



European Union Agency for Fundamental Rights
Agentur der Europäischen Union für Grundrechte
Agence des droits fondamentaux de l'Union européenne

Report on Racism and Xenophobia in the Member States of the EU



FRA 2007

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Foreword

On 1 March 2007, the European Union Agency for Fundamental Rights (FRA) came into being, following the extension of the mandate of the European Monitoring Centre on Racism and Xenophobia (EUMC). This makes the current report a 'transitional' report, in that it has been produced on the basis of the EUMC's legal base and mandate, but it is being published by the FRA. Whilst the equivalent reports in previous years were 'EUMC Annual Reports', this report does not have the title of FRA Annual Report. The first FRA Annual Report will be published in June 2008.

The current report covers the area of racism and xenophobia in the EU for the year 2006. The operation of the Racial Equality Directive provides an important context for much of this report. Last year's EUMC Annual Report focused on the stages of transposition of the Racial Equality Directive in the EU Member States. The current report looks at the implementation of the directive and the initial evidence on how the legislation is applied by courts and tribunals, as well as how the specialised bodies are using their powers.

Whilst there was much progress in implementing the Racial Equality Directive in most Member States, there was wide variation in the degree to which sanctions had been applied or compensation awarded in cases of ethnic discrimination during 2006. In around half of the Member States, even with laws and procedures in place, there were no indications of any sanctions being applied. The very low level of complaints in some countries during 2006 suggests a rather low awareness of the existence of the specialised bodies. It seems, therefore, that some Member States need to do more in the way of publicity and campaigns targeting potential victims of discrimination in order to raise awareness of the specialised bodies and their powers.

Furthermore, not all specialised bodies disclose the grounds of discrimination for individual complaints, which makes it impossible to ascertain how many cases of ethnic discrimination were processed by the legal system during the year. This weakness relates to a broader message of this report, namely that for discrimination to be recognised and tackled there need to be systems in place for producing relevant and accurate data. This should include data on the circumstances of those groups who are potential victims of discrimination, in all the thematic areas of education, employment and housing, as well as on incidents of racist violence and crime. This is important for a number of reasons, not least because of the need for evidence-based policies to combat discrimination and racist crimes. For example, whilst there is evidence in this year's report of some innovative positive action practices against discrimination in employment, such positive action is difficult to introduce and apply without accurate equality data on the employment circumstances of those groups who are the targets of such policies. Meanwhile, in the context of the continuing gaps in our knowledge resulting from the patchiness of equality data, this report demonstrates examples in many Member States

where research investigations have had the important function of identifying and bringing to public attention incidents and processes of racism and discrimination in the fields of employment, housing and education.

This year, the information and data collection activities for this report involved 27 National Focal Points (NFPs), not 25, including for the first time Bulgaria and Romania, who became full members of the European Union on 1 January 2007. As with previous Annual Reports from the EUMC, this report covers in turn the thematic areas of legal issues, employment, housing, education, and racist violence and crime. In addition, for a second year, there is a final chapter covering developments and policies at the EU level in combating racism and xenophobia.

The FRA will continue the work of EUMC in supporting the European Union and its Member States in their efforts to fight racism and xenophobia, combat discrimination, promote equality and present positive messages of diversity in Europe. These will be particularly relevant and important activities during 2007 and 2008, designated respectively as the European Year of Equal Opportunities for All, and the European Year of Intercultural Dialogue.

I would like to thank the Management Board of the EUMC, and now of the FRA, and the staff of the European Union Agency for Fundamental Rights for their strong commitment, and for the hard work they have carried out over the last year, especially during the transformation process, which has been a challenge for all of us.

Beate Winkler

Interim Director

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Executive summary

This report on racism and xenophobia in the EU is the first to be published since the creation of the European Union Agency for Fundamental Rights (FRA) on 1 March 2007, following the extension of the mandate of the European Monitoring Centre on Racism and Xenophobia (EUMC). This report, although published by the FRA, is not the FRA Annual Report. It is a report which was produced on the basis of the EUMC legal base and mandate. It covers information and developments on racism and xenophobia in the EU for the year 2006, in the thematic areas of legal issues, employment, housing, education, and racist violence and crime. In addition, there is a final chapter covering developments and policies at the EU level in combating racism and xenophobia.

Legal issues

By the end of 2006, in nearly all Member States, legislation transposing the Racial Equality Directive had been adopted. Therefore, in contrast to previous EUMC Annual Reports, the focus of this report shifts from matters of legislation and the transposition of the directive to the actual application of the legislation implementing the Racial Equality Directive in the Member States.

Implementation

There was much progress in implementation of the Racial Equality Directive in a majority of Member States in 2006. However, by the end of the year there were still a few countries lagging behind. In the Czech Republic, draft implementing legislation was blocked by the upper house of parliament and the legislative procedure needed to be restarted. Malta and Latvia have been slow in adopting the necessary legislation in compliance with the directive, and Estonia and Poland only introduced anti-discrimination legislation in the area of employment. In Germany and Luxembourg, implementing legislation was adopted only in 2006.

In Spain, a specialised body for the promotion of equal treatment was created formally by legislation, but was still not operational by the end of 2006. Likewise, no such specialised body existed in the Czech Republic and Malta. In Germany and Luxembourg, implementing legislation creating specialised bodies was only adopted during 2006, and these bodies were not fully operational by the end of 2006.

Sanctions

In many countries there is no indication that a single sanction had been applied or compensation awarded in cases of ethnic discrimination during 2006, even though laws and procedures were in place: these countries are the Czech Republic, Estonia, Germany, Greece, Italy, Cyprus, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Slovakia and Spain. Sanctions in cases of ethnic discrimination were applied, or compensation awarded, during 2006 in Belgium, Denmark, France, Ireland, Latvia, Hungary, Austria, Romania, Sweden, and United Kingdom. In Bulgaria and Poland, it is not possible to ascertain how many cases of ethnic discrimination were processed by the legal system during 2006, if at all, because the available case statistics do not disclose the grounds of discrimination concerned. In Estonia and Slovenia, specialised bodies received a comparatively low number of complaints during 2006, which could indicate a low level of awareness of the existence of the specialised body. Another observation is that in some countries (Cyprus, Hungary) the existing powers of the specialised bodies are not fully made use of, which could indicate a lack of resources of the specialised bodies in these countries.

The approach to sanctions and awards in cases of ethnic discrimination varies significantly between the Member States of the EU. The Member States can be clustered in three groups concerning severity of the sanctions and amount of awards: in the first group are those Member States in which comparatively heavy sanctions and large awards in cases of ethnic discrimination are regularly issued (France, Ireland, Hungary, Romania, Sweden, UK). In the second group are those Member States in which sanctions and/or awards have been issued, but these sanctions were not very severe or frequent (Belgium, Denmark, Latvia, Austria). In the third group (Estonia, Greece, Italy, Cyprus, Lithuania, Netherlands, Portugal, Slovenia, Slovakia, Finland), the possibility of complaints for victims of ethnic discrimination has been created, but these procedures do not produce sanctions or awards and there is a general reliance on moral pressure and recommendations to resolve disputes and discourage discrimination.

Employment

There were continuing indications in some Member States in 2006 of a growing awareness of the problem of ethnic discrimination in employment, and the need to combat it. Some Member States are collecting more precise equality data, or starting new anti-discrimination initiatives. It is quite probable that the growing state of awareness is at least partly related to the national developments which have followed on from the European anti-discrimination directives. In some Member States there were landmark court decisions against discrimination in access to employment, where before there were none. However, the fight against discrimination in many Member States is hindered by a continuing lack of adequate data on the subject.

Research findings

Research findings on discrimination in recruitment during 2006 have also had the effect of raising public awareness of the problem, and stimulating policy developments. For example, research in Sweden showed that having an Arabic-sounding name significantly reduced an applicant's chances of finding work, and another study showed that changing to a Swedish name improved them. The results of the two latest countries to be covered by the International Labour Office's discrimination testing programme, France and Sweden, were published in 2006, confirming the problem of discrimination by name, as did further tests by a French university which sent out test CVs to advertised job vacancies. Other variations of discrimination testing were carried out in Slovakia and Hungary. In all cases, the chances of the non-majority applicants were significantly reduced just by possessing a non-majority name. Such findings explain the development in 2006 of experimentation with anonymous CVs as a fairer way of making applications for jobs, this initiative being considered in various ways in France, Belgium and Sweden.

Personal testing

A new development in 2006 concerned several cases of 'personal testing', where individuals who have been told that a job is no longer available, and suspect that they have been told this simply because of their ethnic origin, arrange for a friend or a representative from an NGO to make the same application, and find the job still vacant. In 2006, cases of this were reported from France, the Czech Republic and Hungary, and in each of these countries the evidence from this 'personal testing' was ruled as acceptable in court to prove that discrimination had occurred. The Czech and Hungarian cases both concerned Roma, and this is consistent with a Hungarian survey finding in 2006 that 40 per cent of Roma respondents had personally experienced being told in person that a job was no longer vacant, after having been previously told over the phone that it was available.

