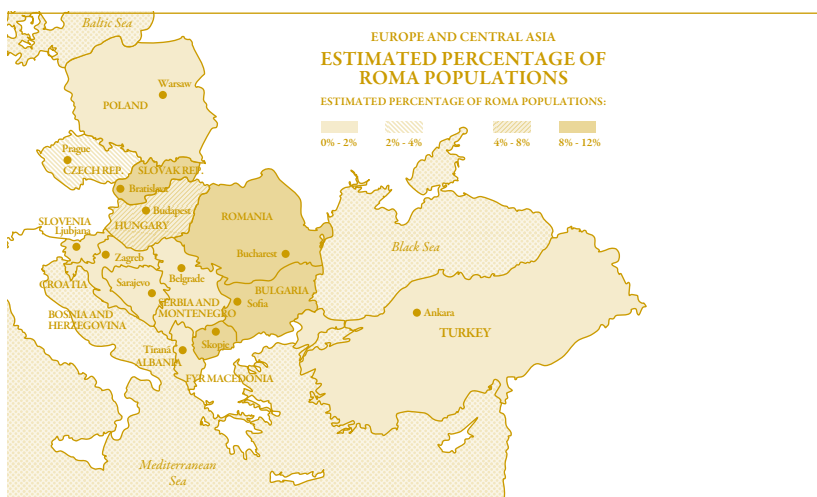
Italy: “Roma say of themselves that they are “breathing with two lungs: one Romani and one Italian”.

Sweden: “Most of Roma prefer to hide their identity because of fear of discrimination”.

Russian Federation: “Gypsy culture was embraced during the Tsar time and became part of the Russian culture”.

C. NUMBER AND LOCATION

There are about 12 million Roma living in all Council of Europe countries.



Roma Population in Europe³

³ <http://www.columbia.edu/itc/sipa/nelson/newmediadev/files/EC.Amap.jpg>

Problems

- *Denied access to health care*
- *Denied right to housing*
- *Unequal education*
- *Denial of employment*
- *Poverty*
- *Racially motivated violence*
- *Anti-gypsism*

Roma probably constitute the most marginalized group of Europe, being present in all of the European countries. They face racial discrimination in most fields of society. They are often denied access to health care, deprived of their right to housing, Roma children receive substandard

education in the segregated school systems and they have a very high rate of unemployment as a result of their denial at employment. Their interwoven web of problems is disproportionately affected by poverty. The discrimination and racism against them often results in violence. The violation of the rights of the Roma can result in racism and anti-gypsism.

A. RACISM

There is an increased climate of hostility toward Roma and Travellers in the Council of Europe member States. Such attitudes reinforce the deeply rooted stereotypes and prejudices, which play a key role in the manifestation of anti-gypsism and intolerance within the society. This climate is fuelled by certain media and by the use of racist remarks in political discourse. Racist remarks are current in countries where the transition to a multicultural society is seen as a threat to national identity, particularly at a moment of economic crisis and globalization. These worrying phenomena undertaken by non-state actors such as skinheads or various paramilitary groups are condemned in a number of public statements by national and international institutions⁴.

⁴ UN experts call for European action to stop violence against Roma”, press release November 2008 <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/021F008588C0AF40C1257507005A3964?opendocument>, and “Combating racism and intolerance against Roma/Gypsies”, ECRI (98) 29 http://www.ihop.org.tr/dosya/coe/ecri/ECRI_3.pdf

B. ANTI-GYPSYISM

Anti-gypsyism is a very specific form of racism, an ideology of racial superiority, a form of “*dehumanization*” and of institutionalised racism. It is fuelled by historical discrimination and the struggle to maintain power relations that permit advantages to majority groups. It is based, on one hand, on imagined fears, negative stereotypes and myths and, on the other hand, on denial or erasure from the public conscience of a long history of discrimination against Roma. It is a distinct type of racist ideology. It is, at the same time, similar, different, and intertwined with many other types of racism. Anti-gypsyism itself is a complex social phenomenon, which manifests itself through violence, hate-speech, exploitation and discrimination in its most visible form⁵.

Specific issues not dealt by the workshop

Addressing in a single workshop the situation of a very large minority, whose members live in different countries under very different circumstances, clearly carries the risk of unjustified generalisations. It is therefore necessary to underline that the issues raised in this workshop do not exhaust the list of problems, which affect all the Roma in Europe. The following points list other interlinked issues affecting Roma people:

- Access to employment;
- Overcoming discrimination linked to provision of adequate education and training (that then accumulates in unemployment and high rate of drop out among Roma pupils);
- Discrimination in health care;
- Racially motivated violence;
- Relation with Police, which often results in rough treatments by Police, abuse of police powers and excessive use of force and of firearms, also against women and minors. The negative image of the Roma in

⁵ Commissioner for Human Rights Viewpoint, August 2008 “*The shameful history of anti-Gypsyism is forgotten - and repeated*”,
http://www.coe.int/t/commissioner/Viewpoints/080818_en.asp

public opinions is cause and effect of the racial profiling of Roma by the Police.

- Displacement, asylum, expulsion and trafficking (the later also relates to the gender issue within the Roma communities).

Tools

- a. Two approaches to protect the rights of Romani people: minority approach v. vulnerable-group approach.

“In the case of a de jure minority, its members are subject to special statutory regulations as to their rights and obligations; whereas in the case of a de facto minority, its members are not entitled to, or do not desire, to make reference to the minority status. While most Roma groups in Europe seem to line up with the minority approach, and, consequently, use its conceptual framework in their search for rights (almost all intergovernmental and non-governmental organisations refer to the Gypsies as the “biggest minority in Europe”), many of the Gypsy collectivities in Greece state that they prefer a claimant platform on the basis of ‘vulnerable’ group. Their quest for recognition, acceptance and equality is pursued not on the basis of ethnic differentiation, but on that of ethnic ‘likeness with particularities’⁶.

- b. The role of local authorities

“Local and regional authorities are often directly responsible for services related to health care, education, housing, water supply, environment, policing and also, in many cases, taxation. These matters affect people’s human rights, not least their social rights. The geographical and personal proximity between inhabitants and local decision-makers has obvious advantages. Local decision-makers are more accessible and they are aware of the latest human rights needs and challenges in their area”⁷.

⁶ Extract from the report and recommendations of the Greek NCHR on issues concerning the situation and rights of the Roma in Greece.

⁷ “Think globally, act locally - for human rights”, Commissioner’s Viewpoint, March 2009 http://www.coe.int/t/commissioner/Viewpoints/090302_en.asp

“Concerning Roma it has to be said that municipalities sometimes undertake work in favour of their Roma population in a national climate and with a background of public opinion that is not at all favourable to Roma rights and in fact can be quite the opposite. This makes the municipalities’ commitment to Roma human rights all the more remarkable and praiseworthy and shows that the local level is where democracy starts and can show the way”⁸.

c. Anti-discrimination law as a means to increase protection the rights of Roma people

Anti-discrimination legislation is of paramount importance for attaining the goals of equality. Each country should have in place a functioning national anti-discrimination system, but in some countries it just remains on a theoretical level. There is therefore a need for improved protection mechanisms at national level to apply standards contained in anti-discrimination laws and eventually ensure the justiciability of Roma rights when these are violated. Rights need to have in place an effective judicial remedy. Without an accessible and effective remedy, rights do not count⁹.

d. Justiciability of Roma rights

“The absence of a clear and unequivocal justice framework on social and economic rights matters threatens further to distort international justice in the coming years, as tribunals bend and warp their own mandates in order to rule on matters in need of just remedy”....“at domestic and international level, a clear and established framework for hearing and redressing social and economic rights violations is the need of the day. Indeed all in-

⁸ Speech by Ian Micallef, President a.i. of the Congress of Local and Regional Authorities at Dosta! Congress Prize for Municipalities - Award Ceremony.

