

AMNESTY INTERNATIONAL

SUBMISSION TO THE
EUROPEAN COMMISSION
ON THE IMPLEMENTATION
OF THE EQUALITY
DIRECTIVES

**AMNESTY
INTERNATIONAL**



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INTRODUCTION

Amnesty International submits this contribution to the European Commission on the occasion of its monitoring report on the implementation of Directive 2000/43/EC, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (hereafter the Race Equality Directive) and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (hereafter the Framework Employment Directive).

The information included in this submission draws on research undertaken by Amnesty International in recent years, specifically focusing on discrimination against the Roma on grounds of race or ethnicity in several areas including housing, access to goods and services and education; and against Muslims on grounds of religion or belief in employment. A list of reports and other materials published by Amnesty International on these issues can be found in the appendix to this submission.

The bulk of this submission, **Chapter 1**, deals with discrimination against the Roma and provides specific country-based examples of persistent and widespread discrimination on grounds of race or ethnicity in access to and supply of adequate housing (Italy 1.1.1 and Romania 1.1.2), access to goods and services (Slovenia 1.2) and access to education (Slovakia 1.4.1 and Czech Republic 1.4.2). It also deals with discriminatory practices within the police especially with regards to preventing and effectively investigating racially motivated crimes (1.3). Some police functions constitute services and thus are covered by the material scope of the Directive.

Chapter 2 deals with discrimination against Muslims on grounds of religion or belief in employment and focuses on the flawed implementation of the Framework Employment Directive in countries such as Belgium (2.1.1) and France (2.1.2)

Other areas relevant for the assessment of the implementation of the two Directives, such as existing gaps of protection, are tackled in **Chapter 3** of this submission.

A ROBUST ROLE FOR THE EUROPEAN COMMISSION IN ENSURING EFFECTIVE IMPLEMENTATION OF EU LEGISLATION

The European Commission should play a robust role in enforcing its equality law and in ensuring that its implementation at national level is consistent with international human rights law. Such a role stems from the clearly established powers the Commission has at its disposal to monitor the application of EU law based on Article 258-260 Treaty on the Functioning of the European Union, TFEU and Article 6.3 of the Treaty on the European Union (TEU) according to which, “*fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law*”.¹

¹ See the consolidated versions of the *Treaty on the European Union and the Treaty on the Functioning on the European Union*: <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2010:083:SOM:EN:HTML> (accessed 25 January 2013).

This role is consistent with the Charter of Fundamental Rights of the European Union, legally binding since 2009, and applicable to member states when they are “*implementing Union law*” (Article 51.1). The European Commission clarified that it may intervene, as guardian of the Treaties, when a member state implements “*a directive in a manner contrary to fundamental rights or when a final decision of a national court applies or interprets the Union law in a way contrary to fundamental rights*”.² The European Court of Justice has also established in its case law that human rights are general principles of EU law.³

As foreseen by the 2006 reports on the application of the Race and the Framework Employment Directives and following infringement procedures undertaken by the European Commission to tackle problems arising in member states in relation to formal transposition of the Directives, the major challenge today is to ensure effective implementation and enforcement.⁴

Amnesty International remains concerned about the implementation and enforcement of the two Directives in some member states. Examples below show that authorities in some instances have not only failed to tackle entrenched discrimination against the Roma but also promoted policies and measures that further contributed to their segregation. Private employers discriminate against individuals wearing religious and cultural symbols and dress without domestic courts having redressed this violation of their human rights.

What is more, Amnesty International remains concerned that the European Commission has not, in some instances, effectively ensured the respect of the principle of non-discrimination by its member states when implementing EU law. The Commission has for instance failed to use all its powers to ensure that France does not implement Directive 2004/38/3C in a discriminatory manner against the Roma.⁵

In line with the Lisbon Treaty and the jurisprudence of the European Court of Justice, Amnesty International calls on the European Commission to fully undertake its role to ensure that EU legislation, including the Race and the Framework Employment Directives, is implemented in a manner fully consistent with international human rights law.

² Communication COM (2010) 573 final. *Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union*, Brussels 19 October 2010.

³ See for instance Case 29/69 *Stauder* [1969] ECR 419, Case 11/70 *Internationale Handelsgesellschaft* [1970] ECR 1125, Case 4/73 *Nold* [1974] ECR 491.

⁴ The application of Directive 2000/43 of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, COM (2006)643, Brussels 30.10.2006. The application of Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. COM (2008) 225, Brussels, 8 July 2008.

⁵ Amnesty International, Press Release 2010, *Amnesty dismayed at Commission's response to France's Roma treatment*, <http://www.amnesty.eu/en/press-releases/fight-discrimination-campaign/amnesty-dismayed-at-commissions-response-to-roma-treatment-0466/> (accessed 31 January 2013).

1. IMPLEMENTATION OF DIRECTIVE 2000/43/EC

The European Court of Human Rights has stressed that racial discrimination is a particularly insidious form of discrimination that “requires from the authorities special vigilance and a vigorous reaction”. According to the Court, authorities “must use all available means to combat racism, thereby reinforcing democracy’s vision of a society in which diversity is not perceived as a threat but as a source of enrichment”.⁶

The European Court of Justice Advocate General Kokott recently commented, “[u]ltimately, Directive 2000/43 is a particular expression of the general principle of equal treatment, which is one of the general principles of European Union law and is protected as a fundamental right under Articles 20 and 21 of the Charter of Fundamental Rights of the European Union. For this reason too, its scope cannot be defined restrictively”.⁷

Existing research, including the European Union Minorities and Discrimination Survey, shows that many ethnic minority groups experience discrimination and violence on grounds of race or ethnicity. Amnesty International has, for instance, recently documented violence and discrimination experienced by ethnic minorities with migrant background in Greece and Italy.⁸

In recent years Amnesty International has specifically focussed on combatting discrimination against the Roma who represent one of the largest and most disadvantaged ethnic minorities in Europe. A recent survey by the United Nations Development Programme (UNDP) and the European Union Agency for Fundamental Rights (FRA) found that half of Roma respondents believed they had been victims of discrimination on grounds of ethnicity in the 12 months prior to the survey.⁹ This survey also found that Roma are widely excluded from employment and higher education and are less likely to be covered by health insurance.¹⁰

⁶ *Timishev v. Russia*, judgment of 13 December 2005, par. 56, *Nachova v. Bulgaria*, judgment of 6 July 2005, par 145.

⁷ Opinion of Advocate General Kokott, Case C-394/11 Valeri Hariev Belov. 20 September 2012, par. 63.

⁸ Amnesty International, *Greece: The end of the road for refugees, asylum-seekers and migrants* (Index: 25/011/2012). Amnesty International, *Exploited Labour: Migrant workers in Italy’s agricultural sector* (Index: 30/020/2012).

⁹ European Union Agency for Fundamental Rights and the United Nations Development Programme, *The situation of Roma in 11 EU Member States*, 2012. This survey confirms the findings of the FRA EU-MIDIS according to which 47 per cent of the Roma surveyed indicated they were victims of discrimination based on their ethnicity the previous 12 months. See European Union Agency for Fundamental Rights. EU-MIDIS. Data in Focus: the Roma. 2009.

¹⁰ The survey found that in most countries within its geographical scope the number of Roma saying they were unemployed is at least double that of non-Roma. In Italy, Slovakia and Czech Republic four or five times more Roma than non-Roma said they were unemployed. In Portugal, Greece, Spain, France and Romania, fewer than one out of 10 Roma is reported to have completed upper-secondary education. In the Czech Republic and Poland fewer than one in three young Roma are reported to have completed this level of education.

Although in general member states have transposed relevant provisions of the Race Equality Directive into their domestic legislation, Romani communities and individuals still face widespread and systemic discrimination daily.

1.1 ACCESS TO AND SUPPLY OF ADEQUATE HOUSING

Although the Directive includes housing in its material scope (Article 3.1 (h)), implementation of this provision is flawed in many member states, in the light of the discriminatory practices experienced by ethnic minorities, and especially the Roma, to access adequate housing.

As Amnesty International has often reiterated, and in line with the approach adopted by the UN Committee on Economic, Social and Cultural Rights, the right to adequate housing encompasses several key components and should not be interpreted restrictively.¹¹ In this respect, Article 3.1 (h) of the Race Equality Directive should be interpreted in line with international human rights standards and especially Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)¹² and Article 7 of the Charter of Fundamental Rights of the European Union.¹³

In view of the well-established right to adequate housing in international law, together with its progressive interpretation as “the right to live somewhere in peace, security and dignity” and not “a mere shelter over one’s head”¹⁴, we submit that housing cannot be considered merely as a “good” or a “service” as suggested by the Directive. We ask the Commission to apply the broadest possible interpretation of the term ‘housing’ when considering effective implementation of Article 3.1(h) of the Race Equality Directive. Failing to take this approach would significantly limit the impact of the Race Equality Directive, contrary to the objectives set by the EU Treaties and the EU Charter on Fundamental Rights.

The European Union should aim to combat discrimination “*in defining and implementing its policies and activities*” (Article 10 TFEU). Such an objective should be pursued in policy areas where the EU has exclusive competence (Article 4 TFEU) but also in areas where the EU shares competences with its member states (Article 5), or has the role of coordinating, supporting or supplementing them (Article 6), for instance in education.

The European Union Agency for Fundamental Rights and the United Nations Development Programme, the situation of Roma in 11 EU member states, 2012.

¹¹ Amnesty International, *Italy’s discriminatory treatment of the Roma breached the EU Race Equality Directive: Briefing to the European Commission* (Index: EUR 30/011/2012).

¹² The European Court of Human Rights has found in the case *Connors v United Kingdom* that the eviction of the applicant and his family from a site where they have been living for 13 years without procedural safeguards violated their right to respect for private and family life and home (judgment of 27 May 2004). The Court has recently found that the planned eviction of Roma from a settlement in Sofia would have constituted, if carried out, a violation of the right to private and family life as the authorities failed to take into account the proportionality and the necessity of the measure (*Yordanova and others v Bulgaria*, Judgment of 24 September 2012).

¹³ European Union Agency for Fundamental Rights, Council of Europe, *Handbook on European non-discrimination law*. 2010. Chapter 3.4.3.

¹⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 4: the right to adequate housing.

Although housing is not explicitly mentioned in the TFEU among the list of EU competences, Article 34 of the Charter of Fundamental Rights of the European Union enshrines the right to social and housing assistance. The principle of access to housing without discrimination on grounds of nationality has also been well established by EU secondary legislation.¹⁵

We believe, in the light of Articles 10 TFEU, Article 6.3 TEU, and Article 34 of the Charter of Fundamental Rights, the European Commission should ensure that the principle of non-discrimination in the enjoyment of the right to adequate housing is respected in its member states. With this aim, the Commission should ensure that the relevant provisions of the Race Equality Directive, and especially Article 3.1 (h), are enforced in member states.