Legal inequality and discrimination

As shown in the last EUMC Annual Report, there is regular evidence of the way that the insecure legal status of many migrant workers leads to their inability to resist gross exploitation. In 2006 the extremes of this were noted in particular regarding domestic and agricultural workers, with the appalling conditions in some areas likened to modern slavery. Also, several Member States in 2006 produced statistics showing that legally-insecure migrant workers experience higher rates of industrial injury than their majority peers.

Less dramatic are those instances of legal inequality where certain jobs or sectors are made unavailable even to those who are long term permanent residents of a Member State, and not 'migrant workers'. These areas of exclusion apply to those who do not hold formal citizenship. Many are 'ordinary' public sector jobs which cannot be claimed to cover areas of national sensitivity. In Italy, legal rulings in 2006 on the justifiability of such exclusion have been inconsistent.

Good practices

There were some strong and innovative 'good practice' examples reported in 2006. In the public sector in several Member States there were special positive action initiatives to recruit under-represented minorities, and also several experiments with public procurement or contract compliance, where local or national government bodies set preconditions to ensure that companies to which they award contracts for goods or services comply with equal opportunities criteria in their employment practices.

In both the private and public sector there were reports in 2006 of the adoption of diversity management policies, which emphasise the benefits of the diverse talents of multiethnic and diverse workforces. Some trade unions were also reported to be embracing diversity management policies, as well as drawing up new policies against discrimination, and initiatives to encourage more migrant workers to become union representatives.

Housing

Over the course of recent years a pattern in housing discrimination and exclusion has emerged, characterised by the persistence of housing disadvantages for migrants and Roma, by the increasingly problematic segregation of Roma, and by the difficulty in gauging the real dimension of discrimination, which makes it harder to address these problems. The chapter on housing focuses on these three main issues.

Evidence of inequality

New data on migrants' housing conditions has surfaced over the course of 2006. As in previous years, this data shows that disparities in housing between migrants and nationals are pervasive across Europe, and have remained so without any signs of regressing. There is an array of indicators of these disparities, among them, clear differences between migrants and nationals regarding housing standards, occupancy rates, quality of facilities and concentration in poorer

housing areas. Added to this is evidence of widespread discrimination obtained from surveys concerning exclusion in the housing market. When combined, these factors have contributed towards the clustering of migrants in areas where reinforcing mechanisms of social exclusion are at work.

Roma

Roma segregation remains a problem to be tackled by Member States. In some countries, the extreme deprivation of housing for Roma is heightened by their vulnerability to forced evictions and relocations. In a number of countries, repeated cases of forced evictions and other violations of the right to adequate housing led the European Roma Rights Centre to lodge several complaints with the Council of Europe European Committee of Social Rights. Also the Council of Europe Commissioner for Human Rights has expressed concern with regard to the continual threat of forced evictions that some Roma populations face. Their precarious housing situation, coupled with high levels of unemployment, locks Roma in a vicious circle of exclusion and segregation. However, the many initiatives promoted by a range of international organisations seem to indicate that Roma exclusion is becoming increasingly visible on the agendas for action of official and NGO bodies in Europe.

Complaints and research evidence

The low number of registered complaints of housing discrimination in most of the Member States seems to reflect an anomaly. The small number of complaints contrasts with the evidence from research and surveys which describe widespread experiences of discrimination in the housing field, suggesting that a large share of discrimination cases remains unreported.

Good practice

Regarding ‘good practices’, Portugal and Sweden are noticeable for devising large scale programmes to address the housing inequalities of migrants and minorities in an integrated manner, combining a broad national approach with local interventions. Both pay special attention to bridging gaps in information and empowering minorities by giving them the necessary resources to improve their housing situation. This report also refers to some encouraging examples of Roma spatial and housing integration. Two of the selected initiatives are particularly relevant inasmuch as they illustrate two different models of re-housing Roma families: on the one hand, maintaining the traditional lifestyle by being faithful to the environment, architecture and spatial distribution of a Roma settlement; on

the other hand, attempting to integrate Roma into the urban fabric by allocating families to the existing housing stock. Both initiatives seem to offer good results, and exemplify two parallel ways of attaining housing desegregation.

Education

Information in 2006 points to an increased public and political awareness as regards discrimination and related inequalities in education in the European Union. The rising number of political and civil society initiatives aiming at countering discrimination in education is a clear indicator of this development. At the same time, however, many of the governmental anti-discrimination and support programmes are not as effective as they could be. Measures and projects in EU Member States not only suffer from chronic underfunding, but also from a range of other problems undermining their effectiveness. These are discussed in turn in the education chapter.

Access to education

One problem is that full access to education is not ensured. While in most Member States there are legal regulations in place guaranteeing the school education of asylum seekers and undocumented migrants, in practice, full and proper access to education for these groups is not always there. Whilst there is an increasing number of programmes aimed at supporting Roma and diminishing segregation and discrimination, in many of the EU Member States equal opportunities in education are still not being provided due to the insufficient funding of programmes, (and some rather limited programmes, which, for example, only support the 'artistic abilities' of Roma).

Widening education gap

Some Member States ignore the effects that highly differentiated school systems with early school tracking have on widening the education gap between more privileged and less privileged population groups. Furthermore, instead of being recognised as reflecting education structures and programmes, low performance in education is often seen to be related to individuals' deficiencies, lack of language skills, lack knowledge of 'the national culture', and so on. 'Integration' is not perceived as something the education system has to achieve, but as something that is up to the individual.

Inadequate data collection on racist incidents

As has been shown by a range of surveys and studies, many migrants experience and perceive discriminatory practices in the context of getting educated (or of being refused proper education). Despite this fact, only four out of 27 Member States (namely some federal states of Germany; France, the Netherlands and the UK) have so far established national, regional and/or local mechanisms for proper data collection in this field. This lack of available information on racist incidents and discriminatory practices significantly constrains the abilities of Member States to counteract discrimination and inequality.

The neglect of mother tongue education

Education policies of most Member States disregard the need for migrant/minority students to develop their mother tongue. Mother tongue education programmes have recently experienced severe cuts in funding and political support. In relation to mother tongue education, there seems to be an increasing gap between pedagogical research and European recommendations on the one hand, and national language policies in practice on the other.

Intercultural education

Multicultural elements of education have been introduced or are in preparation in several countries, although implementation is often still at a very early stage. Dealing with diversity and countering discrimination as subjects of teacher education and in-service training have in many Member States not been sufficiently implemented. Furthermore, the training of teachers in dealing with students who speak foreign languages is in many Member States not well developed.

Involvement of migrants and minorities in teaching

Although there has been an increase in the employment of teachers with migrant or minority background in recent years, their overall number is still very low. In addition, it is still rare in most of the Member States for migrant and minority representatives to be included in developing education and support programmes.

Racist violence and crime

Racist violence and crime remains a serious social ill across the EU. Although good practices in response to the problem either continued or emerged in some Member States in 2006, it remains the case, as reported in previous EUMC Annual Reports, that most Member States still have insufficient data collection on racist violence and crime. This means that in many Member States trends in recorded crime cannot be reported and evidence-based crime prevention policies to combat the problem are lacking. Furthermore, there continue to be disturbing reports of violence and malpractice against vulnerable minorities by agents of the state – police, immigration and border control personnel – in many countries.

Variations in data collection

In 2006 (or 2005 where more recent data is unavailable) five of the EU's 27 Member States did not report any national criminal justice data on racist crime, namely Greece, Spain, Italy, Cyprus and Portugal. Ten Member States were categorised as having 'limited' criminal justice data collection mechanisms on racist violence and crime, with a further ten categorised as having 'good' data collection mechanisms in place for registering crimes. Once again, only two Member States – Finland and the UK – can be classified as having 'comprehensive' data collection. As a stark illustration of the difference in awareness and the variation in data collection policies, the UK (England and Wales, Scotland and Northern Ireland) collected more reports of racist crime in a 12 month period than the other 26 Member States combined.

Trends

Of 11 Member States for which sufficient criminal justice data is available on racist violence and crime to undertake a trend analysis,¹ different trends can be noted. Eight of the 11 Member States experienced a general upward trend in recorded racist crime: Denmark, Germany, France, Ireland, Poland, Slovakia, Finland and the UK (England, Wales and Scotland). On the other hand, three of the 11 Member States experienced a general downward trend in recorded racist crime: Czech Republic, Austria and Sweden.

NGO data

Where official state-produced criminal justice statistics are lacking, NGOs continue to fill a gap in many Member States with respect to documenting

¹ I.e. of recorded crime for the period 2000 to 2006 (or 2000 to 2005 where more recent data is unavailable).

and highlighting racist incidents. Importantly, NGOs have recorded a number of incidents of violence and other abusive treatment against vulnerable minorities by police, immigration and border control personnel. In particular, visible minorities, refugees, asylum seekers and the Roma appear to suffer the brunt of abusive treatment.

Good practices

In contrast to the examples of abusive behaviour by state officials against vulnerable groups, this year's report also offers encouraging examples of good practice initiatives in some Member States that endeavour to remedy police-community relations and improve how the police record and respond to victims of racist crime. In the context of the continuing lack of comprehensive data collection on racist crime across the EU, there are signs that some Member States are beginning to improve police and criminal justice data collection in this area. Supporting these developments, in 2006 the EUMC organised a data collection workshop on racist violence and crime in the context of a seminar organised under the Austrian Presidency of the EU to reinvigorate discussions and Member State agreement concerning the EU's Framework Decision on Combating Racism and Xenophobia.

