

Challenges to Roma Integration Policies in the European Union and Among Candidate Countries

European Roma Rights Centre (ERRC)
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While a number of governments of EU Member States have singled out Roma, Sinti and Traveller communities as disproportionately exposed to social exclusion and have committed to undertake targeted actions to integrate Roma in society, effective social inclusion policies on Roma are still to be seen.² Most worryingly, despite recognition of the magnitude of problems facing Roma, there are few attempts at national level to curb developments which deepen social exclusion of Roma. An escalation of forced evictions of Roma in EU Member States, candidate countries, and countries which will join the EU in 2007, including Bulgaria, Czech Republic, Hungary, France, Greece, Italy, Slovenia, Slovakia, Turkey and others, forces numerous Roma into segregated and extremely substandard conditions and deprives them from access to basic social and economic rights. Segregation of Roma at school deepens in some countries with school facilities which used to have multiethnic student bodies becoming predominantly Romani and degenerating in academic standards. Such developments are often authorised, instigated or condoned by local or regional governments. Despite the fact that actions or inaction of local governments are not in compliance with national law and central government policies on Roma, central governments have not been effective in challenging them.

The Aviles municipal program for the eradication of shantytowns presented by Spain provides a solid basis for drawing lessons for future programming and implementation of Roma-specific actions in Spain and other Member States. The factors which contributed to the success of the program have been comprehensively elaborated in the host country report and in the discussion paper.

In this paper, the ERRC and ENAR offer a non-exhaustive review of broader issues from the political and social context of EU Member States which pose obstacles to the effective implementation of social inclusion policies on Roma. The paper examines five main barriers to the effective implementation of equality and social inclusion policies: (1) lack of positive duty requirements in national legislation; (2) adverse impact of broader legislation and policy; (3) pervasive anti-Romani racism; (4) lack of disaggregated data; and (5) lack of measures to address multiple forms of discrimination.

¹ The European Roma Rights Centre is an international public interest law organisation which monitors the rights of Roma and provides legal defence in cases of human rights abuse. For more information about the European Roma Rights Centre, visit the ERRC on the web at <http://www.errc.org>.

The European Network against Racism (ENAR) is a network of European NGOs working to combat racism in all EU member states. ENAR aims to fight racism, xenophobia, anti-Semitism and Islamophobia, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national initiatives with European initiatives. See www.enar-eu.org.

² In an assessment of the broader impact of social inclusion and integration strategies on ethnic and religious minorities, the recent 2005 ENAR Shadow Report on Racism in Europe concludes that: "while there are some interesting initiatives emerging... on the whole the integration and social inclusion policies and initiatives can be described as ad hoc, inconsistent and limited", see: http://www.enar-eu.org/en/publication/shadow_reports/europe2005_EN.pdf, p 31.

1. Lack of Positive Duty Requirements in National Legislation

Adoption of anti-discrimination legislation transposing the EU Race Equality Directive by EU Member States has provided victims of discrimination with a key tool for redress. While acknowledging the significance of anti-discrimination legislation, however, experiences in some countries where such legislation has been in operation for several decades have indicated its limitations, especially in tackling systemic discrimination affecting groups of individuals.³ Most importantly, anti-discrimination law as it is frequently interpreted in the Member States relies on enforcement by individuals and emphasises the negative obligation not to discriminate rather than proactive measures to ensure equality of opportunity. The existing model of anti-discrimination law which dominates the European landscape fails to address legacies of discrimination and disadvantage.

In recognition of these limitations, equality legislation in some Member States has been developed to include a positive duty on public authorities to promote equality. In some cases this positive duty has also been extended to the private sector. This measure combines the negative obligation not to discriminate with a positive obligation to undertake measures to ensure equality of opportunities for racial and other minority groups. As such, it heightens possibilities to address systemic causes of inequality arising in the functioning of public and other institutions. In order to comply with the positive duty requirement, public bodies are required to undertake a range of measures, including carrying out an ongoing monitoring and assessment of the outcomes of their policies with respect to ethnic minorities and other groups, as well as designing measures to secure equal treatment of these groups.