The prohibition of racial discrimination in the area of goods and services as enshrined in EU law¹⁶ covers services supplied by both private and public actors and thus applies to the criteria used to allocate social housing. Social housing has been listed among the social services of general interest¹⁷ and member states must regulate such services by respecting overarching principles including the principle of non-discrimination.

Amnesty International has documented discrimination against Romani communities and individuals in access to adequate housing in several EU member states where the Race Equality Directive should be enforced. This submission provides evidence of discriminatory practices targeting Roma, including residential segregation, repeated forced evictions, and discrimination in access to social housing in: (a) Italy, despite Article 3(h) of the Directive having been literally transposed into national law¹⁸, and in (b) Romania where protection against discrimination is also provided for in anti-discrimination legislation but is not being implemented in practice.¹⁹

1.1.1 THE CASE OF ITALY

For over two decades Italian public authorities have pursued policies that have both directly and indirectly discriminated against the Roma in their ability to access adequate housing. In so doing, in many instances, they have actively promoted residential segregation of Romani communities while specifically targeting them with forced evictions.²⁰ Romani families and individuals are also often discriminated against in their ability to access social housing.

¹⁵ Article 9 of Regulation 1612/68 on freedom of movement of workers within the Community, establishes that a citizen of a member states working in another member states “shall enjoy all the rights and benefits accorded to national workers in matters of housing” In *Commission of European Communities v. Italian Republic* (case 63/86) the European Court of Justice found that nationality requirements in force in Italy in related to the purchase or lease housing built or renovated with the help of public funds and to obtain reduced-rate mortgage loans were against Articles 52 and 59 of the Treaty of Rome.

¹⁶ Besides Article 3 of the Race Equality Directive see Recital 11 and Article 3.1 of Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services. A definition of service is given by Article 57 TFEU.

¹⁷ European Commission, *Implementing the Community Lisbon Programme: social services of general interest in the European Union*, Brussels, 26 April.2006. Comm (2006) 177 final.

¹⁸ Article 3 of the legislative decree 215/2003.

¹⁹ Article 1.2.d.iii of ordinance No 137/2000 on prevention and sanctioning all forms of discrimination.

²⁰ Amnesty International, *Italy's Discriminatory treatment of the Roma breaches the Race Equality Directive: Briefing to the European Commission* (Index : EUR/30/011/2012).

A substantial proportion of Romani communities in Italy live in segregated conditions.²¹ This has frequently been driven by both legislation and policies, often formulated at regional level. For instance, a municipal regulation adopted by the municipality of Milan in 1999 made “long-stay camps” and “transit camps” permanent housing solutions exclusively for Roma and Sinti.²² These camps were established under a 1989 regional law of Lombardy to protect “*the cultural patrimony and the identity of the ethnicities that are traditionally nomadic or semi-nomadic*” and to better protect their health and welfare.²³ This is despite the fact that only three per cent of Roma and Sinti living in Italy are nomadic.²⁴

In 2009 a new municipal regulation, replacing the 1999 one, was adopted in the context of the “nomad emergency”. This regulation further eroded the security of tenure of those who lived in the camps, which were exclusively Roma and Sinti (apart from a few mixed couples), as it granted authorities powers to close down the camps at any time for reasons of public interest or public safety and security. In this context, authorities have forcibly evicted hundreds of Roma who were often only given extremely short notice, were not able to challenge the eviction and were not offered alternative housing, contrary to Italy’s obligations under international law.²⁵

The establishment of such camps as purported temporary or long-term housing solutions for Roma and Sinti is discriminatory as they cannot be objectively and reasonably justified. Establishing such camps did not improve Roma health as stated by the 1989 law. On the contrary, the housing standards and the living conditions in the camps are frequently wholly inadequate as documented by Amnesty International²⁶ and as also discovered by the European Committee on Social Rights.²⁷ The camps were the only housing solution available to Roma and Sinti, while other groups with low socio-economic status were given other options, such as access to social housing. In addition, the means to achieve the aims of the 2009 regulation, namely promoting safety and security, are neither necessary nor

²¹ According to ECRI one third of Roma and Sinti in Italy lives in camps segregated from the rest of the population. In its last report on Italy, ECRI called on Italian authorities to address residential segregation of Roma and Sinti and to ensure that Roma and Sinti enjoy the right to adequate housing without discrimination. ECRI report on Italy, published on 6 December 2011, recommendations 97, 98 and 99.

²² Article 3 and 4 of the regulation (Regolamento relativo agli insediamenti delle minoranze zingare sul territorio di Milano).

²³ Article 1 of Law 77/1989 (Azione regionale per la tutela delle popolazioni appartenenti alle etnie tradizionalmente nomadi e seminomadi).

²⁴ Senato della Repubblica. Rapporto conclusivo dell’indagine sulla condizione di Rom, Sinti e Camminanti in Italia, <http://www.programmaintegra.it/uploads/c36e9c21-0e8e-b304.pdf> (accessed 4 December 2012).

²⁵ Italy has ratified the International Covenant on Economic, Social and Cultural Rights on 15 September 1978.

²⁶ Amnesty International, *On the edge: Roma, forced evictions and segregation in Italy* (Index: EUR 30/010/2012).

Amnesty International, *‘Zero tolerance for Roma’: Forced evictions and discrimination against Roma in Milan* (Index :EUR 30/020/2011).

Amnesty International, *The wrong answer: Italy’s ‘Nomad Plan’ violates the housing rights of Roma in Rome* (Index: EUR 30/001/2010).

²⁷ See for example, *ERRC v. Italy*, complainant 27/2004, 2005. *COHRE v. Italy*, 2010.

proportionate as authorities have failed to demonstrate that a state of emergency existed.²⁸

Local authorities in Rome have also used segregated camps as housing solutions for Roma and Sinti. The municipal Decree 80/1996 aimed at formalising existing camps identified through a census undertaken with the aim of “*planning a gradual series of actions designed to give a civil and dignified welcome to the groups of Roma and Sinti who satisfy legal requirements and whose presence on the territory is ascertained*”.²⁹ According to a census conducted in 2009, a third of the Roma living in camps in Rome lived in seven camps authorised by authorities.³⁰ The “Nomad Plan” adopted by the municipality in 2009, planned to expand these camps and transfer 6,000 Roma to 13 new camps defined as “villages”. Authorities have referred to these as housing options available to “all nomads”. However, research by Amnesty International has found that there are virtually only Roma living in the camps.³¹ On 16 November 2011 the Council of State found that the state of emergency declared in relation to the presence of “nomad communities” in several Italian regions had no legal basis.

Local authorities have often reiterated that the policies undertaken within the framework of the “nomad emergency” including those affecting housing were not targeting Roma specifically; however, in their public communication they have often conflated the terms “nomads” and “Roma”.

After the repeal of the “nomad emergency” by the Council of State, the municipality of Rome has continued to actively pursue implementation of the measures envisaged by the “Nomad Plan”. On 18 June 2012 the first of the 13 new “villages” in the “Nomad Plan”, La Barbuta, was opened and around 400 people were transferred there after being forcibly evicted from other camps. Such a measure cannot be justified as a positive action under Article 5 of the Race Equality Directive since it cannot by any measure “*prevent or compensate for disadvantages linked to racial or ethnic origin*”. On the contrary, La Barbuta actually fosters residential segregation as it is designed to be a Roma-only community where inhabitants do not have reasonable access to key facilities such as shops, schools and health care services, due to its remote location near the airport. According to a local NGO, the forcible transfer of 100 Roma children from Tor de’ Cenci to La Barbuta in July 2012, considerably increased the distance to the school they were attending.³²

The criteria used by regional authorities in Lombardy and Lazio to allocate social housing, have indirectly discriminated against migrants, including those of Roma ethnicity. To be

²⁸ Italian Council of State, judgment no. 6050 of 16 November 2011.

²⁹ Decree of the Mayor of Rome, no. 80 of 23 January 1996.

³⁰ For more information see: Amnesty International: *The wrong answer: Italy's 'Nomad Plan' violates the housing rights of Roma in Rome* (Index: EUR 30/001/2010), p. 4.

For more information on the definition of authorized, tolerated and unauthorized camps see Amnesty International, *'Zero tolerance for Roma': Forced evictions and discrimination against Roma in Milan* (Index: EUR 30/020/2011), p. 25.

³¹ Amnesty International, *On the edge: Roma, forced evictions and segregation in Italy* (Index: EUR 30/010/2012).

³² On 4 August 2012 the Rome's civil Court accepted the request from Italian NGOs to stop new transfers to La Barbuta as a precautionary measure while the judgment on the merits is still pending.

entitled to social housing, one requirement states that an individual must have been officially resident in the Lombardy region for five years continuously. This criterion cannot be met by those living in informal camps with no official residency. Moreover, a very high score, on the basis of which social housing is allocated, is assigned to those who have been lawfully evicted from private accommodation, but eviction from either authorised or unauthorised camps does not count towards this score, as camps are not considered equivalent to private accommodation.³³

Policies that identify camps as the only housing solutions for the Roma, that result in targeting Roma communities with forced evictions and that foster the resettlement of Roma families and communities in Roma-only camps and villages amount to discrimination. These policies contravene article 3.1 (g) of the Race Equality Directive. Some criteria used by regional authorities to establish social housing entitlement also indirectly discriminate against disadvantaged groups, such as Roma living in informal settlements and/or those who are forcibly evicted, in contravention of article 3.1 (g) of the Race Equality Directive.

1.1.2 THE CASE OF ROMANIA

Roma represent the ethnic group which experiences the highest level of social exclusion and poverty in Romania. A survey by the European Union Agency for Fundamental Rights and the United Nations Development Programme shows that more than 80 per cent of Romani individuals in Romania live in households at risk of poverty, twice as many as non-Roma individuals living in the same areas.³⁴ Although there is a lack of official statistics, a considerable proportion of Roma live in dwellings without any proof of tenancy which are thus considered as “informal” or “illegal” by authorities. These dwellings often do not meet the international housing standards on habitability.³⁵

Amnesty International has conducted research in several settlements in Romanian towns including Cluj-Napoca (the second biggest city), Costanța, Craiova, Baia Mare, Pietra Neamt, Tulcea, and Miercurea Ciuc. These settlements are predominantly populated by Romani communities. Local authorities tolerated their existence and in most cases have encouraged Romani individuals and families who lost their houses as a consequence of the privatisation trend after the fall of the Ceausescu regime, to move to these settlements. However, since authorities failed to take measures that would effectively strengthen their security of tenure, the residents of these settlements are at constant risk of being forcibly evicted. Amnesty International has documented several such forced evictions, carried out without the safeguards required under international law binding on Romania.³⁶

³³ Amnesty International, *Italy's discriminatory treatment of the Roma breaches EU Race Directive: Briefing to the European Commission*, (Index: EUR 30/011/2012), pp. 15-16.

³⁴ European Union Agency for Fundamental Rights and the United Nations Development Programme, *The situation of Roma in 11 EU Member State*, 2012.