⁹ Anti-discrimination at EU level: Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:EN:HTML>

*dications are that in order to ensure effective protection for all persons, including pariah minorities such as Roma, both a strong social and economic rights protection mechanism and a strong anti-discrimination framework are required*¹⁰.

¹⁰ “Roma Rights, Racial Discrimination and ESC Rights”, August 2005
http://www.coe.int/t/dg3/romatravellers/documentation/discrimination/RomaESC_en.asp

CHAPTER 2

The CoE Commissioners' work on Roma

Mr. Alvaro Gil-Robles and his thematic report on the situation of the Roma

The first Commissioner for human rights (1999- 2006), Mr. Alvaro Gil-Robles, started organising country visits with the aim to scan through a wide range of human rights problems and to address specific human rights issues. These country visits were followed by recommendations and with a repeated follow-up visit two years later. In the course of these follow-up visits he realized that the area in which the less was done was the protection of the Roma rights. He therefore stressed the need for NHRs to work on this issue.

Mr. Alvaro Gil- Robles also introduced *thematic reports*. In February 2006 the Commissioner presented the first thematic report on the human rights situation of the Roma, Sinti and Travellers in Europe¹¹ based on the information and views expressed in his country reports and the responses of national authorities and NGOs to a preliminary version published in 2005. The report embraced the following issues:

- Discrimination and inequality;
- Discrimination in the field of housing;
- Discrimination in education;
- Access to employment;
- Racially motivated violence;
- Issues related to displacement, asylum and trafficking of human beings.

¹¹ *Final report on the human rights situation of the Roma, Sinti and Travellers in Europe*
<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=320815&SecMode=1&DocId=941416&Usage=2>

The report documented the continuing difficulties faced by Roma, Sinti and Travellers in fully enjoying their rights throughout Europe, where discrimination in both the private and the public sphere remain prevalent. While describing the principal human rights violations the Roma are subjected to, the report also presented a series of recommendations for overcoming discrimination in housing, education, employment and health care, as well as the treatment of Roma by public authorities. The report called for active partnerships of all authorities, institutions and the Roma themselves. The report was timed to coincide with the creation of the European Roma and Travellers' Forum, which has had an important role to play in amplifying Roma voices in European and national decision-making processes.

Mr Thomas Hammarberg and his Viewpoints

Commissioner Thomas Hammarberg, continued the country visits and replaced the follow-up visits with the *contact and assessment visits* carried out regularly to help raise the standards of human rights protection in Council of Europe member States. He developed a new tool, the *Viewpoints*¹², which are a bi-weekly articles defining topics the Commissioner has been confronted with and feels important to address. Although these articles are not intended to be comprehensive reports, the present Commissioner wrote on Roma issues a number of Viewpoints, among which:

- “*Forced eviction of Roma families must stop*” in September 2006;
- “*The key to the promotion of Roma rights: early and inclusive education*”, in March 2008;
- “*The shameful history of anti-Gypsyism is forgotten and repeated*”, in August 2008.

¹² http://www.coe.int/t/commissioner/Viewpoints/default_en.asp

COUNTRY VISITS BY THE COMMISSIONERS AS OF 2010

<i>Albania, 2007</i>	<i>Germany, 2006</i>	<i>Poland, 2002</i>
<i>Andorra, 2001</i>	<i>Greece, 2002</i>	<i>Portugal, 2003</i>
<i>Armenia, 2007</i>	<i>Hungary, 2002</i>	<i>Romania, 2002</i>
<i>Austria, 2007</i>	<i>Iceland, 2005</i>	<i>Russian Federation,</i> <i>2004</i>
<i>Azerbaijan, 2007</i>	<i>Ireland, 2007</i>	<i>San Marino, 2008</i>
<i>Belgium, 2008</i>	<i>Italy, 2005-2008</i>	<i>Serbia, 2008</i>
<i>Bosnia and Herzegovi-</i> <i>na, 2007</i>	<i>Latvia, 2003</i>	<i>Slovak Republic, 2001</i>
<i>Bulgaria, 2001</i>	<i>Liechtenstein, 2004</i>	<i>Slovenia, 2003</i>
<i>Croatia, 2004</i>	<i>Lithuania, 2003</i>	<i>Spain, 2001-2005</i>
<i>Cyprus, 2003</i>	<i>Luxembourg, 2004</i>	<i>Sweden, 2004</i>
<i>Czech Republic, 2003</i>	<i>“The former Yugoslav</i> <i>Republic of Macedonia”,</i> <i>2008</i>	<i>Switzerland, 2004</i>
<i>Denmark, 2004</i>	<i>Malta, 2003</i>	<i>Turkey, 2001-2003</i>
<i>Estonia, 2003</i>	<i>Moldova, 2000-2009</i>	<i>United Kingdom, 2004</i>
<i>Finland, 2001</i>	<i>Montenegro, 2008</i>	<i>Ukraine, 2006</i>
<i>France, 2005-2010</i>	<i>Norway, 2001</i>	<i>Kosovo*, 2009</i>
<i>Georgia, 2000</i>		

** All reference to Kosovo, whether to the territory, institutions or population, in this document shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.*

CHAPTER 3

How to improve the visibility and the participation of Roma?

The question of “invisibility” is related to specific situations, such as lack of personal documents, irregular residence or even statelessness that prevent Roma to acquire various documents necessary to accede to social, health and other services provided by the authorities. More generally, this phenomenon is due to the almost chronic social exclusion of Roma, which puts them on the fringe of the structured societies. “Invisibility” is also caused by the absence of Roma people in the decision making process.

NHRs have a crucial role in offering a venue for such individuals to become “visible” and to be heard by the administration, both at central and local level. There are also other actors at international level such as the European Roma and Travellers Forum or the Roma Decade Inclusion.

Improving participation of Roma at international level

A. THE EUROPEAN ROMA AND TRAVELLERS FORUM¹³

Established in 2004 the European Roma and Travellers Forum (ERTF) is an international Roma organisation, which brings together Roma NGOs from all over Europe.

The Forum’s objectives are:

- To establish a fair and democratic representation of Roma in Europe;
- To achieve a fair and equal participation of Roma at all levels of policy-making at national and international level;

¹³ <http://www.ertf.org>

- To achieve an improvement of the living conditions of Roma and related groups;
- To achieve the social integration of Roma on the basis of full equality and mutual respect;
- To fight against anti-Gypsyism in all its forms;
- To make governments and international organisations more aware of their responsibilities towards Roma as their citizens and more responsive towards their needs;
- To become recognised as the key political partner and interlocutor by national governments and international organisations on any issues affecting Roma;
- To achieve official recognition of the Roma as a European people and of Romanes as a European language;
- To achieve official recognition of the Romani Holocaust.

How does the ERTF improve the visibility of Roma people?

- As an international body it has close and privileged links with the CoE;
- It participates in and influences the decision making processes;
- It should be consulted as adviser and invited to meetings of CoE related to Roma.

Nature of the ERTF:

- It is an autonomous and independent body;
- It has the statute of an NGO registered in France;
- It is in partnership agreement with the Council of Europe, which provides for the establishment of relations with the various bodies of the CoE.

Principles of ERTF

- Gender balance
“The composition of the delegation should reflect the principles of representativeness, transparency, geographical specificity, gender equality and generation balance”. (Article 6.3 of the Statute).