With regard to Roma integration processes, the introduction of a legally binding obligation to promote equality, including formal monitoring and sanctions, is required to counter a host of problems plaguing the implementation of integration policies, including lack of political will, resentment and opposition at local level, segregation from the mainstream policy environment, as well as a range of other countervailing forces.

1.1 Positive Duty to Eliminate School Segregation

The consistent failure of governments to implement school desegregation policies of Roma in the past decade unequivocally demonstrates the need for introducing a legally binding obligation to desegregate Romani education and integrate Roma and other excluded groups in mainstream education. Despite the fact that school segregation of Roma has been acknowledged as a problem by several Member States, school desegregation actions are non-existent or close to non-existent (Czech Republic, Slovakia); or such actions are abandoned by the state to the domain of the civil society (Bulgaria); or the effective implementation of such actions is blocked by resistance at the local level and lack of accountability (Hungary). In the case of Hungary, desegregation policy has been made operative primarily through financial incentive mechanisms, with few or no sanctions applied to schools refusing to implement or otherwise opting out of the integration policy. The lacuna of enforcement has provided leeway for educational authorities at local level to opt out of such policies. To ensure that school desegregation is implemented, governments should adopt desegregation laws imposing a positive duty on educational authorities to integrate Romani children in mainstream education.

³ See for example, Barbara Cohen. "Positive Obligations: Shifting the Burden in Order to Achieve Equality". In *Roma Rights*, "Positive Action to Achieve Equality", 1/2005.

Recommendation: Governments should adopt school integration legislation imposing a duty on educational institutions and other relevant authorities to eliminate segregated schooling of Roma and other groups in disadvantaged positions.

1.2 Positive Duty to Promote Equality in Employment

Access to employment for many Roma across the European Union, and especially in Central and Eastern Europe, is seriously impaired by raw and frequently open and explicit discrimination in recruitment practices. Working conditions and advancement prospects for employed Roma are also significantly constrained by direct and indirect discrimination. Employers in the public and private sector alike are not under serious threat of financial loss in case of discrimination, because sanctions imposed by anti-discrimination laws are usually not dissuasive, especially for larger companies. Recent ERRC research has indicated that despite existing equality legislation prohibiting discrimination on the grounds of ethnicity, many companies appear unconcerned and take no positive measures to ensure that they comply with the legislation or to ensure that equality in employment is effective in their hiring and employment practices.⁴ Neither public nor private sector enterprises, particularly in Central and Eastern Europe, are making serious effort to apply equal opportunity or diversity policy.

Recommendation: Governments should introduce legislation which provides a strong and regulated approach to achieving equality in employment. A positive model is the Fair Employment and Treatment Order in Northern Ireland. The burden for change must rest with employers, public and private. Employers must be made responsible for achieving a workforce representative of the diversity of the wider society, and a workplace free of discrimination. Employers are also charged with applying the relevant measures and taking the necessary steps to ensure diversity at the workplace.⁵

2. Adverse impact of legislation and policies on Roma

The impact of Roma-specific policies is often undermined by existing legislation and policies in key sectoral fields which have a disproportionately negative impact on Roma.

In the field of housing, in a number of countries such as Bulgaria, Croatia, Czech Republic, Hungary, Romania, Slovakia, Turkey and others, domestic law affords little or no protection of the right to adequate housing. Furthermore, in the post-1989 period housing rights have been dramatically eroded in a number of countries by, for example, removing protections against forced eviction. Some legislative provisions in the field of housing, tend to have a disparate impact on Roma, who are overrepresented among socially vulnerable groups. Legal provisions excluding squatters from access to social housing for a number of years also exist in Bulgaria, and Croatia similarly operates indirectly discriminatory social housing allocation systems. Racial segregation of Roma in the field of housing is

⁴ For a summary of the research see Ann Hyde. "Tackling the Systemic Exclusion of Roma from Employment". In *Roma Rights*, "Exclusion from Employment", 1/2006. Publication of the full research by the ERRC is forthcoming.