³⁵ See CESCR general comment 4 para. 8. For further information on housing standards and habitability conditions in informal settlements see Amnesty International most recent reports and briefings on Romania listed in Appendix 2.

Amnesty International has documented forced evictions of Roma communities in Tulcea, Cluj-Napoca, Costanta, Miercurea-Ciuc, Baia Mare.

³⁶ CESCR general comment 7, definition of forced eviction, par. 3.

The Romanian Housing law (Law number 114/1996) does not explicitly prohibit forced evictions and fails to set out the specific safeguards which must be complied with before any eviction is undertaken. The Romanian Civil Code provides some safeguards against forced evictions and access to remedies for individuals who have been forcibly evicted. However, such provisions are only applicable to tenants or owners who have formal tenure status. The Code explicitly excludes protection against forced evictions for those who live in informal dwellings³⁷. Several local authorities interviewed by Amnesty International justified the forced eviction of Romani families and the demolition of their houses by specifically relying on the lack of legal protection available to those living in informal settlements.³⁸

These are explicit legal gaps which indirectly discriminate against people who live in informal dwellings, many of whom make up the 2.2m Roma who live in Romania. Such a situation places Romania in breach of its own anti-discrimination legislation (the transposition of the Race Equality Directive into domestic law).

Several municipal authorities have implemented policies resulting in forced evictions and relocation of Romani communities that not only directly leads to residential racial segregation, but also discriminates against them in the enjoyment of various fundamental rights such as the right to family and private life, the right to the highest attainable standard of health and the right to be free from degrading treatment. The fact that ethnic Romanians and other ethnic minorities are not subject, according to information available to Amnesty International, to the same policies and practices, suggests that Roma are being specifically targeted.

In 2004 the municipality of Miercurea Ciuc evicted 100 Roma from the city centre. They were relocated near a sewage works at a considerable distance from the city which not only hampered access to a range of services, but also put their health at serious risk. Although the National Council to Combat Discrimination (NCCD), the equality body tasked to monitor the Race Equality Directive, found in 2005 that the relocation was discriminatory, local authorities have not pursued any measures in the intervening seven years to tackle the situation.³⁹

In 2010, 76 Romani families living in the centre of Cluj-Napoca (Coastei Street) were forcibly evicted and relocated to an area on the outskirts of the city already predominantly inhabited by Roma. Alternative housing was offered to only about 40 of these families. The relocation into housing units, close to a landfill site and chemical waste dump, were built with public funds making it part of a policy intentionally pursued by the municipality which actively fostered *de facto* residential segregation. Policies aimed at, or resulting in promoting ethnic segregation of Romani communities have been also pursued by the municipalities of Costanta and Baia Mare. In July 2011 the latter even built a wall separating Romani communities from a non-Roma neighbourhood.⁴⁰

³⁷ Law no. 202/2010: Art. 578 (1) which modifies the Code of Civil Procedure.

³⁸ Amnesty International interviews with: the vice mayor of Cluj-Napoca (December 2010), the local authorities of Tulcea (April 2011) and the mayor of Baia Mare (October 2011, May 2012, October 2012).

³⁹ For more information on this case see, Amnesty International, *Treated like Waste: Roma Homes destroyed and health at risk in Romania*, (Index: EUR/39/001/2010).

⁴⁰ The National Council for Combating Discrimination (NCCD) found on in November 2011 that the wall

In 2010 the municipality of Costanța designed and implemented a social housing project aimed at tackling the housing situation of low-income households and consisting of 100 metal containers located on a former military base to serve as housing units. On the basis of a set of criteria established by local authorities (more than five children, monthly income of less than €27) some Romani families were eligible for this housing solution. However, it is submitted that such a policy cannot qualify as a positive action “*tackling a disadvantage*” in terms of Article 5 of the Race Equality Directive given that these housing units do not qualify as adequate housing. On the contrary, it is likely that such an approach may amount to discrimination if the inadequate housing is predominantly available *de facto*, on the basis of the eligibility criteria, only to Roma.

Romani families and individuals have limited access to social housing. The specific criteria on the basis of which social housing is allocated at municipal level are set out in line with the general framework established by Articles 42, 43 and 48 of the Housing Law (114/1996). Article 43 mentions several categories of individual to whom social housing can be allocated; they include, among others, “*Individuals and families that have or are going to be evicted from houses returned to the former owners*”. Yet such a provision fails to take account of the specific situation of Romani individuals and families who live in informal dwellings, lack security of tenure and are evicted by authorities without the aim of returning the houses they occupy to former owners.

The lack of legal safeguards against forced evictions for those who do not have formal tenure status and the targeting of Roma communities with forced evictions amount to discrimination in access to housing and thus contravene article 3.1 (g) of the Race Equality Directive. Equally, the resettlement of Roma communities in areas predominantly inhabited by Roma amounts to a form of discrimination on grounds of ethnicity. Moreover, although restrictive criteria to allocate social housing may be justified considering its scarcity in Romania, where 97 per cent of housing is private, the criteria under Article 43 of the Housing Law amount to an unjustified difference of treatment and therefore to discrimination in violation of article 3.1 (g) of the Race Equality Directive.

1.2 ACCESS TO AND SUPPLY OF GOODS AND SERVICES: THE CASE OF SLOVENIA

The majority of Roma in Slovenia live in Roma-only settlements built on either state-owned or privately-owned land.⁴¹ Even when the land belongs to the Roma communities themselves, it is in most cases not designated as residential, which is a necessary requirement to apply for building permits. Therefore, any home built on such “non-residential” land is considered to be illegal by the authorities.

fostered ethnic segregation contrary to Article 15 (respect for human dignity) of the anti-discrimination law whilst also amounting to harassment. However, the decision was successfully appealed by the municipality of Baia Mare in April 2012 when the Cluj Court of Appeal quashed the NCCD’s decision considering the aims pursued by the municipality legitimate and the means to achieve them proportionate.

⁴¹ Public bodies and non-governmental organisations in Slovenia estimate that the number of Roma living in Slovenia is between 7,000 and 10,000 (according to some estimates even 12,000), mostly in Prekmurje, Dolenjska, Bela krajina and Posavje, and in major cities such as Ljubljana, Maribor, Velenje and Celje, there are only about 105 Roma settlements and 20 to 25 smaller settlements whose population contain a significant proportion of Roma. In total, it is estimated that there are around 130 Roma settlements, with approximately 9,000 inhabitants. See National Programme of measures for Roma of the government of the Republic of Slovenia for the period 2005-15, 11 March 2010, http://ec.europa.eu/justice/discrimination/files/roma_slovenia_strategy_en.pdf (accessed 13 December 2012).

Some municipalities have taken action to regularise Roma settlements, by, for instance, assigning residential use to the land on which settlements have been built by amending municipal spatial plans. However, a 2010 survey found out that only 55 per cent of Roma settlements had been regularised.⁴² Roma living in un-regularised settlements are at greater risk of being forcibly evicted than both Roma and non-Roma living in private apartments or social housing.⁴³

Roma are in some instances directly discriminated against in access to private housing on grounds of their ethnic origin. Amnesty International has documented instances where landlords refused to rent or sell properties to Roma solely on the basis of their ethnicity.⁴⁴

In some cases municipalities have made financial assistance available to Roma willing to move outside Roma-only settlements conditional on them moving to another municipality.⁴⁵ According to domestic legislation, municipalities are obliged to provide not-for-profit rented apartments and housing units as temporary housing solutions for the most vulnerable. Yet, in at least one instance, Amnesty International found that a municipality's criteria for accessing social housing were indirectly discriminatory against the most disadvantaged groups, including Roma living in informal settlements, as they gave a significant advantage to those who were permanently employed and/or had been in higher education, groups in which, owing to the long history of discrimination, Roma are significantly under-represented.⁴⁶

The lack of security of tenure of those living in informal settlements is a major obstacle to accessing essential services such as water and sanitation. Municipalities are responsible for providing water and sanitation. To be connected to a piped water supply households have to apply to the public water company responsible in the area where they live. The application requires several documents, including not just proof of ownership of the land, but also the permit for any building. However, Roma living in informal settlements cannot provide such documents for the reasons above. Although it is true that most municipalities have waived these obligatory requirements a significant number still exclude Roma settlements from connection resulting in denial of access to water and sanitation. According to the United Nations Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, following a visit to the country in 2010, many settlements where the Roma live have no access to water and sanitation at all.⁴⁷

The Human Rights Ombudsman highlighted in his 2011 Annual Report that *"[t]ime has shown that some municipalities are ineffective as holders of measures for the legalisation of Roma settlements and in the provision of municipal utility services"*.⁴⁸ The Ombudsman

⁴² Amnesty International, *Parallel Lives: Roma denied rights to housing and water in Slovenia* (Index: EUR 68/005/2011), p.34. (Amnesty International, *Parallel Lives*).

⁴³ Evictions in the latter case are indeed regulated by the Housing Act according to which one can take place only on the basis of a Court decision. On the other hand buildings constructed irregularly can be demolished by an administrative decision by the Spatial Inspectorate.

⁴⁴ Amnesty International, *Parallel Lives*, p. 19.

⁴⁵ Amnesty International, *Parallel Lives*.

⁴⁶ Criteria established by the Municipality of Novo Mesto, see Amnesty International, *Parallel Lives: Roma denied rights to housing and water in Slovenia* (Index: EUR 68/005/2011), pp. 23-24.

⁴⁷ Report by the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation. (visit to Slovenia 24-28 May 2010), A/HRC/18/33/Add.2, 4 July 2011

⁴⁸ Human Rights Ombudsman, *Seventeenth Regular Annual Report of the Human Rights Ombudsman of*

highlighted for instance that the persistent lack of access to fresh drinking water in the Roma settlement of Dobruška vas in the Škocjan municipality was threatening the health of those living there. Most sections of this settlement are informal. State-funded programmes aimed at improving the infrastructures in Roma settlements are available to municipalities. However, these funds cannot be used to improve infrastructures in informal settlements.

The existing administrative requirements, such as the need to hold a building permit, access basic services including water and sanitation indirectly discriminate against individuals and communities who lack security of tenure, including Roma living in informal settlements. This situation contravenes Articles 1, 2 (b) and 3.1 (h) of the Race Equality Directive. Denial of access to private and social housing experienced by Roma amounts to discrimination on grounds of ethnicity in access to housing and in contravention of Articles 1, 2 and 3.1 (h) of the Race Equality Directive.

1.3 DISCRIMINATORY POLICE PRACTICES

In recent years Amnesty International has documented discriminatory practices in the police in several countries. They include the use of racial profiling⁴⁹ (Austria, Spain), racially motivated ill-treatment by the police (Austria, Greece) and negligence in duly investigating racially-motivated hate crimes against ethnic minorities such as migrants and the Roma (Austria, Greece, Hungary).