- Romanes as common language
Romanes, the universal language of Roma, is one of the three official working languages encouraging a higher participation of Roma in the Forum, thus contributing to an increased visibility of the Roma. The common language also aims to serve as a tool to reinforce Roma identity, increasing Roma visibility.
- Independence
The European Roma Rights Forum's yearly budget was in 2008 of 300,000 Euro. 200,000 Euro of this sum came from the Council of Europe whereas the majority of the remaining was generously donated by the Finnish Government.
 1. The ERTF is working on a text of the European Charter of Roma Rights, which is now being revised and analyzed and will later on be presented at the Committee of Ministers for adoption.
 2. The forum is not set to segregate or stigmatize but to mainstream the Roma issue to fill in the gap between Roma and majority community avoiding to create parallel institutions.

B. OTHER INITIATIVES, FORA AND INSTITUTIONS

I. The Decade of Roma Inclusion

The Decade of Roma Inclusion 2005–2015 is an unprecedented political commitment by European governments to improve the socio-economic status and social inclusion of Roma. The Decade is an international initiative that brings together governments, intergovernmental and nongovernmental organizations, as well as Romani civil society, to accelerate progress toward improving the welfare of Roma and to review such progress in a transparent and quantifiable way. The Decade focuses on the priority areas of education, employment, health, and housing, and commits governments to take into account the other core issues of poverty, discrimination, and gender mainstreaming.

II. OSCE, Office for Democratic Institutions and Human Rights

The ODIHR deals with a variety of issues related to Roma and Sinti

- Racism and discrimination;
- Security of residence;
- Trafficking in human beings;
- Exclusion from public and political life;
- Roma rights in crisis and post-crisis situations.

III. European Roma Rights Center (www.errc.org)

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.

ERRC's core legal defence work is to engage in impact litigation on behalf of Roma before both domestic and international courts. In doing so it is to achieve the following objectives:

- Encourage more interest among local lawyers for Roma rights litigation and develop their capacity in this regard;
- Generate legal opinions, which expand human rights protection for Roma through creative legal argument and reliance on international and comparative human rights jurisprudence;
- Ultimately, bring about social change at a scale that would benefit Roma throughout Europe.

IV. Roma Access Program¹⁴

The Central European University (Budapest - Hungary), with the financial support of the Roma Education Fund, the Sigrid Rausing Trust, and private donors, offers a nine-month preparatory course for promising young Roma from Central and Eastern Europe.

¹⁴ <http://web.ceu.hu/sep/spo/roma.html>

The course aims to help Roma enter international Master's programs on a competitive basis, with a focus on academic and English language development. Full scholarships are awarded, covering travel, tuition, housing and living stipend.

*Improving the visibility and participation at national level:
examples from Council of Europe countries*

1. A. ITALY: DESCRIPTION OF THE ITALIAN CONTEXT REGARDING ROMA POPULATION¹⁵

The number of Roma and Sinti in Italy is currently estimated at 160,000. Though the exact proportion seems open to controversy, more than half of them would be non-Italian, coming mainly from South and East Europe, that is, Bulgaria, Romania and former Yugoslavia Countries. Among the later group of a special concern are the cases of *de facto* or *de iure* stateless Roma, especially minors who, even though they may attend Italian schools until the age of sixteen and have in general access to health care, encounter various, administrative difficulties. In Italy it seems to be widely, and erroneously, held that Roma and Sinti are “nomads” who prefer to live in camps, while on the contrary the majority of population have been residing in the country stably for decades, thought were not able to regularize their position for lack of proper documentation.

In general, the vast majority of Roma and Sinti in Italy, like in most of the Council of Europe member states, remain in urgent need of effective protection of their human rights, especially their social rights, such as the right to adequate housing and to education, by national, regional and local authorities.

¹⁵ *Commissioner for Human Rights of the Council of Europe - Country visit to Italy, 2008*
<https://wcd.coe.int/ViewDoc.jsp?id=1309811&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679> ()

1. B. ITALY: SOLUTIONS¹⁶

Italian authorities should adopt and implement promptly a coherent, comprehensive and adequately resourced national and regional strategy with short- and long-term action plans, targets and indicators for implementing policies that address legal and/or social discrimination against Roma and Sinti, in accordance with the Council of Europe Committee of Ministers Recommendation¹⁷ on *Policies for Roma and/or Travellers in Europe* (20/02/2008). The authorities are urged in particular to effectively monitor and publish regular evaluation reports on the implementation and impact of the above action plans, in line with the above Recommendation. In addition legislation on acquiring citizenship by naturalization should be softened. It would be a step forward in the recognition of rights of Roma in Italy. Roma without a permit of stay who spent several years in the country should be legalized and permitted to stay.

2. A. GREECE: DE FACTO PROBLEM OF THE REGISTRATION OF ROMA IN CIVIL REGISTERS

The registration of Roma at municipalities is very problematic due to incomplete, false or absolute lack of registration. Hence, there are many unregistered Roma, which amount to 5/10% of the Greek Roma population. The existing process of obtaining a registered status is complex, time consuming and it requires the involvement of several public services.

In order to register one of the following proofs are required:

- to have a recognized citizenship or a documented statelessness;
- to obtain through court a birth certificate;
- to register in the municipal registry;
- to be registered for the purpose of military service.

¹⁶ See also on the situation of Roma population in Italy the Report of the assessment visit carried out by OSCE/ODHIR and High Commissioner on National Minorities in 2008 at http://www.osce.org/documents/html/pdf/html/36620_en.pdf.html

¹⁷ CM/Rec(2008)5

In this context, it is very difficult to create a more reliable process that could accommodate registration en masse (i.e. of large number of individuals or families) without very much bending the current Greek civil law system. An important role could be played by the local authorities in favouring a flexible approach to the registration of Roma. However, a recurrent theme noted by the Greek National Commission for Human Rights (GNCHR), is the lack of co-operation of the local authorities for the resolution of problems faced by Roma. The GNCHR stressed the importance of all policies being based on systematic needs assessment and collection of data of their beneficiaries (including educational policies based on an accurate recording of the school-age population of each region and the systematic collection of statistics on the educational status of Roma on a local scale). Particular attention should be paid to the method of data collection and use in order to prevent any potential abuse thereof. Guarantees such as confidentiality, consent of the subject, credibility of the bodies and individuals collecting the data and monitoring mechanisms are deemed necessary.

2. B. GREECE: SUGGESTIONS FOR SOLUTIONS

The best solution would be the combination of certain elements of the following three options:

1. Using existing procedures and register the person on the basis of whatever proof is at the disposal. This option doesn't apply to people who have no data, however it would not require major legislative or procedural changes.
2. Creating a committee that would have the power to check/consider any sort of information and process them. It could build on any evidence, such as place and time of birth etc. and, in the end, a certificate could be issued for the registration of citizenship. This should be followed by the issuing of identity cards and passports. This option could not be applicable to those with no document whatsoever.
3. Direct municipal roll registration: a general census should be carried out (this seems like an easy option but it would probably collide with the existing civil law system).

3. A HUNGARY: INVISIBILITY OF ROMA BEFORE THE ADMINISTRATION

The two major reasons for the invisibility of Roma before the administration in Hungary are:

1. Too many forums at disposal for remedies combined with a strict division of competencies among public bodies.
2. The Data Protection Act of 1992 and the Statistics Act of 1993 do not allow for data collection based on ethnicity, therefore there are no official data on Roma, thus making them “invisible”. However data collection revealing the ethnicity is only allowed if:
 - a. the person gives written permission for the collection of the data;
 - b. if the data is needed for the implementation of the law;
 - c. in criminal justice matters.

3. B. HUNGARY: SUGGESTION FOR SOLUTIONS

Hungarian Ombudsmen are cooperating with local authorities so that local institutions are educated/trained to take individual complaints. The ombudsmen while making tours in the country, takes individual complaints and analyzes practical measures to solve individual complaints and make general recommendations.