European Union developments

The European Union has repeatedly condemned in the most absolute terms all manifestations of racism and xenophobia and is determined to fight them to the full extent of the powers conferred upon it by the treaties to do so, as well as to safeguard fundamental rights, non-discrimination and equal opportunities for all. In order to boost action at national level, raise awareness about the European anti-discrimination legal framework and demonstrate the benefits of diversity to businesses and society at large, the Council and the European Parliament have designated the year 2007 and 2008 as the European Year of Equal Opportunities for All, and the European Year of Intercultural Dialogue, respectively. During 2006 the EU has taken several measures to mainstream the priority of combating racism and xenophobia and to increase opportunities and access to mainline services, thus enforcing the current legislation in place to overcome discrimination. The final chapter of this reports sets out examples of such measures, describing a range of policies, action plans, programmes, awareness raising campaigns, and other activities which are all designed to further the aims of the European Union in combating discrimination and ensuring equal opportunities for all.

1. Introduction

This report on racism and xenophobia in the EU is the first to be published since the creation of the European Union Agency for Fundamental Rights (FRA). The Council Regulation establishing the Agency for Fundamental Rights, as successor of the European Monitoring Centre on Racism and Xenophobia (EUMC), came into effect on 1 March 2007. The FRA was established to provide assistance and expertise to the European Union and its Member States, when they are implementing Community law, on fundamental rights matters. The aim is to support them to fully respect fundamental rights when they take measures or formulate courses of action. The FRA was established through Council Regulation (EC) No. 168/2007 of 15 February 2007.²

This report, although produced under the FRA logo, is not the FRA Annual Report. It is a report which was produced on the basis of the EUMC legal base and mandate. It covers information and developments on racism and xenophobia in the EU for the year 2006. As with previous Annual Reports from the EUMC, the report covers the thematic areas of legal issues, employment, housing, education, and racist violence and crime. In addition, as with last year's EUMC Annual Report, there is a final thematic chapter covering developments and policies at the EU level in combating racism and xenophobia.

The information set out in this report is the result of an on-going data collection exercise involving the RAXEN National Focal Points (NFPs), one in each Member State. Each NFP has been responsible for collecting data under common headings in its own Member State for each of the five thematic areas, in accordance with specific and common guidelines, for the year 2006. The kinds of information gathered by the NFPs covers legal provisions, statistical data from official, semi-official and NGO sources, racist incidents and court cases, the results of academic research and opinion polls, and case studies of positive initiatives against racism and discrimination.³ This material forms the basis of this report on racism, xenophobia and discrimination in Europe in 2006.

This year, for the first time, the information and data collection involved 27, not 25, NFPs. Bulgaria and Romania became full members of the European Union on 1 January 2007. Although in 2006 they held the status of acceding countries rather than full Member States of the EU, nevertheless both had an NFP in place during 2006 in readiness to collect the appropriate data.⁴ The one difference between the information from Bulgaria and Romania and the other 25 Member States is that the data from the two new Member States draws not only on

² EN L 53/4 Official Journal of the European Union 22.02.2007.

³ Detailed information is presented in the FRA positive initiatives database, available at: http://raxen.fra.europa.eu/1/webmill.php?s_displayed=0&s_detail=0 (26.06.2007), and in the FRA InfoBase, available at: <http://www.fra.europa.eu/factsheets/front/factSheetPage.php> (26.06.2007).

⁴ The EUMC collected information regarding both countries via a project assisted by the European Commission in the framework of the PHARE multi-beneficiary programme on participation of Romania and Bulgaria in certain Community Agencies.

the year 2006 but also on material from earlier years. That is because it is the first time that material on these two countries has appeared in EUMC/FRA reports, and so it has been considered useful to present some information from previous years that has not appeared in an Annual Report before.

The EU equality directives form an important context for many of the themes in this report. Previous EUMC Annual Reports focussed on the legislation itself and the progress of transposition. The emphasis of this report is more on the practical implementation of the Racial Equality Directive and the first signs of its effects. This issue forms the major part of chapter 2, on legal issues and institutional initiatives.

The Racial Equality Directive also provides an important context for chapter 3 on employment. There have been notable landmark cases of court judgements against employment discrimination in two Member States, both said to reflect the influence of the directive. The directive also contains elements which encourage the collection of statistics on those groups who are victims of discrimination, and new developments along these lines in some Member States in 2006 seem to indicate that this message is being taken on board.

Both the employment and the housing chapters demonstrate the importance of research in bringing to light discrimination which would otherwise not be visible. Chapter 4, on housing, contrasts the tangible evidence of discrimination in housing uncovered by research with the virtual or total absence of any formal complaints about housing discrimination in many Member States. This gap between registered complaints and the outcomes of surveys on discrimination suggests that a large proportion of discrimination cases must go unreported, and underlines the importance for Member States to properly set up and resource their specialised bodies under the Racial Equality Directive.

Another theme in both the employment and housing chapters is that of legal insecurity and its implications for migrants' employment and their accommodation. Exploitative work conditions are found amongst migrant workers on restricted work permits, and the abuses and exploitation are even more severe amongst undocumented workers and asylum seekers. Similarly, in the area of housing the lack of a recognised status hinders undocumented workers from finding lawful solutions to housing, and renders them vulnerable to abuse without the protection of the legal system.

In a related theme, chapter 5, on education, shows that the children of undocumented migrants, as well as of asylum seekers, sometimes face barriers to access to education, even though in theory they have a legal right to such education. The chapter describes examples and cases of racism and discrimination in education in many Member States. It also covers three regularly recurring debates in the field of equal opportunities in education: the issues of segregation in schools and how it relates to the disadvantage of minority pupils, the issue of wearing religious symbols such as headscarves at school, and the issue of the

provision of teaching in minority languages. However, similar to the employment and housing chapters, it has to make its conclusions on the basis of incomplete or non-existent official data on discrimination in the educational system.

In chapter 6, on racist violence and crime, a number of themes have appeared before in EUMC Annual Reports. It is clear that significant improvements still need to be made with regard to how criminal justice agencies respond to the problem of racist violence and crime. In this field, there remains a great variety between Member States as to what is counted, how it is counted, and how it is reported. There are also disturbing reports in some Member States of violence against vulnerable minorities by agents of the state, such as police, immigration and border control personnel.

More positively, there are also examples of new initiatives by the police in some Member States, in areas such as the investigation of misconduct, the recording of crime, and the recruitment of minorities into a Member State's police force. Equally, in the other thematic areas of employment, housing and education, there are positive signs of a growing awareness of the need to tackle problems of bad practice and bad data, and there are new examples of innovative initiatives to combat racism and discrimination. All of the thematic chapters end with examples of new and positive initiatives to combat racism, xenophobia and discrimination in Europe.

Political agreement on the Regulation on the FRA was reached at the end of 2006. The Regulation states that the Agency should take measures to raise the awareness of the general public about their fundamental rights. This is in the light of the fact that 'greater knowledge of, and broader awareness of, fundamental rights issues in the Union are conducive to ensuring full respect of fundamental rights.'⁵ In order to raise public awareness of fundamental rights the Agency should develop a communication strategy and promote a dialogue with civil society. Developing effective institutions for the protection and promotion of human rights is a common value of the international and European societies, as expressed by Recommendation No R (97) 14 of the Committee of Ministers of the Council of Europe of 30 September 1997. In a general sense, the positive initiatives described in this report contribute to the promotion and respect of fundamental rights, and are consistent with the fundamental values of the European Union, which include the Charter of Fundamental Rights of the European Union and the European Convention for Protection of Human Rights.

5 http://fra.europa.eu/fra/material/pub/FRA/reg_168-2007_en.pdf (26.06.2007).

2. Legal issues and institutional initiatives against racism and discrimination

The main EU legislation in the area of combating racism and xenophobia falling under the first pillar is the Racial Equality Directive.⁶ The relevance of the Racial Equality Directive for the work of the FRA does not require further explanation.

The EU-15 were obliged to complete transposition of the Racial Equality Directive by 19.07.2003. The newer Member States had a later transposition deadline than the EU-15 (01.05.2004). In the Communication of the Commission to the Council and to the European Parliament on the application of the Racial Equality Directive in 2006,⁷ the Commission mentioned that two Member States (Germany and Luxembourg) had not submitted to the Commission any legislation transposing the directive (by the end of 2006 both countries had in fact enacted relevant legislation). The Commission also stated that it was examining the national legislative measures notified by the Member States, in order to assess their conformity with the directive and to ensure that victims of discrimination can exercise the rights given to them. The Commission also announced that it will then take the necessary action to ensure full and correct transposition. The European Court of Justice did not pass any judgment in which the Racial Equality Directive was interpreted yet.⁸

The legislative sections of the 27 RAXEN National Data Collection Reports for 2006, on which this chapter is based, present an overview of relevant legal issues and institutional initiatives. This year's report on racism takes into account the fact that in most countries legislation regarding ethnic discrimination had already been adopted, aimed at transposing the Racial Equality Directive. Correspondingly, the focus of the FRA shifts from matters of legislation and transposition of the directive to the actual application of the legislation implementing the Racial Equality Directive in the Member States. Following on from last year's Annual Report, which focused especially on the creation and powers of specialised bodies for the promotion of equal treatment designated according to the Racial Equality Directive, this year's report offers information on how the specialised bodies use their powers and how the legislation is applied by courts and non-judicial tribunals. Finally, the chapter highlights a number of legislative and other initiatives of relevance for policy makers and legal practitioners as good practices that promise to reduce the phenomena of racism and xenophobia.