We believe that certain police functions including crime prevention, investigation, law enforcement and the activities associated with them such as identity checks and body searches should be considered as services under Article 3.1 (h) of the Race Equality Directive.⁵⁰ Article 3.1 (h) should be given a broad interpretation and discrimination by the police in exercising their functions should be considered a violation of Article 3.1 (h). As recently stated by the European Court of Justice Advocate General Kokott, "*If a strict interpretation were given to the matters listed in article 3.1 (h) of the directive, this would reduce protection against discrimination to an absolute minimum, which would be incompatible with the abovementioned objective of the directive.*"⁵¹

Racist hate crime⁵² constitutes a form of discrimination. Authorities must not only refrain

the Republic of Slovenia for the Year 2011, http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/Annual_Report_for_the_year_2011_-_Slovenia_Ombudsman_-_Abbreviated_Version.pdf (accessed 13 December 2012).

⁴⁹ Defined as "*the use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities*". See ECRI, *General Policy Recommendation 11 on combating racism and racial discrimination in policing*. Adopted on 29 June 2007

⁵⁰ The European Commission listed police services among the category « non-economic services » in its communication, *Services of general interest, including social services of general interest: a new European commitment*, COMM 725 (2007) of 20 November 2007.

⁵¹ *Timishev v. Russia*, judgment of 13 December 2005, par. 56, *Nachova v. Bulgaria*, judgment of 6 July 2005, par. 62.

⁵² The OSCE defines hate crime as "*A) Any criminal offence, including offences against persons or*

from discriminating themselves but also exercise due diligence to tackle discrimination by non-state actors.⁵³ States have the duty to undertake prompt, adequate, impartial, effective and thorough investigations of any crime.⁵⁴ In the specific instance of racist hate crime, it follows that states must put in place legislation, policies and practices aimed at preventing and effectively investigating such crimes. The European Court of Human Rights has found that authorities have the duty to take all reasonable steps to unmask any racist motive that has allegedly played a role in the perpetration of a crime. As outlined by the European Court of Human Rights, “A failure to make a distinction in the way in which situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention”.⁵⁵ If they fail to do so, states contravene international and European standards on discrimination.

The systematic failure of the police to prevent and thoroughly and effectively investigate racially-motivated hate crimes against ethnic minorities including migrants, asylum-seekers and the Roma in countries such as Greece and Hungary contravenes international human rights law and Article 3.1 (h) of the Race Equality Directive.

Although Greek criminal law acknowledges the gravity of crimes motivated by racial and religious hatred⁵⁶, authorities have systematically failed to prevent and investigate hate crime perpetrated against migrants, asylum-seekers and refugees. An official mechanism to register such crimes is lacking and thus official data are not collected.⁵⁷ However, Amnesty

property, where the victim, premises, or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support, or membership with a group as defined in Part B. B) A group may be based upon a characteristic common to its members, such as real or perceived race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or other similar factor”.

⁵³ See UN Human Rights Committee, *General Comment No. 31 on Article 2 [on non-discrimination] of the International Covenant on Civil and Political Rights*: “The Covenant cannot be viewed as a substitute for domestic criminal or civil law. However the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by Article 2 would give rise to violations by States Parties of those rights, as a result of States Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.” Eightieth session (2004), paragraph 8.

⁵⁴ *Nachova and others v Bulgaria*, judgment of 6 July 2005, *Secic v Croatia*, judgment of 31 May 2007, *Stoica v Romania*, judgment of 4 March 2008

⁵⁵ *Stoica v Romania*, para. 119.

⁵⁶ Article 79 of the Greek Criminal Code.

⁵⁷ According to the data communicated by Greece to the Organisation for Security and Cooperation in Europe’s Office for Democratic Institutions and Human Rights (OSCE-ODIHR), two racially motivated crimes were recorded by the police in 2009. No data have been communicated for 2010 and 2011. OSCE/ODIHR. Hate crimes in the OSCE region: Incidents and Responses. Annual Report for 2011. p. 24.

On 12 December 2012 the President of Greece signed a Decree drafted by the Minister of Public Order and Citizen Protection providing for the establishment of specialized police units at the Athens and

International and other civil society organisations have observed a spike in violence targeting ethnic minorities and their properties, including shops and places of worship, in Greece since May 2011.⁵⁸ This trend is continuing with attacks on migrants and minority groups occurring weekly. In some cases, the police, witnessing episodes of violence targeted at ethnic minorities, failed to intervene to protect the victims or arrest the perpetrators. In other cases the alleged racist motive behind violent attacks was overlooked.⁵⁹

Amnesty International has documented structural flaws in the Hungarian criminal justice system preventing adequate and effective investigation and prosecution of racist hate crimes. These flaws include the lack of a general provision in the criminal code on the basis of which any alleged discriminatory motive can be taken into account, and the lack of thorough guidelines on procedures for the police and the judiciary on investigating and prosecuting hate crimes.⁶⁰ Amnesty International's research has revealed that such flaws contributed to the failure of Hungarian authorities to adequately and effectively investigate and prosecute hate crimes against Romani individuals, including some of the violent attacks perpetrated in 2008 and 2009 that resulted in six people being killed.⁶¹

In several instances, Hungarian authorities failed to protect Romani individuals and communities from threats and violence from extremist and paramilitary groups. Such cases include the intimidation and harassment of Romani residents in the village of Gyöngyöspata, patrolled by vigilante groups for almost one month after a march held by the party Jobbik on 6 March 2011.⁶² On 5 August 2012 Jobbik and several vigilante groups held a march in the

Thessaloniki police directorates to tackle racially motivated crime.

⁵⁸ The Network Recording Incidents of Racist Violence, a network of civil society organizations undertaking a pilot project to monitor hate crime, reported that 87 incidents had taken place between January and September 2012. The Network collected cases on the basis of alleged victims' testimonies only in centre Athens and Patras. Half of such incidents were perpetrated by extremist groups that acted in an organised manner. In March 2012 the Network reported at least 18 incidents perpetrated since January 2012 related to police violence (out of 63 incidents).

⁵⁹ See for instance the details relating to the attack against the community centre for Somalis that took place on 9 April 2011 in Athens and the attack against migrants in Corinth in February 2012. Amnesty International, *Police Violence in Greece: Not Just "isolated incidents"*, (Index EUR 25/005/2012), July 2012, p. 21-22

See the details relating to the attack perpetrated against a barber shop owned by a Pakistani man on 10 September 2012. Amnesty International, *Greece: The end of the road for refugees, asylum-seekers and migrants* (Index EUR 25/011/2012). p. 11

⁶⁰ Article 174B deals exclusively with racist based violence. Other Articles of the Criminal Code deals with homicide (Article 166, section 1 and 2c) and bodily harm (Article 170 section 2) for a which penalty enhancement is foreseen if committed for a "base reason". Judges can consider a racist bias as a "base reason" in the sentencing. For further information on Hungarian law and practices on hate crime see Amnesty International, *Violent attacks against Roma in Hungary: Time to invest racial motivation* (Index: EUR 27/001/2010), p. 19.

Amendments to the Criminal Code will enter into force on 1 July 2013. For further information see Amnesty International, *New Hungarian Criminal Code: A missed opportunity to do more on hate crimes* (Index: EUR 27/003/2012), 27 June 2012.

⁶¹ For instance the initial police investigation into the killing of a Romani man and his four-year-old daughter in Tatarszentgyorgy on 23 February 2009 was flawed to the extent that it was initially treated as an incident. For further details see Amnesty International, *Violent attacks against Roma in Hungary: Time to investigate racial motivation* (Index: EUR 27/001/2010), pp. 25-26.

⁶² An ad-hoc Parliamentary Committee tasked to investigate the events published its conclusions on 30 March 2012 and failed to acknowledge the failure of authorities to prevent discrimination against the

village of Devecser. According to reports, pieces of concrete and other missiles were thrown at Roma homes. Police officers who were present allegedly failed to intervene to stop the attacks on Romani houses.⁶³

1.4. EDUCATION

Discrimination is a major factor in the exclusion and disadvantage experienced by the Roma in education as highlighted by a range of international and regional human rights bodies.⁶⁴ The European Court of Human Rights has found that the placement of Romani pupils in “special schools” for children with mild mental disabilities or in “special classes” in Croatia, the Czech Republic, Greece and Hungary amounted to racial discrimination in their enjoyment of the right to education.⁶⁵

The Roma face exclusion and disadvantage in education across the European Union. A recent survey by the European Union Agency for Fundamental Rights and the United Nations Development Programme⁶⁶ shows that in some EU countries, such as France, Italy, Portugal, Slovakia and Spain, young Roma aged 20-24 are up to two or three times less likely to have completed general upper-secondary education or vocational education as their non-Roma counterparts from the same age group.

In December 2012 the Court found that Greece continued to discriminate against Roma pupils in the town of Aspropyrgos, where they were denied equal access to education on grounds of their ethnicity.⁶⁷ The Committee on the Rights of the Child has recently expressed concerns about the limited access to education and school segregation experienced by Roma pupils in Greece.⁶⁸ Similarly, Greek civil society organisations have documented several cases of persistent segregation and exclusion of Roma pupils including in the settlement of

Roma. For further information see Amnesty International, *Hungary: Report into vigilante activities in Gyöngyöspata fails to address discrimination* (Index: EUR 27/001/2012).

⁶³ Amnesty International, *Hungary must protect Roma communities from attack*, <http://www.amnesty.org/en/news/hungary-must-protect-roma-communities-attack-2012-08-15> (accessed 25 January 2013).

⁶⁴ See for instance some of the most recent concluding observations of the CESCR in this respect: E/C.12/SVK/CO/2, *Concluding Observations on Slovakia*, 8 June 2012, par. 26. E/C.12/HUN/CO/3, *Concluding Observations on Hungary*, 16 January 2008, par. 27 and 50. E/C.12/POL/CO/5 *Concluding Observations on Poland*, 19 January 2010, par. 14 and 33. Moreover, the European Commission against Racism and Intolerance have expressed concerns on segregation of Romani pupils in many EU countries including Hungary, Romania, Bulgaria, Slovakia, the Czech Republic and Slovenia.

⁶⁵ *D.H. and others v. the Czech Republic* (application no. 57325/00), *Sampanis and others v. Greece* (application no. 32526/05 of 5 June 2008) and *Orsus and others v Croatia* (application no. 15766/03), *Horváth and Kiss v Hungary* (application no. 11146/11)

⁶⁶ Amnesty International, *Italy's discriminatory treatment of the Roma breached the EU Race Equality Directive: Briefing to the European Commission* (Index: EUR 30/011/2012).

⁶⁷ *Sampanis and other v. Greece*, application no. 59608 of 11 December 2012.

⁶⁸ Committee on the Rights of the Child, *Concluding observations on Greece*, 13 August 2012. CRX/C/GCR/CO/2-3, par. 60-61.