The way NHRs can help in breaking invisibility of Roma

The above-mentioned examples indicate the following general scenario:

- combating Roma’s invisibility via the ombudsman’s visibility is a must, but Roma tend not to address their problems to any institution, including NHRs, therefore NHRs “should go to Roma”;
- the rigidity of local administration has to be overcome with a flexible approach on a case by case approach.

At individual level NHRs should:

- mediate in favour of less rigorous legal conditions for obtaining identity papers;
- once the procedure is less rigorous, find solutions for individual cases and provide individual assistance to get identity documents.

At national level NHRs:

- NHRs should provide advices and recommendations when a law is being drafted, a national action plan is prepared or when a country's report is submitted to a treaty body.

CHAPTER 4

Housing rights

The patent absence of adequate standards of living within Roma is an unfortunate common denominator characterising Roma settlements throughout Europe. In addition, little or no specifically designated areas for temporary residence of Travellers create frictions between this people and the other residents, causing pressure and resistance from the local population against the settlement of Roma in their neighbourhood. This situation often leads to the forced eviction of Roma people from private or public land. As recalled by Commissioner Hammarberg, *“decisions that cause some people to move because of new city plans are of course sometimes justified. However, the manner in which such initiatives are prepared and implemented should be in accordance with agreed human rights norms and procedural safeguards for human rights”*¹⁸. The monitoring mechanisms of the European Social Charter have already found several countries in breach of their treaty obligations regarding the housing rights of Roma. Furthermore, the European Court of Human Rights has judged that poor housing conditions can, in certain cases, amount to breaches of the prohibition of torture, and inhuman and degrading treatment under the European Convention on Human Rights (ECHR). The UN Committee against Torture has taken a similar position.

*International standards on housing rights***A. UNITED NATIONS**

- International Covenant on Economic, Social and Cultural Rights Article 11(1):

¹⁸ *“Forced eviction of Roma families must stop”*, Commissioner’s Viewpoint http://www.coe.int/t/commissioner/Viewpoints/060904_en.asp

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.”

- UN Committee on Economic Social and Cultural Rights General Comment 4 (Right to adequate housing):
“In the Committee’s view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity [...] irrespective of income or access to economic resources. Secondly, the reference in article 11 (1) must be read as referring not just to housing but to adequate housing.”
- Criteria that constitute adequate housing:
 1. Legal security of tenures: are you relatively secure in your housing? How secure is your ability to remain?
 2. Availability of services, materials, facilities and infrastructure;
 3. Affordability;
 4. Habitability;
 5. Accessibility;
 6. Location (is the location facilitating employment opportunity, education, general facilities? Etc.);
 7. Cultural adequacy (is it fostering parts of your identity that are linked to cultural identity?).
- UN Committee on Economic Social and Cultural Rights General Comment 7:
General Comment 7 sets criteria for forced eviction, which should not result in the individuals becoming homeless, or in their violation of rights, it should be regulated by a procedure and there cannot be any discrimination in its implementation. According to this Comment forced evictions are *“the permanent or temporary removal against*

their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.” “...forced evictions are prima facie incompatible with the requirements of the Covenant.” “Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”

B. COUNCIL OF EUROPE

The Revised European Social Charter contains a definition of the right to housing which is provided by Article 16 (right to social, legal and economic protection of the family) combined with Article 31 (right to housing). Insufficiency and inadequacy of living condition constitutes violation of Article 16 in conjunction with Article E (non-discrimination clause).

Case-law

A. EUROPEAN SOCIAL CHARTER

Forced eviction without alternative accommodation violates human rights law: the case law of the European Committee of Social Rights in its decisions on the Collective Complaints *ERRC v. Greece* (2005), *ERRC v. Italy* (2005) and *ERRC v. Bulgaria* (2006), condemns the practice of forced eviction of Roma carried out in absence of satisfactory protection and without the provision of adequate alternative accommodation. The Committee affirmed that sanctions against persons or groups of persons are not justified where the State had failed to secure access to rights provided by law. A State is responsible for discrimination by failing to take into account that Romani families run a higher risk of eviction as a consequence of the precariousness of their tenure.

Positive action to remedy discrimination: ruling on the Collective Complaint *ERRC v. Bulgaria*, the European Committee of Social Rights formulated the positive duty of the State to undertake action to address a particular situation of Roma. The Committee affirmed that *“for the integration of an ethnic minority as Roma into mainstream society measures of positive action are needed”* and held that indirect discrimination may arise by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all. Government failure to undertake specific action to address the particular situation of Roma constitutes a breach of the state’s obligations under the European Social Charter.

State responsibility to implement official policy: ruling on the Collective Complaint *ERRC v. Greece*, the Committee established that the ultimate responsibility for implementation of official policy lies with the State regardless of the fact that due to the decentralised structure of government, local, regional or other authorities are responsible for carrying out particular functions.

Equally important, Governments must ensure that the implementation of such policies should not result in further marginalisation and discrimination of Roma. A ruling by the United Nations Committee on the Elimination of Racial Discrimination against Slovakia (2005) clarified unequivocally that policies aiming to keep Roma in substandard conditions or resulting in such severe discrimination violate international law, and tolerance of such acts by public officials cannot stand: *“Taking initially an important policy and practical step towards realization of the right to housing [of Roma] followed by its revocation and replacement with a weaker measure, taken together, do indeed amount to the impairment of the recognition or exercise on an equal basis of the human right to housing.”*

State obligation to collect data disaggregated by ethnicity and gender: in its ruling on the Collective Complaints *ERRC v. Greece* and *ERRC v. Italy*,

the European Committee established that, with regard to collecting data, where it is generally acknowledged that a particular group is or could be discriminated against, States have responsibility to collect data, including data disaggregated by ethnicity or other grounds, with due safeguards for privacy and against other abuses. Such data are indispensable to the formulation of rational policy for social inclusion.

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

The European Court of Human Rights has been repeatedly called on hearing cases on inadequate housing. The leading cases on this matter are:

- *Oneryildiz v. Turkey* (application No. 48939/99), 30 November 2004.

Complaint: The applicant lived in a slum quarter of Istanbul surrounding a rubbish tip which exploded because of the decomposition of the refuse and killed 9 of his relatives. A report showed that the authorities failed to take any measures at the tip in question to prevent an explosion of methane. The applicant claimed that there had been a violation of Articles 2 (right to life), 13 (right to an effective remedy), 6. 1 (right to a fair hearing within a reasonable time) and 8 (right to respect for private and family life) of the Convention, and of Article 1 of Protocol No. 1 (protection of property).

Findings of the Court: the Turkish authorities had known or ought to have known that there was a real risk to persons living near the rubbish tip so they had had an obligation under Article 2 of the Convention to take operational measures to protect individuals living near the rubbish tip. As they failed to do so, they breached article 2. Furthermore, there was a positive obligation on the State under Article 1 of Protocol No. 1 to take the practical steps to avoid the destruction of the dwelling, which was not fulfilled either. Finally, the compensations to the applicant were not appropriate and timely so there had been a violation of Article 13 too.

- Stankova v. Slovakia (application No 7205/02), 9 October 2007.

Complaint: This case concerns the interference with the applicant's right to respect for her home (violation of Article 8). In 1999 the applicant was evicted from her flat where she had lived with her father since 1992, under the relevant provisions of Slovakian law (the Civil Code and Executions Order 1995). Following the death of her father the local authority determined that the applicant had not inherited the flat under the provisions of the Civil Code and no alternative flat was offered to her.