⁶ Council Directive 2000/43/EC (29.06.2000).

⁷ COM (2006) 643 final (30.10.2006).

⁸ The ECJ dealt with the Employment Equality Directive 2000/78/EC in two cases: Chacon Navas (C-13/05) concerning discrimination on the ground of disability and Mangold (C-144/04) concerning discrimination on the ground of age.

2.1. The impact of the Racial Equality Directive

The RAXEN Network has collected information on the application of the Racial Equality Directive covering 2005 and 2006 (the data available for Romania cover the period 2002-2006). The reference timeframe for the complaints data varies because the various Member States have different reporting periods. It must be underlined that the data provided are *not directly comparable*, due to different standards concerning the competences of specialised bodies, the methods for recording and reporting complaints, the powers of specialised bodies and the sanctions for racial/ethnic discrimination. While the Racial Equality Directive establishes minimum standards, it does not fully harmonise relevant legislation.

In some Member States, the implementation of the Racial Equality Directive lags behind. In the **Czech Republic**, draft implementing legislation was blocked by the upper house of Parliament and the legislative procedure needed to be restarted. **Malta** and **Latvia** have been very slow in adopting the necessary legislation in compliance with the directive. **Estonia** and **Poland** only implemented anti-discrimination legislation in the area of employment by the end of 2006.

Table 2.1: Application of the Racial Equality Directive and sanctions issued 2005-2006

Member State	Timeframe (reporting periods differ)	Complaints of racial/ethnic discrimination received by specialised body	Racial/ethnic discrimination confirmed by specialised body, other bodies, tribunals, etc.	Sanctions for racial/ethnic discrimination issued by specialised body, other bodies, tribunals, courts, etc.	Type and range of sanctions
Belgium	2005	1,025	133+24	3	€100-650
Bulgaria	2006 (up to 15.09.2006)	Unknown (38 for all discrimination grounds)	Unknown (15 for all discrimination grounds)	Unknown (12 for all discrimination grounds)	Orders for discontinuation, administrative penal sanctions
Czech Republic	2006	No specialised body	0	0	
Denmark	2006	98	5	4	DKK 1,000-3,000 (€134-400)
Germany	2006	No specialised body	0	0	
Estonia	2005-2006	1	0	0	
Greece	2005-2006	Ombudsman: 9 (2005) + 23 (2006); other specialised bodies: 1	4 (2005) + 8 (2006)	0	

Spain	2006	No specialised body	0	0	
France	3/2005-2/2006	729	Unknown	12 (in 2005)	Average €1,270
Ireland	2005	Unknown (285 casefiles regarding ethnic discrimination of Equality Authority; see explanation in text below)	30 (decided by Equality Tribunal)	30	€100-20,000, also non-financial recommendations
Italy	2005	867	282	0	
Cyprus	2005	Unknown	21	0	
Latvia	2005	15	1	1	€1,422
Lithuania	2006	20	7	0	
Luxembourg	2006	No specialised body	0	0	
Hungary	2006	Unknown (592 for all discrimination grounds)	5	5	HUF 400,000-700,000 (ca. €1,600-2,800); or publication of decision
Malta	2006	No specialised body	0	0	
Netherlands	2005	421 (limited to employment; otherwise unknown)	37	0	
Austria	Jan-Aug 2006	337	1 (court) + 5 (specialised body)	1	€800
Poland	2006	Unknown	Unknown	Unknown	
Portugal	2006	68	11	0	
Romania	2002-2006	252	Unknown	53	€114-2,285 (for all discrimination grounds)
Slovenia	2005-2006	6 (1 in 2005, 5 in 2006)	0	0	
Slovakia	2006	Unknown (156 written + 90 oral for all discrimination grounds)	9	0	
Finland	2005	302	5	Unknown	
Sweden	2006	757	Unknown	6	SEK 15,000-40,000 (€1,613-4,303)

United Kingdom	2005	1,028	119 (limited to employment cases by Employment Tribunals; others unknown)	73 (limited to Employment Tribunals, otherwise unknown)	Median award £6,640 (€9,859); average award £30,361 (€45,079); maximum award £984,465 (€1,461,995)
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Source: National Focal Points of RAXEN network (October 2006)

Based on this information, the systems addressing racial/ethnic discrimination in the Member States can be categorised in five groups. In the first group are those Member States in which comparably severe sanctions and awards are regularly issued. In the second group are those Member States in which sanctions and/or awards have been issued in the reporting period, but these sanctions were not severe or frequent; in the third group are those Member States where it is not possible to assess the effectiveness of legislation to tackle racial or ethnic discrimination, because statistics are not disaggregated according to discrimination grounds. In the fourth group are those Member States where complaints possibilities for victims of ethnic discrimination were created, but these procedures have not produced sanctions or awards relying mostly on 'moral pressure' to resolve disputes and discourage discrimination. In the fifth group are those Member States where the specialised body received a negligible number of complaints. Finally, in the sixth group are those Member States which did not have an operational specialised body in place by 2006.

Table 2.2: Systems addressing racial or ethnic discrimination 2005-2006

Sanctions or awards are comparably severe and/or frequent 2005-2006	Sanctions or awards are not severe or frequent 2005-2006	No data on effectiveness of legislation concerning racial/ethnic discrimination available 2005-2006	No sanctions or awards 2005-2006	Specialised body exists, but received negligible amount of complaints 2005-2006	No operational specialised body 2005-2006
France Ireland Hungary Romania Sweden United Kingdom	Belgium Denmark Latvia Austria	Bulgaria Poland	Greece Italy Cyprus Lithuania Netherlands Portugal Slovakia Finland	Estonia Slovenia	Czech Republic Germany Spain Luxembourg Malta

2.1.1. Severe and/or frequent sanctions or awards 2005-2006

In **France**, the High Authority against Discrimination and for Equality (HALDE) published its first annual report in May 2006. It covers the period from 08.03.2005 to 28.02.2006. During this time, HALDE received 1,822 complaints on all discrimination grounds. Forty per cent of these complaints concern discrimination on the grounds of ethnic origin. Of these 1,822 complaints, HALDE reached a final decision in 163 cases and in some of these cases issued a recommendation to public bodies or companies.⁹ HALDE registered 4,058 complaints during the whole year 2006, i.e. twice more complaints than in the year 2005. Origin is still the most important reason for being discriminated: thirty-six per cent of the complaints are related to origin (17 per cent for health or handicap, 6 per cent for age and 5 per cent for gender). Employment remains the most important field of complaints: forty-four per cent of the complaints are related to discrimination in employment, whereas only 5 per cent of the complaints are related to discrimination in housing. In France, very few civil court cases are based on discrimination on the ground of race or ethnic origin and such cases are more likely to be before criminal courts. In 2006 (January-December 2006), the Prosecution offices registered 660 cases related to discrimination issues, among them 628 were racial discrimination cases, 21 were religious discrimination and 11 were anti-Semitic discrimination. Moreover, regarding issued decisions in 2005, the NFP France noted that 12 decisions were related to anti-discrimination laws; six decisions were related to racial discrimination in access to goods and services; four decisions were related to ethnic/national/origin discrimination in access to goods and services; two decisions were related to racial discrimination in access to employment. In July 2006, a fine of 3,000 euros was issued in a case of employment discrimination by the Nantes first instance criminal court.¹⁰ The decision, which was based on work done by HALDE, is the most severe ever pronounced by a court in France concerning ethnic discrimination in employment (see section 3.7).

In **Hungary**, the Equal Treatment Authority, the specialised body against discrimination, received 491 complaints in 2005; in 2006 it grew by approximately 20 per cent, to 592. (The data refer to all types of complaints issued to the Authority and are not disaggregated according to discrimination ground.) In 2006 altogether 27 decisions were adopted which found that the complaints were well founded. Five out of these referred to discrimination on the grounds of ethnic origin, sanctions included issuing a fine (ranging from EUR 1,600 to EUR 2,800) and publication of the ruling. The legal instrument of *actio popularis* has not yet been utilised by the Equal Treatment Authority. In one instance, in the highly publicised Jaszladany school segregation case, the Equal Treatment Authority joined the ongoing court proceedings.¹¹ One hundred and three complaints were dismissed mainly

⁹ HALDE Annual Report 2005, available at: <http://www.halde.fr/rapport-annuel/2005/> (30.08.2006).

¹⁰ <http://www.halde.fr/actualite-18/agenda-haute-autorite-38/pour-discrimination-9261.html> (12.09.2006).