Spata,⁶⁹ about which the UN Independent Expert on Minority Issues raised concerns in 2008.⁷⁰

The European Commission, on the basis of Article 6 TEU and Article 14 of the Charter of Fundamental Rights, should take the European Court of Human Rights' case law, together with the findings of other international and regional human rights bodies, into account when assessing implementation of the prohibition on racial discrimination set out by the Race Equality Directive and when devising measures aimed at enforcing it.

Amnesty International's research has extensively documented discriminatory practices against Romani pupils in the Czech Republic and Slovakia⁷¹, including ethnic segregation, that are at odds with the protection against discrimination on grounds of race or ethnicity in education provided by Article 3.1 (g) of the Race Equality Directive.

1.4.1 THE CASE OF SLOVAKIA

The Roma population in Slovakia has been estimated at nearly ten per cent of the total population (between 480,000 and 520,000).⁷² Yet according to a recent report published by the UNDP, more than 65 per cent of special primary schools (meant to provide education to children with mental disabilities) and more than 90 per cent of special classes in primary schools almost exclusively comprise Roma pupils.⁷³ Roma children also face segregation in mainstream education. Over 36 per cent of Romani children in Slovakia attend classes in regular schools which are almost exclusively Roma. Roma pupils are thus over-represented in special schools and in segregated Roma-only classes within mainstream education: a discriminatory pattern that has been confirmed by Amnesty International's own research in Slovakia.

Crucial drivers behind this segregation and discrimination are the criteria according to which children are sent to special schools and the means by which assessment tests are carried out. This is despite the fact that in 2008, in addition to the Anti-Discrimination Act adopted in 2004, aimed at transposing the Race Equality Directive into domestic legislation, new legislation was introduced prohibiting all forms of discrimination in education, including segregation (the schools act).⁷⁴

According to the schools act, special schools provide education to children with mental disabilities but also to children coming from socially disadvantaged backgrounds.⁷⁵ Children are placed in special schools, or special classes in mainstream schools, on the basis of an

⁶⁹ See for instance Greek Helsinki Monitor, *Greece: mainstream racism and discrimination*, Press Release, 9 December 2012.

⁷⁰ Gay McDougall, *Report of the independent expert of minority issues*, Mission to Greece (8-16 September 2008), A/HRC/10/11/ add. 3, Par. 60.

⁷¹ Please see the list of reports published by Amnesty International on this issue in the Appendix.

⁷² Amnesty International, *Still separate, still unequal : Violations of the right to education of Romani children in Slovakia* (Index: EUR 72/001/2007).

⁷³ UNDP, *Report on living conditions of Roma households in Slovaia in 2010*, chapter 8, Education and expenditures on education.

⁷⁴ Act 245/2008, accessible here (in Slovak): http://www.uips.sk/sub/uips.sk/images/PKvs/z245_2008.pdf (accessed 10 December 2012).

⁷⁵ Act 2045/2008, par. 2.i .

assessment taken at the beginning of the compulsory schooling age. Children in mainstream education can also at any time be referred to specific centres to take the test. A four-member specialist committee is in charge of assessing the child and recommending placement in special schools if necessary. The assessment process can be highly subjective, with the assessor's prejudice influencing the recommendation. Most of the education professionals spoken to by Amnesty International listed reasons such as "incest", "genetic predisposition" and "criminality of the parents" to explain the over-representation of Romani children in special schools. The placement should always occur with the informed consent of parents or guardians. However, Romani parents are often not made aware of the long-term consequences of sending their children to special schools by state authorities, or else they fear the prejudice that their children could face if educated in mainstream schools.⁷⁶

Such assessments do not take into account the cultural and linguistic differences of Romani children. For example language skills are tested in Slovak even though this is not necessarily the language Romani children speak at home. What is more, placement in special schools often takes place after a single test. Although the test is meant to be standardised and culturally neutral, in practice the content and the format vary across the country.⁷⁷

The curriculum in special schools is abridged, less academically focussed and concentrates on developing practical skills. As a result children completing special elementary schools generally lag two years behind graduates of elementary schools. Although reintegration in mainstream schools is theoretically possible, it is solely dependent on head teachers who have the power to re-test pupils if the grade of their disability changes or the grade does not match the character of pupils' "disability". In practice this rarely happens.⁷⁸ The result is a two-tier education system that perpetuates segregation and diminishes the life opportunities of successive generations of Roma children.

The conflation of mental disability and social disadvantage in Slovak legislation and the practices on the basis of which pupils are assigned to special schools amount to indirect discrimination against Roma as they cannot be reasonably or objectively justified. Such practices do not adequately meet the educational needs of children from disadvantaged backgrounds but actually result in a sub-standard education. The practices through which the placement takes place, particularly the biased nature of the assessment process and the flawed means by which parents provide "informed" consent, also fail to qualify the measures as proportionate to the aim pursued. Such practices therefore contravene Article 3.1 (g) of the Race Equality Directive.⁷⁹

Amnesty International has documented cases where Romani children have been segregated in Roma-only classes in mainstream schools. Such segregation amounts to direct

⁷⁶ Amnesty International, *A tale of two schools: Segregating Roma into special education in Slovakia* (Index: EUR 72/007/2008), p. 17.

⁷⁷ Amnesty International, *Still separate, still unequal: Violations of the right to education of Romani children in Slovakia* (Index: EUR 72/001/2007), p. 20.

⁷⁸ 32 children attending the special school of Pavlovce and Uhom were reintegrated in mainstream education in 2008. The number of pupils attending this school decreased in the school year 2009/10 compared to 2007/8. For more information: Amnesty International, *Unlock their future: End the segregation of Romani children in Slovakia's special schools* (Index: EUR 72/002/2011). p.3.

⁷⁹ Article 3.1g states "*Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to: (g) education*".

discrimination against Roma in breach of both Slovakia's general anti-discrimination legislation and that applying specifically to the education system. For instance, the primary school of Šarišské Michal'any has operated for four years mainstream classes attended exclusively by children of Roma origin. In 2008/9 all the Romani pupils were transferred to separate classes on another floor of the building.⁸⁰ In September 2011 the primary school in Francisciho Street in the town of Levoča, established two separate first grade classes for Romani children. In November 2011, 26 out of 29 Romani children attending the first grade in this school were placed in these two special classes.⁸¹ Again, such practices perpetuate a two-tier discriminatory system that fails to comply with Slovakia's Race Equality Directive obligations.

1.4.2 THE CASE OF THE CZECH REPUBLIC

In the Czech Republic Romani children continue to be over-represented in practical schools and practical classes in mainstream education where they follow a reduced curriculum. Although Roma living in the Czech Republic represent between 1.4 and 2.8 per cent of the entire population, a 2012 report of the Public Defender of Rights (Ombudsperson) found that 35 per cent of pupils attending 67 surveyed schools and classes teaching a curriculum for pupils with mild mental disabilities were Roma.⁸²

In January 2005 a new School Act entered force⁸³; former "special schools", which were conceived for children with "mild mental disabilities" were renamed "practical schools". However, as Amnesty International's research has highlighted, this reform did not bring any substantial change, Romani children are still being taught a reduced curriculum in both the practical schools and segregated mainstream classes. The 2005 Schools Act defines "*pupils with special education needs*" as those who, among other categories, are from a "*socially disadvantaged background*". The law does not clearly define the indicators which apply to such pupils, although Czech authorities have made reference to the Roma when outlining those falling within the category of "*socio-cultural disadvantaged background*" in other education-related policies.⁸⁴

As with Slovakia, discrimination and segregation is compounded by a flawed assessment process. Special educational needs are assessed on the basis of educational and psychological tests. Children can be placed in practical schools or classes that follow the practical curriculum within mainstream education, when they reach the compulsory schooling

⁸⁰ On 30 October 2012 the regional Court in Prešov ruled that the segregation of Romani pupils operated by the school is discriminatory. See Amnesty International, *Slovak Court rules segregation of Roma in schools unlawful*, <http://www.amnesty.org/en/news/slovak-court-rules-segregation-roma-schools-unlawful-2012-10-31> (accessed 25 January 2013).

⁸¹ For further information on these two cases: Amnesty International, *Slovakia: Briefing to the UN Committee on Economic, Social and Cultural Rights*, 48th Session, May 2012, (Index: EUR 72/001/2012).

⁸² **Report of the Public Defender of Rights on the ethnic composition of pupils in the former special schools.** June 2012., summary in English available at <http://www.non-discrimination.net/content/media/CZ-25-TEMPLATE%20FLASH%20REPORT-ethnic%20composition%20of%20special%20school%20pupils%20-%20research%20of%20the%20Czech%20EB.pdf> (accessed 12 December 2012).

⁸³ 39 Law No. 561/2004 Coll., on preschool, primary, middle, higher technical and other education.

⁸⁴ Ministry of Education, *Concept on Early Care for Children from Socio-Culturally Disadvantaged Backgrounds in the Area of Education*, 2005.

age, up to two years after they have reached the “school maturity”⁸⁵ or at any moment if they lag behind in mainstream education and are referred to the school advisory centres that perform the assessment.⁸⁶ The assessment tests have been found to be flawed by human rights bodies⁸⁷ and the European Court of Human Rights in the judgment *D.H. and others v the Czech Republic*⁸⁸.

Again, as with Slovakia, children in practical schools or classes are taught a reduced curriculum oriented towards developing practical rather than academic skills. Children attending practical schools or classes can be re-tested. However, this happens only if parents demand it, as authorities are not bound to re-test these children. Roma parents are not always fully aware of the lower quality of education provided in cases where a reduced curriculum is followed; nor do they know the procedures according to which a pupil can be reintegrated into mainstream education. Such reintegration is harder the longer children stay in practical schools and classes. Placement in such schools and classes also has negative consequences on their ability to access secondary and tertiary education and often confines them to vocational education.

A report by Amnesty International and the European Roma Rights Centre focusing on four schools in Ostrava, in the region where the applicants of the *D.H. and others v the Czech Republic* case live, documents that the amendments brought in by the schools act in 2005 fail to address the segregation of Romani pupils in Roma-only classes and the over-representation of Romani children in practical classes.⁸⁹ On the contrary the report concludes that in many instances discrimination and segregation is worsening, with successive generations of school children being affected.

The placement of Romani children in practical schools and classes cannot in any way be considered as reasonably and objectively justified. The inclusion of both pupils with disabilities and pupils from a socially disadvantaged background under the category of pupils with special education needs results in the over-representation of Romani pupils in schools and classes where they are taught a reduced curriculum. Such difference of treatment is not necessary, as other policies and practices could cater for the specific educational needs, if any, of pupils from disadvantaged backgrounds. Nor is it proportionate considering the impact that reduced curricula have on the future educational and life choices of Romani pupils in practical elementary schools and classes. The placement of Romani children in such classes cannot be considered justified on the basis of the flawed assessment undertaken by school authorities. Nor can it be considered justified on the basis of consent by parents. Such consent does not always qualify as informed and in general cannot be considered as a waiver of the right to be free from racial discrimination, as highlighted by the European Court.⁹⁰ The practices found to be discriminatory by the European Court of Human

⁸⁵ The enrolment of a pupil in compulsory education can be postponed for up to two years upon assessment, which shows that the child has not yet reached school maturity. The child can instead receive support in a nursery or in preparatory classes established for pupils who lack nursery experience.