Findings of the Court: The European Court agreed with the Constitutional Court's assessment and concluded that the interference complained of was "not necessary in a democratic society". The Constitutional Court had in fact previously found that the criteria of the Civil Code of Slovakia regarding the inheritance of the flat had not been met but that as no alternative accommodation was offered to the applicant, the eviction proceedings were disproportionate and did not pursue a legitimate objective. However, at that time, the Constitutional Court could not provide redress for any violations it found.
- Connors v. UK (application No. 66746/01), 27 May 2004.

Complaint: the applicant and his family are Gypsies, who led a traditional travelling lifestyle. However, they claim that they suffered so much from harassment and from being moved on with ever increasing frequency that they settled on the local authority's Gypsy site at Cottingley Springs in Leeds (England), where they lived permanently for about 13 years. The applicant complains under Articles 8 (right to respect for private and family life), 14 (prohibition of discrimination), 6 (right to a fair hearing) and 13 (right to an effective remedy) of the European Convention on Human Rights and Article 1 of Protocol No. 1 (protection of property) to the Convention.

Findings of the Court: the Court found that the eviction of the applicant and his family from the local authority site was not attended by the requisite procedural safeguards, namely the requirement to establish proper justification for the serious interference with his rights, and consequently could not be regarded as justified by a "*pressing social*

need” or proportionate to the legitimate aim being pursued. There had, accordingly, been a violation of Article 8.

Suggested strategies for NHRs

RECOMMENDATIONS OF THE COE COMMISSIONER FOR HUMAN RIGHTS RELATED TO HOUSING¹⁹

As a matter of priority, it must be ensured that alternative accommodation is provided, on equal terms with other citizens, to those Roma who live in settlements, which are hazardous to the health of the inhabitants.

Appropriate infrastructure, including electricity, roads, clean water and garbage removal, must be put in place in settlements where such infrastructure does not exist; urgent measures are needed to ensure adequate living conditions in winter time.

Policies of segregating Roma communities in settlements outside otherwise inhabited areas must be ended and, when needed, reverted.

Central authorities should intervene more actively in situations where implementation of housing projects for the Roma is hampered by local authorities and local majority populations.

Initiatives should be launched to promote tolerance and regular contacts between the Roma and non-Roma populations.

Anti-discrimination legislation in the field of private and public housing must be enacted or strengthened while special measures must be taken to ensure that seemingly neutral allocation criteria do not negatively affect Roma populations.

With regard to travelling Roma, it is important to ensure that there is a sufficient number of camping sites with adequate facilities; that sanctions imposed for illegal camping are not disproportional; and that if eviction is unavoidable, consideration is given to the particular circumstances of the persons concerned.

¹⁹ *Final report on the human rights situation of the Roma, Sinti and Travellers in Europe by Commissioner Alvaro Gil Robles*

CHAPTER 5

Right to education

The lack of proper education is linked to the lack of proper documentation and, in a vicious circle, to poor accommodation facilities, which very often are quite distant from school buildings and lack of public transportation. The European Court of Human Rights recently delivered two important judgments regarding discrimination of Roma children in the field of education. A similar case, following a Chamber's judgment, which did not find a violation of the ECHR on this specific issue, is now pending before the Grand Chamber of the Court.

International standards: right to education

A. BACKGROUND

Main education issues

A significant number of Roma children have no or limited access to education, a phenomenon which is indicated by:

- limited access to pre-school education;
- segregated Roma-only communities;
- non – attendance and drop out rates increasing;
- very low enrolment in secondary and university education;
- limited adult education.

Segregation

Roma are overrepresented in schools for children with special needs and this is due to:

- biased selection criteria often based on their ethnic origin;
- biased testing which fails to recognise different language and culture;
- testing about exclusion and not inclusion.

Experience of integrated education for Roma children contains elements of segregation, such as:

- separate classroom buildings within schools;
- separate meal breaks, canteen facilities and cutlery;
- separate classes (remedial classes);
- inferior curriculum;
- withdrawal of non-Roma.

Discriminatory practices and prejudices are a profound cause of inequality in access to education. Typical examples of such practices are:

- bullying and harassment;
- protests of non-Roma parents;
- separate schools or classrooms often poorly equipped with an unsatisfactory teacher-pupil ratio;
- inferior curriculum and facilities;
- no recognition of Roma culture;
- inadequate training for teachers in multicultural education;
- racist attitudes among staff in schools and authorities.

Why is segregation/discrimination wrong?

- it violates principle of human dignity;
- it undermines self-esteem if somebody is not accepted and treated as others are treated;
- isolation of groups on basis of race compounds suspicion, fear and misunderstanding;
- racial segregation is unlawful discrimination;
- denial of access to a quality of education denies Roma opportunity to live and work in dignity
- and improve quality of their lives;
- it denies opportunity for non-Roma children to learn about Roma;
- it entrenches division in society and impacts on democracy.

The vicious circle of marginalization:

- inferior education leads to loss of opportunity – employment, community leadership,
- national development;
- it compounds inferiority and lack of self-esteem;
- loss of skills and talent has an impact on national economies as well as on social cohesion and
- democracy.

B. INTERNATIONAL PROTECTION OF RIGHT TO EDUCATION

- Article 26 (1), the Universal Declaration of Human Rights.
- Articles 13 and 14, the International Covenant on Economic, Social and Cultural Rights provides that:
 - free and compulsory primary education should be guaranteed to the minimum age of employment (15 years);
 - if this is not in place, States should adopt detailed plan of action to achieve it within reasonable number of years.
- Article 28, the UN Convention on the Rights of the Child foresees:
 - right of the child to education;
 - free primary education compulsory and available to all;
 - State's obligation to encourage development of secondary education and to take measures to encourage regular attendance, as well as reduce drop-out rates such as compensating families for loss.

Other relevant treaties;

- UN Convention on the Rights of Persons with Disabilities (Article 24).
- International Convention on the Elimination of All Forms of Racial Discrimination.
- UNESCO Convention against Discrimination in Education.
- ECHR Article 2 of Protocol No. 1 provides that:
 - *No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions;*

- State should guarantee right of access to educational institutions and to recognition of such studies;
- The right is mainly related to primary and secondary schooling;
- The content and quality of the education should be adequate and appropriate;
- There should be a balance between a fair and proper treatment of minorities and needs of majority.
- ECHR Article 14 provides that:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.
- Protocol 12 to the ECHR enlarges the anti discrimination clause by providing that:

“No one should be discriminated by a public authority about the enjoyment on ‘any right set forth by law’ on any ground such as race, colour, language, national or social origin, association with a national minority, property, birth or other status”.

C. REGIONAL MECHANISMS

- EU Race Directive
 - it prohibits direct and indirect discrimination on grounds of racial and ethnic origin in field of education, Article 3(1)(g);
 - it also prohibits harassment and instructions to discriminate;
 - it permits positive action to prevent or compensate for disadvantages linked to racial or ethnic origin;
 - it states that remedies must be effective, proportionate and dissuasive.
- Council of Europe European Social Charter

Article 17 - right to social, legal and economic protection -
State is obliged to:

 - ensure sufficient and adequate education and training for children and young people;

- establish and maintain educational institutions and services;
- provide free primary and secondary education;
- encourage regular attendance at schools.

Article 15 - right of disabled people to education and vocational training -

Article E - prohibition on discrimination -

- Decisions on collective complaints:
 - Autism-Europe v. France (4 November 2003);
 - Mental Disability Advocacy Centre (MDAC) v. Bulgaria (3 June 2008);
 - INTERIGHTS v. Croatia (4 May 2007).