⁵ For an overview of measures which can be implemented directly by private and public employers see: ENAR (2006) Convincing employers to take action to combat racial discrimination and promote equality, available at: http://www.enar-eu.org/en/factsheets/FS27_employment_EN.pdf

rising visibly in the Czech Republic, Hungary, Slovakia and elsewhere, as a result among other things, of policies excluding Roma from access to social housing, or of otherwise undermining equality in the field of social housing.

In some countries, national authorities have acted to attempt to ameliorate or override local efforts to exclude Roma from social housing. For example, in 2005, the Hungarian Constitutional Court struck down Budapest local government decrees excluding from eligibility for social housing persons who previously occupied apartments or other premises in violation of the owners' property rights or without legal entitlement. The ERRC challenged the decree before the Constitutional court on the grounds that the decree had a disproportionate, negative impact on Roma, many of whom resort to squatting to avoid severe exposure to homeless life.⁶ Pursuant to the Constitutional Court decision, Hungarian Parliament has amended domestic law to specify that rules on the allocation of social housing must be social in nature. These positive developments have however not yet been sufficient to correct problematic law in the area of housing, nor to reverse over a decade of developments including widespread homelessness. Hungarian lawmakers have to date declined to establish a right to adequate housing under domestic law, and have not yet joined the Revised European Social Charter, thus avoiding establishing law in this area.

In the field of health care, Roma in a number of countries such as Bulgaria, Romania, Slovenia do not have access to health care due to the fact that they are not covered by health care insurance. In Bulgaria and Romania, existing provisions for state-provided, non-contributory health insurance tend to exclude a disproportionate number of Roma. One reason for this situation is that eligibility for non-contributory health insurance is contingent on eligibility for social assistance. For various reasons, including discriminatory denial of access to social benefits, many Roma do not have access to such benefits and are also excluded from social health insurance.

In Slovenia, exclusion from a range of social and economic rights affects Roma citizens of the former Yugoslav Republic who found themselves arbitrarily excluded from Slovene citizenship after the formation of the independent Slovene state in 1991. The distinction both in law and in practice, between so-called "autochthonous" Roma (whose families have lived continuously in Slovenia for generations) and so-called "non-autochthonous" Roma (who are perceived to have primary links to other former Yugoslav republics, or are otherwise viewed as not having a full claim on belonging in Slovenia) has deprived Roma of access to citizenship as well as of access to a range of basic rights. Many Roma classified as "non-autochthonous" are not able to become Slovene citizens, notwithstanding real factual ties to Slovenia, in many cases dating prior to Slovenia's independence in 1991, and despite November 2002 legal amendments to the Slovene Act on Citizenship attempting to some extent to ameliorate conditions precluding such persons from having access to Slovene citizenship. Similarly, there are continuing socially degrading effects of the 1993 Czech Act on Citizenship, which was designed to exclude Roma from the body politic in the newly independent Czech Republic, notwithstanding repeated amendments to the law.

⁶ After these developments, on 2 May 2005, the Parliamentary Commissioner for Civil Rights and the Parliamentary Commissioner for National and Ethnic Minority Rights officially requested the Minister of Interior to order the county-level administrative offices to examine the local self-government regulations on social housing, with the aim to ensure that criteria for allocating social housing are constitutional.

Recommendation: Governments should carry out a comprehensive review of legislation and policies in the area of social inclusion and assess their impact on Roma and vulnerable groups in similar positions. Laws and policies which are found to have a disproportionate negative impact on Roma and other socially vulnerable groups should be amended without delay. Across the EU member states particular attention should be given to the impact of immigration and citizenship policies on access to social rights, the European Commission should monitor carefully restrictions of social rights in the context of freedom of movement in an enlarged European Union.