¹¹ <http://nol.hu/cikk/418058/> (26.06.2007).

because the Hungarian legal framework limits proceedings of the Equal Treatment Authority in discrimination cases arising between private parties outside the sphere of employment, for example condominium housing cases. Another reason for dismissals is that the complainant wished to remain anonymous which is not possible according to the Hungarian legislation.

In **Hungary**, on 09.06.2006 the Appellate court of Debrecen overruled the first-instance judgment in a highly publicised school desegregation case.¹² In June 2005 the Chance for Children Foundation (CFCF) brought an *actio popularis* claim against the local council of Miskolc, alleging that the council was indirectly responsible for segregation of Roma children in primary education for failing to redraw the boundaries of the school districts when several primary schools were shut down. The Appellate Court found that the Council of Miskolc segregated Roma children, thus violating their right to equal treatment based on ethnic origin. The Court held that not only active conduct, but also omission could lead to a breach of the obligation of equal treatment, especially of the obligation to accord similar quality service in education to all. The court observed that the legal provision regulating the reversal of the burden of proof in fact created a legal presumption to the effect that once the protected ground (Roma ethnicity) and the disadvantage suffered (separated education of a lower quality) had been established, the burden to disprove discrimination automatically fell to the defendant. The court ordered the defendant to publish its findings through the Hungarian Press Agency (MTI). The case is groundbreaking because it is the first case in which a court applied the principles created by the Racial Equality Directive to address racial segregation in education.

In **Ireland** complaints can be lodged with the Equality Authority, who may assist the complainant to pursue their case; or directly with the Equality Tribunal. The Equality Tribunal is a quasi-judicial body that hears and decides claims of discrimination in employment under the Employment Equality Act 1998-2004 and in relation to goods and services under the Equal Status Acts 2000-2004. However, casefiles of the Equality Authority are 'neither a measure of the extent of discrimination or the level of demand on the Equality Authority's services. The number and type of casefiles reflect the priorities that have been set down by the Board of the Equality Authority.'¹³ The Equality Authority had the following casefiles during 2005: under the Employment Equality Act 1998 and 2004, 115 cases on the ground of race and four cases on the Traveller ground; under the Equal Status Acts 2000 to 2004, 49 cases on the ground of race and 104 cases on the Traveller ground; under the Intoxicating Liquor Act 2003, two cases on the ground of race and 11 cases on the Traveller ground. In cases before the Equality Tribunal under the Employment Equality Act 1998-2004 on the 'race' ground, complainants were awarded EUR 5,000, EUR 10,000 and EUR 20,000 ('race' and gender grounds). In

¹² http://www.cfcf.hu/?folder_id=3 (26.06. 2007).

¹³ Equality Authority *Equality Authority Annual Report 2005*, p. 21.

cases under the Equal Status Acts 1998-2004 on the ground of 'race', awards of EUR 100 and EUR 500 were made. Awards in cases under the Equal Status Acts 1998-2004 on the Traveller ground ranged mostly from EUR 100 to EUR 500, with some awards in the range of EUR 1,000 to EUR 2,000. In total, complainants were successful in ethnic discrimination cases in 30 cases (some with multiple complainants).

The Supreme Court of **Ireland** delivered its decision in the case *Doherty & Doherty v. South Dublin County Council*.¹⁴ This case turns around the powers of the Equality Authority in Ireland and its power to intervene in court proceedings in circumstances where the Authority considers that it can assist the court in reaching a conclusion. The Supreme Court held that the Equality Authority has the statutory authority to apply to act and, if permitted by the court, to act as expert adviser of the court, technically termed *amicus curiae*, and that this fell well within the scope of the general power of the Authority. This case is significant as it sets a precedent which allows the Equality Authority to be involved in court proceedings.

In **Romania**, the experience is very much marked by the transposition of both directives in one piece of legislation¹⁵ and the establishment of one common national equality body¹⁶ to deal with all forms of discrimination, including race or ethnic origin, nationality, religion. The national equality body has the power to sanction discrimination – to issue a verbal or written warning or even an administrative fine. The level of administrative fines differs: when the victim is only one individual, then the amount varies from RON 400 to 4,000 (about EUR 114 to 1,140), while in cases where the victims are a group or a community, the levels are higher: from RON 600 to 8,000 (about EUR 170 to 2,285). Under the influence of EU monitoring, the NCCD compiled in 2006 different statistics of its jurisprudence with regard to ethnic discrimination for the years 2002-2006.¹⁷ From a total of 1,542 complaints, 252 complaints are complaints of alleged ethnic discrimination. Sanctions are issued in 21 per cent of complaints. Statistics are also available on the areas in which ethnic discrimination occurred and sanctions were applied in 2002-2006. For the year 2005, although the number of complaints was the highest (18 complaints) in regard to alleged discriminatory behaviour of public officials (institutions), no sanction was applied. Yet, the behaviours most likely to be sanctioned are hate speech against Roma (prejudice) and press articles related to Roma (prejudice and stereotypes) (nine sanctions) and denial of access to public places and shops (four sanctions) or discriminatory advertisement (four sanctions). In 2006 the number of these complaints has been 69, representing 16 per cent from all (432). In 2006, the National Council for Combating Discrimination established

14 31.10.2006, S.C. No. 223/06 Fennelly J. and No. 233/06 Macken J.

15 See Romania/Law 48/2002 concerning the adoption of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination (31.01.2002) and subsequent amendments.

16 Romania/National Council for Combating Discrimination (NCCD) – The official website of the institution is available at: <http://www.cncd.org.ro> (14.10.2006).

17 NCCD's President public presentation on statistics on ethnic/race discrimination.

nine facts of discrimination against Roma people and set six fines: four for discriminatory public speaking, one for segregation of Roma children in education and the last for access to public spaces.¹⁸

In **Sweden**, during 2006, the Ombudsman against ethnic discrimination received 757 complaints of ethnic and religious discrimination, most of which were either dismissed or settled out of court. In six cases the Ombudsman won lawsuits on behalf of the victim. In these six court judgments, compensation payments ranging from SEK 15,000 to 40,000 (about EUR 1,600 to 4,300) were issued. These cases involved discrimination outside the field of employment, and they have all been appealed.

In the **United Kingdom**, statistics on cases cover either racial discrimination (as under the definition of racial grounds under the Race Relations Act 1976) or discrimination based on religion or belief. The Commission for Racial Equality received 1,028 complaints in 2005.¹⁹ The Employment Tribunal provides statistics for discrimination in employment in their annual report for the year ended 31.03.2006.²⁰ For the period 01.04.2005 to 31.03.2006 race discrimination was established in 119 cases and religious belief discrimination was established in nine cases (in both cases this represents a success rate of 3 per cent) by the Employment Tribunal. In 73 race discrimination cases compensation was awarded; the median award amounted to GBP 6,640, the average award to GBP 30,361 and the maximum award to GBP 984,465.

In the **United Kingdom**, probably the most significant race discrimination case during 2006 following changes introduced into the Race Relations Act by the Racial Equality Directive was *Elias v Secretary of State for Defence*.²¹ The High Court (and on appeal the Court of Appeal) found that the compensation scheme operated by the Ministry of Defence for British civilian internees, interned in the Far East during WWII was indirectly racially discriminatory. It applied a criterion of having to be born in the UK, or having a parent or grandparent born in the UK to obtain the payment. The Court of Appeal's judgment was significant because the new definition of indirect discrimination derived from the Racial Equality Directive was applied and further clarification of what is required to establish indirect discrimination was offered; the case also established that the compensation scheme constituted a form of 'social advantage' and therefore was covered by the new indirect discrimination definition.

18 2006 Annual Report of the National Council for Combating Discrimination (NNCD), <http://www.cncd.org.ro/index.php?level1=adresa>

19 http://www.cre.gov.uk/downloads/ar05_main.pdf (11.05.2007).

20 http://www.employmenttribunals.gov.uk/publications/documents/annual_reports/ETSAR05-06.pdf (09.01.2007).

21 United Kingdom/Court of Appeal (10.10.2006) EWCA Civ 1293.

2.1.2. No severe or frequent sanctions or awards 2005-2006

In **Belgium**, the specialised body, the Centre for Equal Opportunities and Opposition to Racism (CEOOR), received 1,025 complaints regarding racism in 2005²² and 987 complaints in 2006. In 2005, 133 complaints were the subject of a mediation exercise and 24 complaints formed the basis for a judicial procedure. Official statistics on the amount of civil court cases regarding ethnic discrimination in Belgium are not available. In at least three cases,²³ sanctions (ranging from fines between 100 euros in a case of discrimination by a doorman in a discotheque and 650 euros in a case of discriminatory refusal to let an apartment) were imposed by courts in cases of ethnic discrimination.