Case-law of the European Court of Human Rights

PRINCIPLES / MAIN ISSUES FROM DISCRIMINATION CASE-LAW:

- Emerging international consensus recognising the special needs of minorities;
- Obligation to protect their security, identity and lifestyles in order to safeguard their interest and to preserve a cultural diversity of value to the whole community;
- Vulnerable position of Roma/Gypsies requires special consideration given to their needs and lifestyle;
- Discrimination occurs when people in similar situations are treated differently without an objective and reasonable justification, e.g. treating complaints of racially motivated violence the same as other complaints or neutral policy with disproportionate, adverse impact can be discrimination; there is no need to prove intention to discriminate.

STATE'S POSITIVE DUTY TO INVESTIGATE SEVERE RACIAL DISCRIMINATION:

The judgment of the European Court of Human Rights in Nachova v. Bulgaria (2005) established that failure by a state to investigate allegations of severe discriminatory treatment and racist attacks may amount to a violation of the prohibition of discrimination and set the standard for a positive duty on authorities to investigate racially motivated violence. The positive duty on authorities is to "do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a racially induced violence." Ever since, an increasing number of the Court's judgments held states accountable for acts of racist violence and failure to punish those involved, committed either by state officials (case of Stoica v. Romania) or by third parties (case of Šečić v. Croatia).

PRINCIPLES / MAIN ISSUES FROM RIGHT TO EDUCATION CASE-LAW

I. DH and Others v. Czech Republic Application no. 57325/00, Judgment 7 February 2006

Complaint: the applicants were 18 Czech nationals of Roma origin who were born between 1985 and 1991 and live in the Ostrava region (Czech Republic). They alleged that, as a result of their Roma origin, they were assigned to special schools.

Findings of the Court: the Court, while recognising the efforts the Czech authorities had made to ensure that Roma children received schooling and the difficulties they had been confronted with, was not satisfied that the difference in treatment between Roma children and non-Roma children was objectively and reasonably justified and that there existed a reasonable relationship of proportionality between the means used and the aim pursued. Since it had been established that the relevant Czech legislation at the relevant time had had a disproportionately prejudicial effect on the Roma community, the applicants as members of that community had nec-

essarily suffered the same discriminatory treatment. Consequently, there had been a violation of Article 14 of the Convention, read in conjunction with Article 2 of Protocol No. 1.

II. Sampanis and Others v. Greece, Application no. 32526/05, Judgement 5 June 2008

Complaint: the case concerns the authorities' failure to provide schooling for the applicants' children during the 2004-2005 school year and their subsequent placement in special classes, in an annexe to the main Aspropyrgos primary school building, a measure which the applicants claimed was related to their Roma origin.

Findings of the Court: the Court stressed the importance of introducing a suitable system for assessing the capacities of children with learning needs, to monitor their progress, especially in the case of children from ethnic minorities, to provide for possible placement in special classes on the basis of non-discriminatory criteria. In addition, in view of the racist incidents provoked by the parents of non-Roma children, the setting-up of such a system would have given the applicants the feeling that their children had not been placed in preparatory classes for reasons of segregation. The Court was not satisfied that the applicants, as members of an underprivileged and often uneducated community, had been able to assess all the aspects of the situation and the consequences of their consent to the transfer of their children to a separate building. The Court considered that the possibility that someone could waive their right not to be the victim of such discrimination was unacceptable. Such a waiver would be incompatible with an important public interest. The Court concluded that, in spite of the authorities' willingness to educate Roma children, the conditions of school enrolment for those children and their placement in special preparatory classes – in an annexe to the main school building – ultimately resulted in discrimination against them. Accordingly, there had been a violation of Article 14 of the Convention taken together with Article 2 of Protocol No. 1 in respect of each of the applicants.

Orsus v. Croatia, Application No. 15766/03, judgment of 17 July 2008

Complaint: the applicants allege that their segregation into Roma-only classes at school deprived them of their right to education in a multicultural environment and made them endure severe educational, psychological and emotional harm, and in particular feelings of alienation and lack of self-esteem. They also complain about the excessive length of the proceedings they brought before the domestic courts concerning those complaints. They rely, in particular, on Article 3 (prohibition of inhuman or degrading treatment), Article 6 § 1 (right to a fair hearing within a reasonable time), Article 2 of Protocol No. 1 (right to education) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights.

Findings of the Court: the Court held, unanimously, that there had been no violation of Article 2 of Protocol No. 1 taken alone or in conjunction with Article 14 of the Convention concerning the applicants' complaint that they were placed in Roma-only classes at primary school; and, a violation of Article 6 § 1 of the Convention concerning the excessive length of the proceedings brought by the applicants in particular before the Constitutional Court.

Referral to the Grand Chamber²⁰: the applicants requested that the case be referred to the Grand Chamber under Article 43 and on 1 December 2008 the panel of the Grand Chamber accepted that request. The evidence brought by the applicants are that:

- Curriculum is not equal in Roma only classes;
- There is no mixed extra-curricular activities;
- Three applicants had good marks for Croatian language, the remainder had average marks;
- They were subject to no regular transfers;
- Pupils stayed in classes after language classes and grades showed improvement;
- Four applicants educated in special classes were never transferred to regular classes;

²⁰ *The European Court of Human Rights held a Grand Chamber hearing on 1 April 2009*

- There is no uniform system of testing;
- There is no testing designed for Roma pupils;
- There is no complaint mechanism in school;
- The applicants did complain to Ombudsman.

Contribution by NHRs to the implementation of ECHR judgments

CHALLENGES

There are a number of challenges impeding the full execution to the benefit of Roma rights of these ECHR judgments, which entails a lack of change in practice. Thus there is an important role for NHRs to challenge governments. NHRs should provide monitoring on how decisions are implemented. In particular, NHRs must monitor national implementation of ECtHR judgment, reporting on national trends of violation of rights to education, on strategies to prioritise Roma inclusion as well as vulnerable minority requiring protection. In addition, NHRs should follow up how states implement action plans (verbal promises are not enough!). In doing so NHRs should take action as follows:

- encourage interpretation of national constitutions to address economic social and cultural rights through guaranteeing the right to education;
- broaden use of references to include international legal standards and reports;
- explore use of *amicus curiae* (third party briefs) before national courts in order to bring in new points of view;
- build partnerships with international and national NGOs (ERRC, Amnesty International, Interrights etc.);
- encourage respect for diversity through development of multi cultural curricula and educational materials;
- deal with invisibility through the visibility of NHRs;
- favour Roma involvement in NHRs;

- take positive action in employment in NHRSs, internships, training and mentoring schemes;
- take positive action in promotion of knowledge of rights;
- organise rights based training courses working with Roma NGOs;
- facilitate Roma's access to documentation in accordance with the Sampanis' case;
- implement different treatment to correct inequality based on Article 14 of the ECHR;
- address anti-Roma prejudice in NHRSs;
- address institutional discrimination;
- organise training for NHRS staff in cultural awareness and prejudice reduction;
- encourage complaints from Roma;
- raise awareness of one's own rights and the rights of others;
- raise awareness about existence of complaint procedures;
- reassure about fears of negative consequences of complaining;
- raise confidence in a system is capable of correcting violations.

DIFFICULTIES AND POSSIBILITIES FOR INTERVENTION BY NHRS

Vojvodina:

Quick facts concerning Roma population: there are 29 057 Roma who declared themselves to be Roma (1.43% of total population of Vojvodina). Not all Roma are included in the census since Roma rather prefer to declare themselves non-Roma. There are 157 Roma settlements in Vojvodina. 32 % of Roma are below 15 years old. High drop out of school especially among girls is quite common.

Action taken by the Provincial Ombudsman (2004): the Office issued a recommendation and condemned the practices of using the test that are culturally bias²¹. Different programs have been started in order to improve the situation of Roma.