3. Pervasive Anti-Romani Racism

High levels of anti-Romani racism pose serious obstacles in sustaining government policies. Currently, in a number of EU Member States, political parties represented in national parliaments, and in the case of Slovakia – in the government coalition, are associated with repeated expressions of contempt and hostility towards Roma. Anti-Romani racism emerges in two broad forms: (i) Roma are stigmatised as perpetrators and abusers of the state's social security system; and (ii) Roma are presented as a primitive and homogenously marginalised group. In both instances, the public image of Roma works against the success of integration policies. In the first instance, integration policies are perceived as a privilege at the expense of the majority, and in the second instance, integration policies are deemed to be a waste of resources. Governments have not undertaken effective strategies, in many instances no efforts have been undertaken at all, to communicate to the broader society the policy measures for the integration of Roma. In a number of countries, anti-Romani racism blocked implementation of central government policies at the local level. In Slovakia and Greece, for example, local authorities have effectively blocked plans for provision of adequate housing for Roma.

The Thematic Report pays particular attention to the need to mute non-Romani opposition to integrated schools, it acknowledges that such opposition can be overcome if dealt with sensitively and with adequate resources.

Recommendation: Governments should undertake focused awareness-raising campaigns to confront anti-Romani racism. Furthermore, governments should design appropriate means of communicating integration policies to the majority without stigmatising Roma.

4. Lack of data disaggregated by ethnicity and gender

A major obstacle to measuring the magnitude of discriminatory treatment and social exclusion affecting Roma is the failure of governments in many EU Member States to generate and make available in a form readily comprehensible to the general public aggregate data on the situation of Roma and other minority groups in fields such as education, healthcare, housing, social services and in other areas relevant for social inclusion. Moreover, the lack of statistical data on the situation of Roma in various sectoral fields makes the design, monitoring and evaluation of policies and programmes difficult and unreliable. According to interpretation of data protection laws frequently promoted by governments, gathering data according to ethnicity is "illegal". In its data protection rules however, the EU has consistently affirmed that data protection rules apply to personal data, not to aggregate data about groups, nor data disaggregated by ethnicity or other criteria. In addition, several international bodies

have urged Member States to generate ethnic data. The European Union's social inclusion process would require a range of requirements on governments to produce accurate data on the situation of marginalised groups.

Recommendation: Local and regional data collection and evaluation mechanisms should complement national data collection strategies, in order to facilitate comprehensive analysis of the interplay between local and national strategies. The Open Method of Cooperation has a particular role to play in encouraging the collection of comparable Europe social inclusion data that is disaggregated by ethnicity.

5. Lack of Measures to Address Multiple Forms of Discrimination Experienced by Roma

There are particularly vulnerable groups within the Romani community facing multiple forms of discrimination – i.e. discrimination based on more than one ground, for example ethnic background and gender. Romani women, children, disabled persons, homosexuals and the elderly are exposed to intersectional discrimination and multiple vulnerability factors which are not studied and addressed by social inclusion policies. In recent years, the higher vulnerability of Romani women to violations of fundamental human rights, especially in the context of trafficking, domestic violence, and reproductive rights, has received increasing attention. Efforts to address the specific situation of Romani women however are still fragmentary and incoherent and inclusion of Romani women in mainstream gender equality policies is not a priority.

Recommendation:

Governments should examine the situation of particular groups within the Romani communities such as women, children, disabled persons, homosexuals and the elderly, who are exposed to multiple exclusionary factors and are not taking advantage of mainstream policies targeting similar groups in the majority population. Specific actions addressing the situation of these groups should be designed. Furthermore, governments should ensure that existing laws and policies for gender equality and equality for people with disabilities include provisions for preventing and addressing the multiple barriers which are facing individuals from ethnic minority groups.

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