⁸⁶ For further details on how the assessment is undertaken see: Amnesty International, *Injustice renamed: Discrimination in education of Roma persists in the Czech Republic* (Index: EUR 71/003/2009), pp. 20-21.

⁸⁷ Including CERD 2007 and ECRI 2009.

⁸⁸ *D.H. and others v the Czech Republic*, judgment of 13 November 2007.

⁸⁹ Amnesty International and the European Roma Rights Centre, *Five more years of injustice: Segregated education for Roma in Czech Republic* (Index: EUR 71/006/2012).

⁹⁰ *D.H. and others v the Czech Republic*, par. 202.

Rights in the case D.H and others v the Czech Republic continue to be implemented and result in continuing systematic discrimination in education against Romani children on grounds of their ethnic origin. This contravenes Article 3.1(g) of the Race Equality Directive.

2. IMPLEMENTATION OF DIRECTIVE 2000/78/EC

Amnesty International's recent research on **discrimination on grounds of religion and belief**⁹¹ in employment and occupation found that the Council Directive 2000/78/EC (the Framework Employment Directive) has not been adequately implemented and enforced in several EU countries. Individuals expressing their religion or belief by wearing religious and cultural symbols and dress have been discriminated against in access to employment or in the workplace. In several cases, they were denied redress by national courts which found that such differences in treatment did not amount to discrimination. The specific examples of such instances in Belgium and France are provided in chapters 2.1.1 and 2.1.2.

2.1 DISCRIMINATION ON GROUNDS OF RELIGION OR BELIEF

According to international anti-discrimination standards⁹², differences in treatment based on prohibited grounds, such as religion or belief, does not amount to discrimination if it has an *objective and reasonable justification*, which means that such differences in treatment pursues a "*legitimate aim*" and that there is a "*reasonable relationship of proportionality between the means employed and the aim sought to be realised*."⁹³ A legitimate aim could be related to public health, safety, security, or the protection of the human rights of the others.

In some instances a difference of treatment on grounds of religion or belief in the workplace can be justified. For example, in the claim that work safety requirements for the wearing of a helmet indirectly discriminated against Sikhs because religious custom requires them to wear a turban, the UN Human Rights Committee held that the protection of workers' safety was an objective justification and proportional, and therefore did not violate the principle of non-discrimination.⁹⁴ The European Court of Human Rights has insisted that unfavourable treatment based on prohibited grounds will require particularly weighty justification to be compatible with the non-discrimination principle.⁹⁵

Article 4 of the Framework Employment Directive introduces the principle according to which a difference in treatment based on prohibited grounds, including religion or belief, does not constitute discrimination if it corresponds to a genuine and determining occupational requirement.

The notion of "*genuine and determining occupational requirement*" should be interpreted

⁹¹ Amnesty International, *Choice and Prejudice, Discrimination against Muslims in Europe* (Index: EUR 01/001/2012).

⁹² See for instance, Human Rights Committee, General Comment No. 18: non discrimination, <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/3888b0541f8501c9c12563ed004b8d0e?Opendocument> (accessed 25 January 2013).

⁹³ See for instance the Judgment of the European Court of Human Rights in the case *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, paragraph 72.

⁹⁴ HRC, *Karnel Singh Bhinder v. Canada* (No. 208/1986).

⁹⁵ Amnesty International, *Dealing with difference: A framework to combat discrimination in Europe, reasonable and objective justification* (Index: EUR 01/003/2009), pp18–19.

restrictively and accordingly to recital 23 of the Framework Employment Directive.⁹⁶ The European Court of Justice pointed out in a case relating to discrimination on grounds of age that “*To examine whether the difference of treatment based on age in the national legislation at issue in the main proceedings is justified, it must be ascertained whether physical fitness is a characteristic related to age and whether it constitutes a genuine and determining occupational requirement for the occupational activities in question or for carrying them out, provided that the objective pursued by the legislation is legitimate and the requirement is proportionate*”.⁹⁷

A genuine and determining occupational requirement constitutes an objective and reasonable justification to a difference of treatment only if it is proportionate and necessary given the nature of the occupation and the specific tasks involved. In recent years there have been instances in EU countries where individuals wearing religious or cultural symbols or dress⁹⁸, or displaying features interpreted as the expression of a religion or belief, have not been recruited or have been dismissed by employers in the private sector. Wearing such symbols or dress, has been considered contrary to corporate image, wishes of clients, colleagues or neutrality in private employment in countries including Belgium, Denmark, France, Germany and The Netherlands. The differences in treatment in these cases cannot be considered as objectively and reasonably justified as they rely on very general principles, sometimes stereotypes, that could be applied to any occupation.⁹⁹ Considering such differences in treatment justified on the basis of the notion of “genuine and determining occupational requirement” contravenes Article 4.2 of the Directive.

Restrictions on religious and cultural symbols and dress in public employment have been introduced in several countries across the EU with the aim of ensuring neutrality. The concept of the state’s neutrality should be interpreted in line with the guiding principles of the United

⁹⁶ “*In very limited circumstances, a difference of treatment may be justified where a characteristic related to religion or belief, disability, age or sexual orientation constitutes a genuine and determining occupational requirement, when the objective is legitimate and the requirement is proportionate. Such circumstances should be included in the information provided by the Member States to the Commission.*”

⁹⁷ *Wolf v. Stadt Frankfurt am Main*, C 229/09, judgment of 12 January 2010, para13.

⁹⁸ Amnesty International construes ‘religious and cultural symbols and dress’ as “*forms of dress and symbols commonly perceived as associated with a particular religious and cultural affiliation or identification. Wearing such symbols and forms of dress is an exercise of the right to freedom of expression, and may also be an exercise of the right to manifest one’s religion or belief for individuals who wear such forms of dress and symbols as an expression of their religious beliefs.*” See Amnesty International, *Choice and Prejudice, Discrimination against Muslims in Europe* (Index: EUR 01/001/2012), pp. 8-9.

⁹⁹ The European Court of Justice found in the case of *Centre for Equal Opportunities and Fight against Racism v. Firma Feryn NV*⁹⁹, that the publicly announced recruitment policy excluding people from ethnic minorities on the basis of clients’ wishes amounts to direct discrimination “such statements being likely strongly to dissuade certain candidates from submitting their candidature and, accordingly, to hinder their access to the labour market.” The Director of the company Feryn declared after having published a vacancy announcement: ‘I must comply with my customers’ requirements. Judgment of the European Court of Justice of 10 July 2008, Reference for a preliminary ruling from the Labour Court of Brussels in the case of *Centre for Equal Opportunities and Fight against Racism v. Firma Feryn NV*⁹⁷, Case C-54/07, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=67586&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=846396> (accessed 25 January 2013).

Nations Special Rapporteur on freedom of religion or belief, who pointed to the “*Positive significance of that concept, which lies in the state’s obligation to be fair to the members of different religions or beliefs, on the basis of equality, and to refrain from any discriminatory treatment. State neutrality in this sense can be understood as a normative principle deriving from the obligation of a non-discriminatory implementation of freedom of religion or belief.*”¹⁰⁰

The requirement for state officials to present an impartial and neutral appearance, to the extent of excluding the wearing of religious and cultural symbols and dress may be an objective and reasonable justification regarding state officials, such as law enforcement agents, public prosecutors, or judges, exercising potentially coercive powers of the state. As the Council of Europe Commissioner for Human Rights has explained: “*In general, states should avoid legislating on dress ... It is, however, legitimate to regulate that those who represent the state, for instance police officers, do so in an appropriate way. In some instances, this may require complete neutrality as between different political and religious insignia; in other instances, a multi-ethnic and diverse society may want to cherish and reflect its diversity in the dress of its agents.*”¹⁰¹

Concerning teachers in public schools, the UN Special Rapporteur on the right to freedom of religion or belief has noted that the school is a place in which authority is exercised and, especially for young children, the teacher may represent an authority with enormous influence;¹⁰² a teacher wearing religious symbols in class may have an undue impact on students, but this will depend on the teacher’s general behaviour, the age of students and other factors.¹⁰³

Restrictions on wearing religious and cultural symbols and dress applicable to teachers must be assessed case-by-case in the light of the facts, and will only be permitted if they are demonstrably necessary and proportionate and for a legitimate aim under international human rights law. The requirement on teachers to carry out their professional duties impartially does not mean it is legitimate to prohibit them from wearing religious and cultural symbols and dress in all circumstances. In general, educational authorities should focus on ensuring that teachers perform their duties compatible with their pedagogical function, including respecting the religious or other beliefs of their students, notwithstanding their own religious, political or any other ideological opinions or beliefs.¹⁰⁴

¹⁰⁰ Interim Report of the Special Rapporteur on Freedom of religion or belief to the General Assembly, 18 July 2011, A/66/156, para50.

¹⁰¹ Council of Europe Commissioner for Human Rights, *Human Rights in Europe: no grounds for complacency: The burqa and privacy*, p39, http://www.coe.int/t/commissioner/Viewpoints/ISBN2011_en.pdf (accessed 25 January 2013).

¹⁰² Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, A/HRC/16/53 para23. <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-53.pdf> (accessed 10 January 2013), (Report of the Special Rapporteur on freedom of religion and belief, Heiner Bielefeldt).

¹⁰³ Report of the Special Rapporteur on freedom of religion and belief, Heiner Bielefeldt, para44.

¹⁰⁴ For further information on restrictions on the wearing of religious and cultural symbols and dress applicable to teachers in countries such as Belgium and Germany: Amnesty International, *Submission to the European Commission against Racism and Intolerance on Belgium* (Index EUR 14/001/2013), Amnesty International, *Submission to the European Commission against Racism and Intolerance on Germany* (Index EUR 23/003/2012).

2.1.1. THE CASE OF BELGIUM

Domestic anti-discrimination legislation allows for differences of treatment on grounds of religion or belief in employment. However, such differences must be based on a genuine and determining occupational requirement,¹⁰⁵ in line with Article 4.2 of the Framework Employment Directive.

Existing research has identified wearing headscarves in particular, as a barrier to accessing employment, especially in positions requiring direct contact with clients.¹⁰⁶ Some private employers, such as banks and financial institutions, allow the display of religious symbols only for back-office staff. Other employers, such as cleaning companies, restrict wearing religious symbols and dress to satisfy their clients' requirements.¹⁰⁷ This trend has been confirmed by the Centre for Equal Opportunities and Opposition to Racism, which collects individual complaints against discrimination, civil society organisations¹⁰⁸ and by Muslim individuals who were allegedly discriminated against and spoke to Amnesty International.