²¹ www.see-educoop.net/education_in/pdf/str-improv-roma-educ-rep-ser-yug-srb-enl-t02.pdf

Results: the preschool program of Vojvodina had an increased number of attendees. These pre-schools are available in 5 languages: Serbo-Croatian, Hungarian, Slovak, Rutenian and Rumanian.

The first book in Romanes was printed in the year 2000. Similarly, in high school it was recorded an increasing number of Roma, as well as in the higher education. Special seminars for teachers, assistance for preschool kids and educational training were specifically targeted to Roma children in order to facilitate their enrolment in the regular education system and to encourage them to stay. This included providing text-books and covering alimentionation costs. Funding from provincial level to support such activities has increased. There are local programs now to train Roma adults in certain skills and knowledge in order for them to start their own business.

Complaints related to education dealt by the Provincial Ombudsman Office: an NGO with a project for education of Roma children claimed that they had been discriminated in being allocated funding. The Office investigated but no violations were found. In another complaint it was alleged that Police refused to investigate a case of a girl who was offered money to get married and for this was encouraged to move. The Provincial Ombudsman Office asked police to investigate. After this the parents of the applicant were afraid of letting the girls go to school due to the failure of the relevant authorities to take appropriate action. However, the Ombudsman Office succeeded in requesting the authorities' intervention.

CONCLUSIONS

Examples of NHRs action

The NHRs annual reports, where human rights issues are treated from different perspectives, list very often the protection of Roma rights as one of the five most important fields of activities. Therefore, a brief overview of issues related to Roma as it results from the NHRs reports is given here below. It can serve as an example for further NHRs action in this field.

Discrimination. Discrimination on racial, ethnic and gender's grounds seems to be the category under which most of the Roma related issues are reported by NHRs. For example in its 2007 report the NHR of FY-ROM (Macedonia) mentioned that a Roma student group from Skopje asked for the intervention of the Ombudsman against an offensive and discriminatory radio programme. The National Ombudsman indicated this to the Broadcasting Council, which issued a warning to the radio station, and established a permanent monitoring of its programme to avoid such expressions.

Gender inequality. Gender inequality of Roma women is reported by the Ombudsman of Romania as one of the most particularly severe form of discrimination in the Country and the discussion of the workshop indicated this issue as the most serious form of "invisibility" of Roma: the low level of political participation of Roma women is one of the cause for the lack of involvement of Roma in the decision making process, concerning for example health care and reproductive health for women. The numerous complaints received by NHR of Serbia reflect, according to the National Ombudsman, the characteristic expressions of negative or, unfortunately, generally spread and deeply rooted stereotypes of Roma people among the mainstream population. The NHR representatives from Sweden brought

examples of one of the most innovative and interesting tool for NHRs to combat discrimination of Roma: the Swedish Ombudsman against Discrimination on Grounds of Sexual Orientation, recently merged in a new institution, the Swedish Equality Ombudsman, has the mandate to investigate grievances of individuals and file class action suits on their behalf. In the majority of the cases brought before a court the persons involved are Roma. For examples in Göteborg the court condemned a housing company to pay 40,000 SEK (about 4,000 Euros) to a man of Roma origin who had not been allowed to look at the flats he was interested in. In another case, in an agreement brokered by the court and the Ombudsman office, a camping site paid 200,000 SEK (20,000 Euros) to a Roma family in compensation.

Protection of minority. In the report of the NHRS of Georgia we read that Roma are not recognised as a minority community in Georgia, which in itself according to the Ombudsman seems to be an act of discrimination. Moreover they are often victims of illegal detention and inhuman treatment. However, the Greek Human Rights National Commission reported that many of the Gypsy collectivities in Greece prefer a claimant platform on the basis of ‘vulnerable’ group not on the basis of minority group. Their quest for recognition, acceptance and equality is pursued not on the basis of ethnic differentiation, but on that of ethnic ‘likeness with particularities’.

Housing. Other reports label as discrimination cases of eviction, which are related to housing rights. In January 2007 the Public Defender of the Czech Republic opened an inquiry at his own initiative in the matter of Romani families eviction from a gallery house in Vsetín’s Smetanova street. The Ombudsman of Greece, under issues pertaining to discrimination on grounds of racial origins, has systematically and repeatedly examined the following cases: housing recuperation and evictions or demolitions of Roma makeshift lodgings, while they are away, when these are not accompanied by the designation of an appropriate area for relocation, even if this is temporary. The Greek national Human Rights Commission has repeat-

edly submitted concrete recommendations to competent State institutions, for comprehensive Roma integration policy, since the experience from the field has demonstrated that any State intervention concerning housing of Roma so far has been insufficient and fragmentary.

Education. Access to public education is a problem faced by Roma children according to many NHRs reports. According to the Ombudsperson of Kosovo some children from the Roma community can only be taught in their own languages if they attend parallel schools. The Ombudsperson proposed the unification of curricula and the full implementation of minority language education at all levels. The Ombudsman of Macedonia highlighted this problem with the Ministry of Interior Affairs requesting to make efforts to register more Roma children, because most of them are not involved in elementary education as they are not included in the birth register. More in general, lack of appropriate documentation is reported to be at the origin of the denial of enjoyment of many social rights for Roma children, such as social protection, education, health protection, etc. This is the reason why many of the Roma issue are reported by NHRs under the chapter of Children's right. Cases relating to language rights are an important category in the Ombudsman's work of Finland, a Country where the protection of such rights stem from the Constitution guaranteeing the Sámi, as an indigenous people, as well as the Roma and other groups, including the right to maintain and develop their own language and culture.

Lack of proper I.D. Documentation. According to the Ombudsperson of Kosovo, one of the problems regarding health access of Roma and other ethnic minorities is the fact that they often cannot apply for health insurance or social assistance, since many members of these communities are not registered. This prevents these persons from enjoying many basic rights, such as the right to health care, education, and social protection. According to a report issued by the OSCE Mission in Kosovo on civil registration of these communities (following a monitoring exercise that took place from mid-December 2006 to mid-January 2007), these unregistered per-

sons even risk becoming stateless. The Ombudsperson formulated general recommendations to competent UNMIK²² institutions, but these were scarcely implemented.

Police behaviour. In one case in Macedonia a Roma person lost his life as a result of alleged unprofessional police behaviour. The Ombudsman called for an investigation in the Internal Control Sector and, since it had no effect, turned to the Court and Public Prosecutor. However, the Public Prosecutor denied initiating a court procedure. The report urges the establishment of permanent monitoring of police activities by the Ministry of Interior Affairs.

Concluding remarks

The main question or “the question” raised during this workshop was how much NHRs actually do and can do for improving the human rights situation of Roma. The workshop did not provide “the answer” but only a wide panorama of attempts by NHRs, partly successful and often unsuccessful, to find practical solutions, at national and especially at local level, to the many problems Roma face in their everyday life. It is evident from the reading of this debriefing paper that the situation is very complex despite the impressive number of national and European programmes devised to enhance the protection of Roma rights and their standard of living in terms of health, education, employment and housing. The grim reality is that there are not many safeguards or recipes, which Ombudsmen could easily follow, despite the many recommendations addressed to all stakeholders. Making stakeholders aware and concerned of the issue, suggesting practical solutions and enhancing the involvement of Roma in the decision making process and implementation of these solutions, seem to be avenues for NHRs’ action in this field. As a final note, we would like to summarise the recom-

²² *United Nations Mission to Kosovo.*

mendations given by the Commissioner for Human Rights, aiming to enhance cooperation between the Roma community and the NHRs²³.

Co-operation between the Roma/Gypsy community and the NHRs should be stepped up as a matter of urgency. This would lead to a greater understanding by the public authorities and public at large of the problems facing this community in each country.