In **Denmark**, the specialised body, the Complaints Committee for Ethnic Equal Treatment, received 98 complaints during 2006, and a total of 174 complaints in the period July 2003-December 2005. The Complaints Committee was able to establish discrimination in seven cases, recommending free legal aid for only one in the specified period.²⁴ The Complaints Committee does not have a mandate to hear witnesses or otherwise examine the facts of a case, and bases its findings solely on documentary evidence. Many cases have to be dismissed on this ground. The Complaints Committee does not apply the principle of the shared burden of proof and cannot recommend free legal aid when discrimination is not proven. The Danish government intends to abolish the Complaints Committee on Ethnic Equal Treatment and to create a new equality body covering all grounds of discrimination.²⁵ There were a few court cases²⁶ against doormen at various discotheques for ethnic discrimination when refusing accessing to potential customers. The fine usually imposed in these cases amounted to 1,000 Danish kroner (about 135 euros).

In **Denmark**, the one and only case for which the Complaints Committee on Ethnic Equal Treatment had granted free legal aid so far was decided by the courts. The case concerned a technical school which allegedly followed discriminatory instructions of employers. The plaintiff, who was a student at this school, noticed a handwritten note stating that an employer did not wish 'P' as trainees. 'P' meant '*perker*', Danish slang for 'Pakistani/Turkish'. The teacher confirmed that a private employer had instructed the school not to send a person of the specified ethnic origin for training. The plaintiff also

22 Calculations by the Centre for Equal Opportunities and Opposition to Racism.

23 Belgium/Correctionele Rechtbank Leuven (25.05.2005); Belgium/Rechtbank Brussel, Nr. 05/1289/A (03.06.2005); Belgium/Cour d'appel de Liège (02.11.2005).

24 Calculations by the Complaints Committee on Ethnic Equal Treatment; Complaints Committee on Ethnic Equal Treatment *Annual Report 2003/2004*, p. 39; Complaints Committee on Ethnic Equal Treatment *Annual Report 2005*, p. 50.

25 Beskrivelse af regeringens forslag om oprettelse af et Fælles Klagenævn for Ligebehandling, available at: http://www.bm.dk/graphics/Dokumenter/Presse%20og%20nyheder/Pressemeddelelser/2006/061003_notat.pdf (12.10.2006).

26 Denmark/Copenhagen City Court judgment (01.01.2006), Denmark/Copenhagen City Court judgement (23.02.2006); Denmark/Copenhagen City Court judgment (16.03.2006); Denmark/Copenhagen City Court judgment (23.03.2006); Denmark/Copenhagen City Court judgment (06.04.2006).

complained of experiencing reprisals from the school due to his complaint. The Complaints Committee for Ethnic Equal Treatment had recommended free legal aid.²⁷ The City Court of Copenhagen²⁸ and, on appeal, the Eastern High Court²⁹ decided that it was not proven that there had been a violation of the Act of Equal Treatment neither in relation to the alleged differential treatment of trainees of Danish origin or trainees of another ethnic origin, nor in relation to the alleged reprisals towards the plaintiff. The City Court found that the handwritten note did not indicate that the teacher had been willing to fulfil discriminatory demands made by the specific company or other employers. The High Court based its decision solely on the reason that the plaintiff was not eligible for the trainee position due to lack of qualifications.

In **Latvia**, a package of draft amendments to eight pieces of legislation was developed in 2005 to transpose the Racial Equality Directive. Two draft amendments were adopted in 2005 and two in 2006 while the remaining four draft amendments are in the Parliament at various stages of progress. During 2005, the Latvian National Human Rights Office received 15 complaints concerning discrimination on the grounds of race or ethnic origin and five complaints on the grounds of language.³⁰ Until December 2005, the Law on the Latvian National Human Rights Office (LNHRO) did not envisage representation of victims of discrimination at court.³¹ The amendments to the legal basis of the Latvian National Human Rights Office adopted in December 2005 provide that the LNHRO has a right (however, not a duty) to represent victims of discrimination. This new role led to the first-ever ethnic discrimination court case in Latvia (see below). In 2005 the LNHRO created a Unit for Eliminating Discrimination, which would investigate cases of discrimination, analyse legislation, and raise public awareness. During 2006, the LNHRO received 49 complaints on the grounds of race or ethnicity. On 01.01.2007, the Ombudsman of the Republic of Latvia was established on the basis of the former LNHRO.

In **Latvia**, in 2006 the first-ever ethnic discrimination case was reviewed by the Jelgava court:³² the Latvian National Human Rights Office, the national specialised body for the promotion of equal treatment, filed a complaint on behalf of a Roma woman who was refused employment in a children clothes store. The court awarded compensation of LVL 1,000 (EUR 1,422) for moral harm (see section 3.7).

In **Austria**, the specialised body, the Ombud for equal treatment (OET), recorded 337 complaints based on the ground of ethnic origin in the period

²⁷ Decision of 01.09.2004 (j.nr, 730.4).

²⁸ Denmark/Copenhagen City Court (29.11.2005).

²⁹ Denmark/Eastern High Court, 5 afd. A.s. nr. B-4028-05 (27.06.2006).

³⁰ Latvian National Human Rights Office *Annual Report 2005*.

³¹ Information provided by the Latvian National Human Rights Office on 27.04.2005.

³² Latvia/Jelgavas tiesa, Case No C 15066406 (06.06.2006).

January-August 2006.³³ The Equal Treatment Commission, a non-judicial body specialised on discrimination cases, consists of three senates covering all grounds of discrimination covered by Article 13 of the EC Treaty. Senate I does not deal with issues of ethnic discrimination, but exclusively with gender discrimination. Senate II deals with ethnic discrimination in employment cases and Senate III deals with cases of ethnic discrimination in education, services and other areas covered by the Racial Equality Directive. During 2006, Senate II received 11 applications concerning ethnic discrimination and Senate III received six applications concerning ethnic discrimination. During 2006, Senate II established one case of ethnic discrimination and Senate III established four cases of ethnic discrimination.³⁴ The decisions of the Equal Treatment Commission are non-binding and do not contain any sanction. By May 2006, all federal provinces transposed the EU anti-discrimination directives and established the required equality bodies. The equality bodies in seven federal provinces reported about 550 contacts and about one quarter was related to the grounds of ethnic origin or religion. Most of the respective cases dealt with employment issues and were resolved through mediation. There was only one court decision concerning ethnic discrimination in Austria in 2006 (see below).

In **Austria**, the first court ruling regarding discrimination on grounds of ethnic origin based on the new Equal Treatment Act was issued.³⁵ The plaintiff, a woman of Arab origin wearing a headscarf, was thrown out of a clothes shop by a shop assistant shouting: 'We do not sell to foreigners.' The court decided that the plaintiff was discriminated against on the ground of ethnic origin. The denial of service was declared to be direct discrimination and the behaviour was classified as harassment. The first instance decision was appealed. On 30.03.2007, the appeal court delivered its verdict and awarded immaterial damages of 800 euros to the plaintiff.³⁶

2.1.3. No data on effectiveness of legislation concerning racial/ethnic discrimination 2005-2006

Bulgaria transposed the Racial Equality Directive by the Law on Protection from Discrimination,³⁷ adopted by the Bulgarian Parliament on 16.09.2003 and in force as of 01.01.2004. The Commission for Protection from Discrimination was set up in 2005 as a specialised body according to the Racial Equality Directive. The Law

33 Information provided by a representative of OET II by e-mail (05.10.2006); information provided by a representative of OET III by e-mail (05.10.2006).

34 Information provided by the Equal Treatment Commission via e-mail (15.05.2006, 27.09.2006 and 10.01.2007).

35 Austria/District Court Vienna Döbling (23.01.2006) GZ 17 C 1597/05f-17 and District Court Vienna Döbling (12.10.2006) GZ 17 C 1597/05f-35.

36 Austria/Vienna Regional Court for Civil Law Matters (30.03.2007) GZ 35 R 68/07w, 35 R 104/07i.

37 Bulgaria/Komisiya za zashtita ot diskriminatsiya, Bulgaria/DV 86/2003 (30.09.2003).

on Protection against Discrimination provides for two administrative procedures (a general procedure and a conciliation procedure) before the Commission for Protection from Discrimination and one special judicial procedure before the civil courts. The Commission has the power to issue mandatory directions for prevention and discontinuation of violations and for restoration of the original situation and can impose administrative penal sanctions. For the year 2006 (up until 15.09.2006) the Commission for Protection from Discrimination instituted a total number of 38 procedures based on complaints by citizens. It established 15 violations of the Law on Protection from Discrimination and made 13 decisions. The commission issued seven decrees giving a total number of eight mandatory orders for prevention and discontinuation of violations and for restoration of the original situation. It imposed eight administrative penal sanctions and four administrative enforcement measures.³⁸ As far as judicial proceedings are concerned the Ministry of Justice (*Ministerstwo na prawosadieto*) started to collect information on court cases under the Law on Protection from Discrimination in 2006. For the first six months of the year a total number of 36 court cases were instituted under this law. Nine of them have been completed, while the other 27 are still pending. In three of the completed cases the court has ruled in favour of the complainant, in two of the cases the claim has been rejected, and four cases have been terminated. For the same period of time the regional courts have not received any appeals against administrative acts violating the Law on Protection from Discrimination.³⁹ Statistics on the amount of cases concerning ethnic discrimination by the specialised body and of the courts are not available because statistics are compiled for all discrimination grounds together and it is not possible to isolate the cases on the ground of race or ethnic origin.