Belgian courts have at times¹⁰⁹ relied on the notion of "*genuine and determining occupation requirement*" to justify the rejection of candidates or the dismissal of employees solely on the basis of religious and cultural dress. Employers have justified such differences of treatment by relying on general considerations pertaining to neutrality, corporate image or clients' preferences.

We believe that for the reasons explained in chapter 3.1, this contravenes Article 4.2 of the Framework Employment Directive.

2.1.2 THE CASE OF FRANCE

According to French law, differences of treatment on grounds of religion or belief do not amount to discrimination if they stem from a genuine and determining occupational

¹⁰⁵ Belgian Law of 10 May 2007 "tendant à lutter contre certaines formes de discrimination", Article 8.

¹⁰⁶ The ECRI found that "*In some cases, it is claimed that these prejudices lead to discrimination, especially in the employment sector, as Muslims are refused posts on account of the suspicion in which they are held. Women who wear the headscarf in particular encounter difficulties in access to employment, housing and goods and services available to the public.*" European Commission against Racism and Intolerance (ECRI), *Fourth Report on Belgium*, 26 May 2009.

¹⁰⁷ Nadia Ben Mohammed, "*Les femmes musulmanes voilées d'origine marocaine sur le marché de l'emploi*", Free University of Brussels, 2006. F. Brion & U. Manço, "Exclusion and the job market. An empirical approach to Muslim women's situation in Belgium", *Muslim Voices*, 1998, p18–19. Ilke Adam, Andrea Rea, "*La diversité culturelle au travail. Pratiques d'aménagements raisonnables: adaptation du code vestimentaire*", 2010, pp80–92. The study includes 71 examples of policies implemented by public and private employers and relating to the accommodation of specific forms of dress code.

¹⁰⁸ Interviews undertaken by Amnesty International's researchers in March and June 2011 with civil society organisations including Toutes Egaales au Travail et à l'Ecole (TETE), Boss Over Your Own Head (BOEH), l'Association Belge des professionnels musulmans, l'Executif Musulman de Belgique, le Mouvement contre le racisme, l'antisémitisme et la xénophobie (MRAX) and the European Forum of Muslim Women (EFOMW).

¹⁰⁹ *Kadija Sounossi v. S.C Multipharma*, Labour Court of Brussels, judgement of 4 November 2010, *Centre for Equal Opportunities and Opposition to Racism v. nv G4S Security Services and Samira Achbita*, Labour Court of Antwerp, A.R. 06/397639/A, judgment of 27 April 2010, confirmed by the Antwerp Labour Court of Appeal, judgment of 23 December 2011, *E.F. v. Club Corp*, Labour Appeal Court of Brussels, judgment of 15 January 2008.

requirement, provided the objective is legitimate and the requirement is proportionate.¹¹⁰

As in Belgium, wearing religious and cultural symbols and dress, particularly the headscarf, has been identified as an important barrier for Muslim women whether they are attempting to access the labour market or already in the workplace. This has been confirmed by Amnesty International's research and human rights treaty bodies.¹¹¹

In research involving 20 big companies and focusing on the accommodation of religious needs in the workplace, the headscarf was a core concern raised by managers.¹¹² Some employers did not perceive the headscarf as a religious symbol but rather as a political claim or a symbol of gender inequality. Others saw a need to enforce the principle of secularism by making a clear distinction between the public and private spheres when manifesting religion or belief. Since the workplace is considered to be in the public sphere, the rejection of a candidate on the sole ground that she displays religious or cultural symbols or dress was not perceived as a discriminatory practice.

In recent years, legislative and policy proposals aimed at restricting wearing of religious and cultural symbols and dress in private employment have been discussed. The Union for a Popular Movement (UMP) supported the introduction of an amendment to the Labour Code, which would allow employers to introduce internal restrictions on the wearing of religious and cultural symbols and dress, with the aim of promoting religious neutrality in private companies.¹¹³

A bill aimed at imposing respect for the principle of religious neutrality in private child-care facilities was introduced to the Senate in October 2011 following the case of an employee of a private kindergarten who was dismissed because she refused to remove her headscarf.¹¹⁴

¹¹⁰ French law no. 2008-496 of 27 May 2008 "*portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations*".

¹¹¹ UN Human Rights Committee (HRC), *Concluding Observations on France*, CCPR/C/FRA/CO/4, 31 July 2008, par 25: "*The Committee notes with concern that despite the measures adopted by the State party to combat discrimination in the field of employment [...] persons belonging to ethnic, national or religious minorities – especially those with North African or Arabic names – face serious discriminatory practices that prevent or limit their equal access to employment*".

European Commission against Racism and Intolerance (ECRI), ECRI report on France, CRI (2010)16, adopted on 29 April 2010, para. 47.

¹¹² Dounia and Lylia Bouzar, *Allah-a-il une place dans l'entreprise?*, Albin Michel, 2009.

¹¹³ In the Republican Pact adopted by the UMP in April 2011, the proposition to amend the Labour Code is put forward. On 1 June 2011 the National Assembly adopted the resolution, "*Commitment to respecting the principles of secularism and religious freedoms*", which also includes the possibility of enforcing religious neutrality in companies (point 10). In its opinion "*Religious manifestation and secularism in the business sector*" of 1 September 2011 the High Council for Integration suggests amending the Labour Code to allow private employers to regulate the wearing of religious symbols and/or other manifestations of religion, p20, <http://www.hci.gouv.fr/IMG/pdf/HCI-Avis-laicite-entreprise-DEFINITIF-09-2011.pdf> (accessed 31 January 2012).

¹¹⁴ On 13 December 2010, a first-degree Tribunal found that the dismissal of an employee by Baby Loup, a private child day-care facility, following her refusal to remove her headscarf was not discriminatory. The judgment was confirmed by the Court of Appeal of Versailles in October 2011. After having taken parental leave, the employee returned to work in December 2008 wearing the headscarf. According to the internal regulation of the institution, employees are required to be neutral in relation to the clients' political and religious beliefs.

The bill was adopted by the Senate on 17 January 2012 and is currently pending before the National Assembly.¹¹⁵ Such legislative proposals, if passed into law, will contravene Articles 2 and 4 of the Framework Employment Directives.

¹¹⁵ Proposition de loi visant à étendre l'obligation de neutralité aux structures privées en charge de la petite enfance et à assurer le respect du principe de laïcité. The Bill was introduced by MP Françoise Laborde on 25 October 2011. The bill aims at extending the duty of neutrality to private child-care facilities with the exception of faith-based facilities. The bill also aims at introducing a duty of neutrality to structures hosting minors put under State protection and to child-minders (assistants maternels). <http://www.assemblee-nationale.fr/14/propositions/pion0061.asp> (accessed 17 December 2012).

3. GAPS IN PROTECTION

Although this submission focused on implementation of Directives 2000/43 and 2000/78, Amnesty International remains concerned about the existing gaps within the European Union's legislation against discrimination.

States are bound by international law to prohibit all forms of discrimination.¹¹⁶ In addition, the EU must also ensure this in the light of Articles 6 of the Treaty on the European Union and Article 21 of the Charter of Fundamental Rights of the European Union.¹¹⁷

As specified in the Directives, their monitoring process should also serve to identify existing gaps in the legislation, and the review process should "*include, if necessary, proposals to revise and update*" the existing legislation (Art.17 Race Equality Directive, Art. 19 Employment Equality Directive). **The Commission should use the current reviewing exercise as an opportunity to identify existing gaps in EU anti-discrimination legislation and ways to address them.**

In particular, Amnesty International remains concerned about the lack of political will at the level of the Council of the EU to adopt the Commission's proposal for a new anti-discrimination directive covering the grounds of age, disability, religion or belief and sexual orientation in access to social protection including social security and health care, social advantages, education and access to and supply of goods and services that are available to the public, including housing.¹¹⁸

After more than four years, there has still been no progress, and discussions within the Council of the EU seem to question fundamental aspects of the proposal, undermining the EU's commitment to reinforcing the *acquis* of EU anti-discrimination law, in stark contrast with the views of the European Parliament. The failure to adopt the proposed new EU legislation is at odds with the EU's obligations under the EU treaties and the Charter of Fundamental Rights. The new anti-discrimination directive would enhance protection against discrimination in several EU countries where domestic law still fails to cover discrimination on all grounds outside employment. Moreover, it would provide new common ground for monitoring and combating structural patterns of discrimination across the EU.

Examples below highlight instances of discrimination which fall outside the scope of the existing EU anti-discrimination legislation, including legislation aimed at fostering equality between women and men, leaving victims of discrimination outside the protection of EU law.

¹¹⁶ Article 26 of the ICCPR, Article 2 of the ICESCR, Article 14 and Protocol 12 to the European Convention on the Protection of Human Rights and Fundamental Freedoms.

¹¹⁷ Article 21.1 states "*Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited*".

¹¹⁸ Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:DKEY=473800:EN:NOT> (accessed 11 January 2013).

3.1 AN EXAMPLE OF DISCRIMINATION IN EDUCATION ON GROUNDS OF RELIGION OR BELIEF

EU legislation aimed at combating discrimination does not provide protection against discrimination on the grounds of religion or belief in the area of education. EU legislation, including the role of the Commission in ensuring its implementation and enforcement, is thus not applicable to cases of discrimination such as that below.

In February 2010, 'I', a 14-year-old Muslim girl of Moroccan background, and student at the Don Bosco College (a publicly-funded Catholic school), in Volendam, The Netherlands, expressed, along with three other pupils, the desire to wear a headscarf in school. An internal regulation prohibited headwear in general. School authorities decided to hold an internal discussion to clarify the issue. Initially 'I' refrained from wearing the headscarf but at the start of the following school year, she decided to do so as school authorities had yet to take a decision. After three weeks, during which 'I' received education by herself in a room separated from her schoolmates, she was told she was not allowed to wear the headscarf at school and would be expelled if she did not comply. The school amended its internal regulation by adding the headscarf to the list of items pupils were not allowed to wear. The case was brought before the Equal Treatment Commission, which found direct discrimination on grounds of religion. In its opinion, issued on 2 July 2010, the Commission said the school had failed to prove that prohibiting headscarves was necessary to preserve its religious ethos. The Commission was clear that denominational schools were entitled to introduce restrictions on grounds of religion insofar as they applied a consistent policy, which was not the case, as the school modified its internal rules only after 'I' expressed her wish to wear the headscarf. The school did not implement the opinion of the Equal Treatment Commission and thus 'I' was not allowed to wear the headscarf. Her family took the school to court but on 4 April 2011 the District Court of Haarlem found that the Don Bosco College had not discriminated against 'I'. The Court stated that denominational schools had wide discretion to decide what was necessary to preserve their religious ethos and that it was not within the judiciary's remit to decide on this issue. The Court of Appeal of Amsterdam upheld the judgment on 6 September 2011.¹¹⁹

3.2 DISCRIMINATION ON GROUNDS OF GENDER IDENTITY

Amnesty International remains concerned that EU anti-discrimination legislation provides only very limited protection against discrimination on grounds of gender identity. This is not explicitly covered by the EU Directives aimed at combating discrimination on grounds of sex.¹²⁰ Although the European Court of Justice has clarified that discrimination against people who intend to undergo, are undergoing or have undergone gender reassignment may amount to sex discrimination, Amnesty International is concerned that such protection is narrower than what would be provided on grounds of "gender identity", which are recognised grounds of discrimination in international law.