NHRs should reach out more actively to the Roma communities in their countries, offering a venue for individuals to complain about discriminatory measures against them. This could be attained by opening decentralised office outside capital cities or arranging for mobile offices.

NHRs should make an effort to engage in their offices a person specialised in Roma questions and if possible belonging to this minority.

NHRs should facilitate organized consultation, for instance, in the municipalities, between the local authorities and the Roma population on housing and other concrete problems. This should ease the rigidity of local administration, for example with less rigorous legal conditions for obtaining proper documentations needed to access to housing, health and education services.

²³ *Final report on the human rights situation of the Roma, Sinti and Travellers in Europe by Commissioner ALVARO GIL-ROBLES.*

APPENDIXES

List of background documents

UNITED NATIONS

Treaties / Conventions

- International Convention on the Elimination of All Forms of Racial Discrimination
<http://www2.ohchr.org/english/law/cerd.htm>
- Reports from the United Nations Special Rapporteurs
General Recommendation No. 27: Discrimination against Roma
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/11f3d6d130ab8e09c125694a0054932b?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/11f3d6d130ab8e09c125694a0054932b?Opendocument)

Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance

- UN experts call for European action to stop violence against Roma

COUNCIL OF EUROPE

Treaties

- European Convention on Human Rights
<http://www.echr.coe.int>
- European Social Charter
<http://conventions.coe.int>

Committee of Ministers

- Recommendation Rec(2008)5 of the Committee of Ministers to member states on policies for Roma and/or Travellers in Europe
- Recommendation Rec(2006)10 of the Committee of Ministers to member states on better access to health care for Roma and Travellers in Europe
- Recommendation Rec(2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe

- Recommendation Rec(2004)14 of the Committee of Ministers to member states on the movement and encampment of Travellers in Europe
- Recommendation Rec(2001)17 on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe
- Recommendation (2000)4 of the Committee of Ministers to member states on the education of Roma/Gypsy children in Europe
- Recommendation (1983)1 of the Committee of Ministers on Stateless Nomads and Nomads of Undetermined Nationality
- Resolution (1975)13 on the Social Situation of Nomads in Europe

Parliamentary Assembly

- Recommendation 1633 (2003) forced returns of Roma from the former Federal Republic of Yugoslavia, including Kosovo, to Serbia and Montenegro from Council of Europe member states
- Recommendation 1557 (2002)1 on the legal situation of Roma in Europe
- Recommendation 1203 (1993) on Gypsies in Europe
- Recommendation 563 (1969) on the situation of Gypsies and other Travellers in Europe

Selected judgments of the European Court of Human Rights

<http://echr.coe.int/echr/EN/hudoc>

- Case of D.H. and Others v. the Czech Republic
- Case of Sampanis and Others v. Greece (in French only)

Selected decisions from the European Committee of Social Rights

<http://www.coe.int/t/dghl/monitoring/socialcharter>

- No. 31/2005 European Roma Rights Center (ERRC) v. Bulgaria
- No. 27/2004 European Roma Rights Center v. Italy
- No. 15/2003 European Roma Rights Centre v. Greece

Council of Europe Coordinator of Activities concerning Roma and Travellers

- Report by the Coordinator on Evictions, November 2008
<http://www.coe.int/t/dg3/romatravellers>

European Roma and Travellers Forum

- <http://www.coe.int/t/dg3/romatravellers>

The Commissioner for Human Rights

<http://www.coe.int/t/commissioner>

- Final Report on the Human Rights Situation of the Roma, Sinti and Travelers in Europe
- Rapport final sur la situation en matière de droits de l'homme des Roms, Sintis et Gens du voyage en Europe
- Collection of Commissioner viewpoints and other resources on discrimination

ECRI (European Commission Against Racism and Intolerance)

- Fight against racism and intolerance towards Roma, ECRI (98) 29 (EN)

EUROPEAN UNION

<http://eur-lex.europa.eu/en/index.htm>

- The Racial Equality Directive 2000/43/EC / Directive sur l'égalité raciale 2000/43/CE
- The Employment Equality Directive 2000/78/EC / Directive 2000/78/CE en matière d'emploi
- The Situation of Roma in an enlarged European Union
<http://www.errc.org/db/00/E0/m000000E0.pdf>

OSCE/ODHIR

- Implementation of the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area
http://www.osce.org/publications/odihhr/2008/09/33130_1186_en.pdf

OTHER USEFUL LINKS AND DOCUMENTS

- European Roma Rights Centre
<http://www.errc.org>
Roma Rights, Racial Discrimination and ESC Rights
- Case of Orsus and Others v. Croatia
<http://www.errc.org/cikk.php?cikk=3002>
<http://www.errc.org/db/03/9F/m0000039F.pdf>
- Decade of Roma Inclusion 2005-2015
<http://www.romadecade.org/>
- Roma Campaign: DOSTA!
<http://www.dosta.org/>

Workshop programme

MONDAY, 23 FEBRUARY 2009

Arrival of participants at the European Youth Centre

20.30 Buffet-dinner

TUESDAY, 24 FEBRUARY 2009

9.30 – 12.00 **OPENING SESSION**

Issues addressed by the workshop

by STEFANO VALENTI, P2P Project manager, Interdepartmental Centre on Human Rights and the Rights of Peoples of the University of Padua

The Commissioner's work on the issues addressed by the workshop

by MARKUS JAEGER, Head of the National Human Rights Structures Unit, Office of the Council of Europe Commissioner for Human Rights

10.30 – 11.00 Coffee break

Discussion

12.00 – 13.30 Lunch break

13.30 – 17.30 **WORKING SESSION 1: ROMA "INVISIBILITY"**

Lack of personal documents/statelessness/irregular residence and low level of political participation

The perspective at international level: problems and solutions

by ROBERT RUSTEM, European Forum for Roma and Travellers, Directorate General of Social Cohesion, Council of Europe

The perspective at national level: problems and solutions

By MARCO BRAZZODURO, Professor of Social Policy at the Faculty of Statistics, University of Rome "La Sapienza" (Italy)

15.30 – 16.00 Coffee break

Difficulties and possibilities for intervention by NHRs

Exchange of experiences with contributions from NHRs, namely from Greece and Hungary

Discussion

17.30 Close of first day's work

20.00 Dinner

WEDNESDAY, 25 FEBRUARY 2009

9.00 – 13.00 **WORKING SESSION 2: HOUSING RIGHTS**

Eviction, access to (social) housing, failure to provide public utilities

Standards and protection mechanisms at international level

by CLAUDE CAHN, independent expert on housing rights, Thoiry (France)

Discussion on implementation of standards at national level

10.30 – 11.00 Coffee break

Difficulties and possibilities for intervention by NHRs

Exchange of experiences with contributions from NHRs

Discussion

12.30 – 14.00 Lunch at the European Youth Centre

14.00 – 17.30 **WORKING SESSION 3: RIGHT TO EDUCATION**

Discrimination and segregation in the school system

Standards and protection mechanisms at international level

by GERALDINE SCULLION, independent expert on equality and human rights, Belfast, Northern Ireland (United Kingdom)

Discussion on implementation of standards at national level

15.30 -16.00 Coffee break

Difficulties and possibilities for intervention by NHRS

Exchange of experiences with contributions from NHRSs, namely from Sweden and Vojvodina (Serbia)

Discussion

17.30 - 18.00 Winding-up of the workshop
MARKUS JAEGER

20.00 Dinner

THURSDAY, 26 FEBRUARY 2009

Departure from the European Youth Centre

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²⁴ All reference to Kosovo, whether to the territory, institutions or population, in this document shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

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