In **Poland**, the Racial Equality Directive was only partially transposed into Polish labour law for the sphere of employment, but work on a draft bill covering also the other areas of the directive is ongoing. The Department of Women, Family and Counteracting Discrimination at the Ministry of Labour and Social Policy was designated as new specialised body. Over the ten months of the Department's functioning, approximately 90 persons have turned to it for help for various reasons, including discrimination for various discrimination grounds. There is no indication of any complaint of ethnic discrimination received by the Chief Labour Inspector in 2006 (up to October)⁴⁰ or by the Commissioner for Civil Rights Protection in the period between 01.07.2005 and 30.06.2006.⁴¹ The statistics regarding employment discrimination of the Ministry of Justice cover all discrimination grounds,⁴² but do not disclose complaints of discrimination specifically due to ethnic origin, race or religion.

38 Bulgaria/Commission for Protection from Discrimination (2006) *Letter to the Center for the Study of Democracy No. 1329/15.09.2006*.

39 Bulgaria/Ministry of Justice (2006) *Letter to the Center for the Study of Democracy No. 08-00-26/15.08.2006 (15.08.2006)*.

40 Information provided by e-mail (06.10.2006).

41 Poland/Commissioner for Civil Rights Protection *Wystąpienie dr Janusza Kochanowskiego, Rzecznika Praw Obywatelskich do p. Joanny Kluzik-Rostkowskiej, Podsekretarz Stanu w Ministerstwie Pracy i Polityki Społecznej w sprawie działań podejmowanych przez Rzecznika Praw Obywatelskich dla przeciwdziałania zjawisku dyskryminacji*, 12 października 2006 r., p. 8-9, available at: <http://www.rpo.gov.pl/pliki/1160649444.pdf> (16.10.2006).

42 Poland/Ministry of Justice, Department of Statistics *Ewidencja spraw o odszkodowania i zadośćuczynienie w związku z wybranymi formami dyskryminacji – sądy pracy – sądy rejonowe – I p. 2006 roku*, letter to HFHR (13.09.2006), DO-II-078-089/2006.

2.1.4. No sanctions or awards 2005-2006

In **Italy**, there are no statistical data, official or unofficial, on the number of court/tribunal cases applying the national legislation falling under the Racial Equality Directive. The specialised body against racial discrimination in Italy, UNAR, verified 282 cases of discrimination on the grounds of race or ethnic origin in 2005, but did not support a single judicial action at court. UNAR reported that in all cases discrimination was removed through informal activity such as conciliation, mediation and moral persuasion.⁴³ There is no evidence that an effective, proportionate and dissuasive sanction was imposed in a single case of ethnic discrimination in the reporting period in Italy.

In **Cyprus**, the specialised body for the promotion of equal treatment is the Ombudswoman with the power to issue fines. In 2005, the Ombudswoman issued 21 reports falling under the Racial Equality Directive with criticism, recommendations and suggestions. In addition, two cases were classified as 'well-founded complaints'. No fines or other sanctions have been imposed before the end of 2005 for cases of racial discrimination, and the Ombudswoman's decisions have never so far been used for the purpose of obtaining damages in a district court or at an employment tribunal, as foreseen in the law.⁴⁴

In **Greece**, there is no statistical information available on court cases in ethnic discrimination cases⁴⁵ and the FRA could not identify any case law by courts falling under the scope of the Racial Equality Directive. Greek implementing legislation foresees three specialised administrative bodies as equality bodies: the Greek Ombudsman for discrimination by public bodies and authorities, the Equal Treatment Committee and the Equal Treatment Service annexed to the Ministry of Justice dealing with discrimination by private and legal entities, and the Labour Inspection Body (SEPE) dealing with discrimination cases in the sphere of employment. In 2006, the Equal Treatment Committee together with the Equal Treatment Service handled one case concerning discrimination, but this case did not concern ethnic discrimination. There is a four-digit cost-free telephone number available to the public, providing information to citizens about the anti-discrimination law. No official statistics about its use and its follow up are available. The Labour Inspection Service (SEPE), according to an official response given to the Greek RAXEN National Focal Point,⁴⁶ did not handle a single case of ethnic discrimination in employment in the reporting period. These two specialised bodies received a negligible amount of complaints, whereas the third specialised body, the Greek Ombudsman, received a substantial amount of complaints. The Greek Ombudsman in its Annual Report 2005 indicated that it received 26 complaints of discrimination from which 19 fell under the mandate of the Ombudsman. From these 19 complaints, 47 per cent concerned discrimination due

43 UNAR *Un anno di attività contro la discriminazione razziale, Rapporto 2005, Relazione al Presidente del Consiglio dei Ministri sull'attività svolta dall'Ufficio Nazionale Antidiscriminazioni Razziali*, p. 52.

44 Information provided by the Ombudswoman's office to the NFP Cyprus.

45 Greece/Penitentiary Policy Directorate of the Ministry of Justice/Doc. port.n. 45857/09.05.2006.

46 Official doc. No.31471/27.12.2006.

to racial/ethnic origin.⁴⁷ In the year 2006 the Ombudsman received 51 complaints on discrimination grounds. Twenty-three of these were related to racial/ethnic discrimination grounds. In eight of these the Ombudsman confirmed racial ethnic discrimination, eight have been under investigation at the time of writing this report and the rest fall within the exemption of nationality (Article 4 par. 2 of the law 3304/05). The recommendations of the Ombudsman are not binding for the administrative authorities. There is no evidence that an effective, proportionate and dissuasive sanction was imposed in a single case of ethnic discrimination in the reporting period in Greece even though the Ombudsman established ethnic discrimination in some cases.

In **Lithuania**, there have been no court/tribunal cases addressing ethnic discrimination. However, the specialised body in Lithuania, the Equal Opportunities Ombudsperson, received 20 complaints regarding racial or ethnic discrimination and six complaints regarding discrimination on the grounds of religion or belief in 2006 and established ethnic discrimination in seven cases. In practice, most of these rulings are complied with. There is no evidence that an effective, proportionate and dissuasive sanction was imposed in a single case of ethnic discrimination in the reporting period in Lithuania even though the Equal Opportunities Ombudsperson established ethnic discrimination in some cases.

In the **Netherlands**, the Equal Treatment Commission, the specialised body in the Netherlands, is the main forum for complaints of ethnic discrimination. The Equal Treatment Act, with its Equal Treatment Commission, provides victims of discrimination with a low-threshold forum for lodging complaints. Requests to the Commission must be done in writing but are otherwise free of charge and do not require any legal assistance. In 2005, the Commission issued a non-binding opinion in 37 cases on the grounds of race/nationality and 17 cases on the ground of religion.⁴⁸ In practice, most of these rulings are complied with. However, the Equal Treatment Commission has no power to issue sanctions and there is no evidence of any sanction imposed by any court or other body in a case of ethnic discrimination during the reporting period.

In **Portugal**, according to the specialised body, the High Commission for Immigration and Ethnic Minorities, eight cases of ethnic discrimination were supported in 2006 by a special unit supporting victims of ethnic discrimination (UAVIDRE).⁴⁹ The *Comissão para a Igualdade e Contra a Discriminação Racial* (CICDR - Commission for Equality and Against Racial Discrimination), the main body in Portugal responsible for accepting and processing all written and verbal complaints and grievances alleging racial discrimination, registered 68 complaints and grievances filed with the Commission in 2006. Eleven complaints were

47 Greece/The Greek Ombudsman (2006) *The Greek Ombudsman's first year as a specialised body for the Promotion of the Principle of Equal Treatment*, available at: http://www.synigoros.gr/docs/discrimination_ish_metaxeirish.pdf (19.01.2007).

48 [http://www.cgb.nl/media/downloadables/Fact%20sheet%201994%202005%20\(EN\).pdf](http://www.cgb.nl/media/downloadables/Fact%20sheet%201994%202005%20(EN).pdf) (14.06.2007).

49 http://www.apav.pt/pdf/UAVIDRE_Janeiro_a_Setembro%202006.pdf (22.1.2007).

forwarded to the *Inspecção-Geral do Trabalho* (IGT) (General Work Inspectorate).⁵⁰ This institution deals with all the complaints related to employment that the CICDR, acting as a mediator, was not able to reach an agreement or settlement between parties. The High Commissioner for Immigration and Ethnic Minorities (ACIME), after the mandatory consultation of the Commission for Equality and Against Racial Discrimination, has the power to issue administrative sanctions in cases of racial and ethnic discrimination. This happened in February 2005, when a company and two individuals were fined and the company was ordered to post a poster. The defendants appealed at court, who annulled ACIME's decision on formal grounds. On December 2005, after correcting the formal problems, the High Commissioner reissued its original condemnatory decision. The defendants appealed once more to the court and in 2007 they were acquitted. Otherwise not a single decision of a court or tribunal concerning ethnic discrimination during the reporting period could be identified or found in Portugal. There is no evidence that an effective, proportionate and dissuasive sanction was imposed in a single case of ethnic discrimination in the reporting period in Portugal.