¹¹⁹ For further analysis of gaps in Dutch legislation, see Amnesty International's report '*Choice and prejudice*', chapter 4.3.5, page 73, <http://www.amnesty.eu/content/assets/REPORT.pdf> (accessed 31 January 2013).

¹²⁰ For instance Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between women and men in the access to and supply of goods and services and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

The United Nations Committee on Economic, Social and Cultural Rights has clarified that, “*Gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace*”.¹²¹ According to the Yogyakarta Principles on the application of international human rights law to sexual orientation and gender identity, which the Committee referred to, gender identity is “*each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms*”.¹²² Gender identity cannot thus be narrowly construed as referring exclusively to “gender reassignment” and protection under EU law should be extended to cover the full range of “gender identity”.

¹²¹ CESCR comment 20: Non-discrimination in Economic, Social and Cultural Rights, par.32., <http://www2.ohchr.org/english/bodies/cescr/comments.htm> (accessed 24 January 2013)

The Yogyakarta Principles, http://www.yogyakartaprinciples.org/principles_en.htm (accessed 24 January 2013)

CONCLUSIONS & RECOMMENDATIONS

1. REVIEW OF DIRECTIVE 2000/43/EC

1.1. NON-DISCRIMINATION IN ACCESS TO AND SUPPLY OF GOODS AND SERVICES, INCLUDING HOUSING

- The situation experienced by the Roma in Italy and Romania concerning housing amounts to racial discrimination and contravenes Article 3.1 (h) of Directive 2000/43/EC
- Lack of access to basic services such as water and sanitation experienced by Romani communities in Slovenia amounts to racial discrimination and contravenes Article 3.1 (h) of Directive 2000/43/EC
- Failure by the authorities, including the police, to prevent and thoroughly investigate racially motivated crimes, contravenes Articles 3.1 (h) of Directive 2000/43/EC. The police function relating to crime prevention and investigation should be construed as a service, access to which should be provided without discrimination.

Amnesty International calls on the European Commission to:

- **Promptly use all its powers, including those established by Article 258 TEU, to enforce article 3.1(h) of Directive 2000/43/EC in Italy, Romania and Romania**
- **Promptly use all its powers, including those established by Article 258 TEU, to ensuring that racially-motivated crimes are thoroughly investigated by enforcing Articles 3.1 (h) of Directive 2000/43/EC in Greece and Hungary**

1.2 NON-DISCRIMINATION IN EDUCATION

Segregation of Romani pupils in Roma-only schools, their placement in schools and classes meant to cater for educational needs of pupils with disabilities and where they are taught a reduced curriculum in the Czech Republic, Greece and Slovakia amount to racial discrimination and contravenes Article 3.1 (g) of Directive 2000/43/EC.

Amnesty International calls on the European Commission to promptly use all its powers, including those established by Article 258 TEU, to enforce Article 3.1 (g) of Directive 2000/43/EC in the Czech Republic, Greece and Slovakia.

2. REVIEW OF DIRECTIVE 2000/78/EC

Non-discrimination on grounds of religion or belief

Denial of access to employment or the dismissal of individuals wearing religious and cultural symbols and dress in private employment on the basis of the general

assumptions that restrictions on such forms of symbols and dress fulfil a genuine and determining occupational requirement, contravenes Articles 2, 3 (a, c) and 4 of Directive 2000/78/EC.

Amnesty International calls on the European Commission to promptly use all its powers, including those established by Article 258 TEU, to enforce Articles 3 (a, c) and 4 of Directive 2000/78/EC in Belgium and France.

3. PROTECTION GAPS

The current EU legislative framework aimed at combating discrimination does not provide protection against all forms of discrimination in all areas of life. Amnesty International also believes that the European Commission has not been consistent in ensuring respect for the principle of non-discrimination in the implementation of its legislation at national level.

Amnesty International calls on the Council of the European Union to promptly adopt the European's Commission Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.

Amnesty International calls on the European Commission to put forward proposals which aim to provide better protection against discrimination on the ground of gender identity in all areas of life.

Amnesty calls on the European Commission to promptly use all its powers, including those established by Article 258 TEU, to ensure that the principle of non-discrimination is respected by its member states when implementing EU law.

APPENDIX: LIST OF AMNESTY INTERNATIONAL'S RELEVANT PUBLICATIONS

DISCRIMINATION AGAINST THE ROMA IN ACCESS TO HOUSING IN ITALY

- Amnesty International, “On the edge: Roma, forced evictions and segregation in Italy”, (Index: EUR 30/010/2012)
- Amnesty International, “Italy's discriminatory treatment of the Roma breaches EU Race Equality Directive: Briefing to the European Commission”, (Index EUR 30/011/2012)
- Amnesty International, “Italy: 'Zero tolerance for Roma': Forced evictions and discrimination against Roma in Milan”, (Index :EUR 30/020/2011)
- Amnesty International, “Europe: Stop forced evictions of Roma in Europe”, (Index: EUR 01/005/2010)
- Amnesty International, “The wrong answer: Italy's 'Nomad Plan' violates the housing rights of Roma in Rome”, (Index: EUR 30/001/2010)
- Amnesty International, “Italy: The witch-hunt against Roma people must end” (Index: EUR 30/006/2008)

DISCRIMINATION AGAINST THE ROMA IN ACCESS TO HOUSING IN ROMANIA

- Amnesty International, “Amnesty International assessment of states' implementation of recommendations from first UPR cycle: 15th session of the UPR Working Group, 21 January - 1 February 2013”, (Index: IOR 41/021/2012)
- Amnesty International, “Romania: Forced eviction of Roma and alleged collusion in US-led rendition and secret detention programmes: Amnesty International Submission to the UN Universal Periodic Review, January-February 2013” (Index: EUR 39/012/2012)
- Amnesty International, “Unsafe foundations: Secure the right to housing in Romania”, (Index: EUR 39/002/2012)
- Amnesty International, “Mind the legal gap: Roma and the right to housing in Romania” (Index: EUR 39/004/2011)
- Amnesty International, “Treated like waste: Roma homes destroyed, and health at risk, in Romania” (Index: EUR 39/001/2010)
- Amnesty International, “Romania: Submission to the UN Universal Periodic Review: Second session of the UPR working group, 5-16 May 2008”, (Index: EUR 39/001/2008)

FORCED EVICTIONS AND THE RIGHT TO ADEQUATE HOUSING OF THE ROMA PEOPLE IN FRANCE

Amnesty International, "Chased Away: Forced evictions of Roma in Ile-de-France (Index: EUR 21/012/2012)

DISCRIMINATION AGAINST THE ROMA IN ACCESS TO SERVICES IN SLOVENIA

■ Amnesty International, "Parallel lives: Roma denied rights to housing and water in Slovenia", (Index: EUR 68/005/2011)

FAILURE TO INVESTIGATE RACIALLY MOTIVATED CRIMES, POLICE ILL-TREATMENT AND RACIAL PROFILING

GREECE

■ Amnesty International, "Police violence in Greece: Not just 'isolated incidents'", (Index: EUR 25/005/2012)

■ Amnesty International, "Greece: the end of the road for refugees, asylum-seekers and migrants", (Index EUR)

SPAIN

■ Amnesty International, "Stop racism, not people: Racial profiling and immigration control in Spain" (Index: EUR 41/011/2011)

HUNGARY

■ Amnesty International, "Violent attacks against Roma in Hungary: Time to investigate racial motivation" (Index: EUR 27/001/2010)

AUSTRIA

■ Amnesty International, "Victim or suspect - A question of colour: Racial discrimination in the Austrian justice system" (Index: EUR 13/002/2009)

DISCRIMINATION AGAINST ROMA PUPILS IN THE SLOVAKIA

■ Amnesty International, "Briefing to the UN Committee on Economic, Social and Cultural Rights, 48th session, May 2012", (Index: EUR 72/001/2012)

■ Amnesty International, "Right to education without discrimination: Policy brief to the Slovak government", (Index: EUR 72/003/2011)

■ Amnesty International, "Unlock their future: End the segregation of Romani children in Slovakia's schools" (Index: EUR 72/004/2010)

■ Amnesty International, "Steps to end segregation in education: Briefing to the government of Slovakia" (Index: EUR 72/009/2010)

■ Amnesty International, "Roma Children Still Lose Out: Segregation persists in Slovak schools despite new law - Campaign Digest" (Index: EUR 72/004/2009)

■ Amnesty International, "A tale of two schools: Segregating Roma into special education in Slovakia" (Index: EUR 72/007/2008)

- Amnesty International, “Still separate, still unequal : Violations of the right to education of Romani children in Slovakia” (Index: EUR 72/001/2007)

DISCRIMINATION AGAINST ROMA PUPILS IN THE CZECH REPUBLIC

- Amnesty International, “Five more years of injustice: Segregated education for Roma in Czech Republic”, (Index: EUR 71/006/2012)
- Amnesty International, “Continuing discrimination of Romani children in education: Amnesty International submission to the UN Universal Periodic Review”, (Index: EUR 71/003/2012)
- Amnesty International, “Submission to the Committee of Ministers of the Council of Europe on D.H. and others v. the Czech Republic” (Index: EUR 71/005/2011)
- Amnesty International, “Injustice renamed: Discrimination in education of Roma persists in the Czech Republic” (Index : EUR 71/003/2009)
- Amnesty International, “End injustice: Elementary schools still fail Romani children in the Czech Republic” (Index: EUR 71/004/2009)

DISCRIMINATION AGAINST MUSLIMS AND WEARING RELIGIOUS AND CULTURAL SYMBOLS AND DRESS

- Amnesty International, Public Statement, “Spain: Restrictions imposed by schools on the rights to freedom of expression and religion or belief must be in line with human rights standards” (EUR 41/002/2012)
- Amnesty International, “Choice and prejudice: Discrimination against Muslims in Europe” (EUR 01/001/2012)
- Amnesty International, “Choice and prejudice- A summary” (EUR 01/002/2012)
- Amnesty International, Public Statement, “United Kingdom: Judgment of the European Court of Human Rights in Eweida and Others v the United Kingdom” (EUR 45/001/2013)

DISCRIMINATION ON GROUNDS OF GENDER IDENTITY

- Amnesty International, “Submission to the European Commission against Racism and Intolerance on Germany” (EUR 23/003/2012)
- Amnesty International, “Submission to the European Commission against Racism and Intolerance on Belgium”, (EUR 14/001/2013)

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