In **Slovakia**, the specialised body, the Slovak National Centre for Human Rights, has dealt with nine breaches of the principle of equal treatment based on the grounds of ethnic origin or nationality in 2006 (of a total of 156 written and 90 oral complaints received regarding all discrimination grounds). Telephone counselling was provided in 220 cases (concerning all discrimination grounds). In 2006, two court decisions concerning ethnic discrimination were decided by courts in Slovakia, in which discrimination was established (see below). There is no evidence that a single sanction was issued or compensation awarded in a case of ethnic discrimination in Slovakia in 2006.

In **Slovakia**, the district court in Michalovce decided a case of ethnic discrimination in a club on 31 August 2006.⁵¹ Potential Roma customers were asked to produce a club card at the entrance, whereas non-Roma customers were allowed entry without such a card. Discrimination testing methods carried out by Roma and non-Roma activists in cooperation played an important role as a method to prove discrimination in this case. The court established discrimination, but refused to award financial compensation for intangible damages on the ground that the testers knew that they would be discriminated. In another court case⁵² in **Slovakia**, an electricity supply company was ordered to apologise to applicants of Roma origin because invoices to the applicants were addressed to 'Gypsy Street' instead of the correct name of the street where the applicants lived. No compensation for immaterial damage was awarded.

50 The data presented was made available to the NFP by the CICDR.

51 Slovakia/District Court in Michalovce, 12 C 139/20050 (31.08.2006).

52 Slovakia/District Court Bratislava IV, Malacky Office, MA 7C 73/2004 (27.02.2006).

In **Finland**, the Ombudsman for Minorities, the specialised body in Finland had 1,508 customer contacts during 2005 of which 704 led to measures taken on the part of the staff at the Office of the Ombudsman for Minorities. Three hundred and two of these cases concerned ethnic discrimination and other inappropriate treatment.⁵³ The National Discrimination Tribunal is a non-judicial body which may confirm a settlement between the parties or prohibit the continuation of a conduct that is contrary to the prohibition of discrimination or victimisation and can issue fines in cases in which there are reasons to believe that the accused party will not comply with decision of the National Discrimination Tribunal. In 2006, the National Discrimination Tribunal issued five condemnatory decisions⁵⁴ concerning ethnic discrimination, but none of these decisions imposed a fine. Sixty incidents of ethnic discrimination were reported to Occupational Health and Safety Authorities in 2006. These reports were processed as follows: fifteen cases proceeded from the regional inspectorates either to the police for a preliminary investigation or to the public prosecutor for consideration of charges for cases regarded as constituting work discrimination provided in the Penal Code. In addition, four cases were examined whether they constitute discrimination under the Non-Discrimination Act, but they did not.⁵⁵ In six cases discrimination was established, but the matter was settled. The 2005 police report discloses data on how many ethnic work discrimination offences were reported to police. In 2005, only two work discrimination cases were reported to the police.⁵⁶ In 2003 and 2004, the numbers were five and four respectively.⁵⁷

2.1.5. Negligible complaints received by specialised body 2005-2006

In **Estonia**, by the end of 2006, there were no discrimination-related cases within the material scope of the directives tried in the National (supreme) Court of Estonia.⁵⁸ In the period 2004-2006, the Legal Chancellor (specialised body in Estonia) received altogether one complaint concerning discrimination on the ground of ethnicity (access to services). The Chancellor did not have a mandate to deal with these issues before January 2004. This body does not collect statistics on discrimination by public bodies.⁵⁹ In 2006, the Estonian quasi-judicial body –

53 Finland/Ombudsman for Minorities *Annual Report 2005*, pp. 18-19, available at: http://www.mol.fi/mol/fi/99_pdf/fi/06_tyoministerio/02_organisaatio/02_vahemmistovaltuutettu/vuosikertomus2005/vuosikertomus_eng_lanti2005.pdf (14.11.2006).

54 Finland/National Discrimination Tribunal of Finland, 1528/66/2005; 2732/66/2004; 1366/66/2005; 2392/66/2005; 1920/66/2005 (22.09.2006).

55 Finland/21/2004 (01.02.2004).

56 N. Ellonen (2006) *Poliisin tietoon tullut rasistinen rikollisuus Suomessa 2005*, Espoo: Poliisiammattikorkeakoulun tiedotteita 53:2006, p. 82.

57 T. Keränen (2005) *Poliisin tietoon tullut rasistinen rikollisuus Suomessa 2003*, Espoo: Poliisiammattikorkeakoulun tiedotteita 39:2005, p. 43; T. Keränen (2005) *Poliisin tietoon tullut rasistinen rikollisuus Suomessa 2004*, Espoo: Poliisiammattikorkeakoulun tiedotteita 40:2005, p. 55.

58 Estonia/Riigikohus, public database, available at: <http://www.nc.ee> (15.01.2007).

59 Estonia/Legal Chancellor; Written communications no. 5-3/0503214 of 14 June 2005, no. 5-3/0600912 of 1 February 2006, and no. 5-3/0608588 of 5 January 2007.

the Employment Disputes Commissions – received no complaint of discrimination on the grounds of race, ethnicity or religion.⁶⁰ There are no statistics available for the period before January 2006.

In **Slovenia**, complaints concerning ethnic discrimination are rare. In 2005 and 2006 the Advocate of the Principle of Equality, the specialised body in Slovenia, received six complaints claiming discrimination on the grounds of race, ethnicity and religious belief.⁶¹ In addition, the available legal literature shows that case law with regard to the Racial Equality Directive is virtually non-existent.⁶² There is no evidence that an effective, proportionate and dissuasive sanction was imposed in a single case of ethnic discrimination in the reporting period in Slovenia.

2.1.6. No operational specialised body 2005-2006

In **Spain**, a specialised body for the promotion of equal treatment was created formally by legislation, but it was still not operational by the end of 2006. In **Germany** and **Luxembourg**, implementing legislation creating specialised bodies was only adopted during 2006 and these specialised bodies were not operational by the end of 2006. Likewise, no specialised body for the promotion of equal treatment on the ground of race or ethnic origin existed by the end of 2006 in the **Czech Republic** and **Malta**.⁶³

In the **Czech Republic**, excluding the area of labour and procedural issues such as shifting the burden of proof implemented by Provision 133a of the Civil Procedure Code, the Racial Equality Directive is planned to be implemented by the Anti-Discrimination Act. The proposal for an Anti-Discrimination Act was introduced, but the proposal was not passed at the time of writing this report by the Parliament. The Czech Republic also did not create or designate so far a specialised body according to the Racial Equality Directive. However, the courts in the Czech Republic, especially the Supreme Court, have developed a theory which interprets direct discrimination on the ground of race or ethnic origin as a violation of personality rights according to the Civil Code.

60 Estonia/Labour Inspectorate *Written communication of 9 January 2007*.

61 Government of the Republic of Slovenia, Office for Equal Opportunities (2006) *Poročilo o delu zagovornice enakih možnosti žensk in moških ter zagovornice načela enakosti za leto 2005*, p.10, available at: http://www.uem.gov.si/fileadmin/uem.gov.si/pageuploads/zagovornica_porocilo2005.pdf, (05.10.2006). Government of the Republic of Slovenia, Office for Equal Opportunities (2007) *Poročilo o delu zagovornice za leto 2006*, p.4, available at: <http://www.uem.gov.si/fileadmin/uem.gov.si/pageuploads/PorociloZagovornica2006.pdf>, (24.05.2007). Additional information submitted by the Advocate of the Principle of Equality upon request.

62 See e.g. V. Jaichand, A. Sembacher, K. Starl (eds) (2006) *Anti-Discrimination for the Judiciary: Challenges to Access to Justice in Austria, Hungary, Slovakia and Slovenia*, Vienna/Graz: Neuer Wissenschaftlicher GmbH; D. Zagorac (ed) (2005) *Enakost in diskriminacija: Sodobni izzivi za pravosodje* Ljubljana: Mirovni inštitut.

63 The National Commission for the Promotion of Equality (NCPE), set up in 2004 in Malta, works only in the promotion of gender equality.

In the **Czech Republic**, a case before the regional court in Usti nad Labem concerned ethnic discrimination in the provision of services. Restaurant staff refused to serve four claimants of Roma origin and justified their behaviour by pointing out that the restaurant was in fact a private club and the claimants were not members. Immediately afterwards three persons of non-Roma origin were served without questions and without membership requirements. The claimants sued the restaurant owners for public apology and financial compensation for non-material damage in violation of their dignity. The regional court in Usti nad Labem referred the case to the Constitutional Court of the Czech Republic and suggested to annul the provision of the Czech Civil Procedure Code⁶⁴ implementing the principle of shift of burden of proof in cases of ethnic discrimination required by the Racial Equality Directive. The Constitutional Court⁶⁵ rejected the suggestion as unsubstantiated and confirmed the shift of the burden of proof in discrimination cases as compliant with the Racial Equality Directive and as compliant with the fundamental right to a fair trial.

In **Germany**, the General Equal Treatment Act, which is intended to transpose the EU equality directives into German law, entered into force on 18 August 2006.⁶⁶ The Act covers also relations between private individuals provided the respective civil law contract is usually concluded without respect to the individual person ('mass businesses'); the conclusion of a private insurance policy is also covered by this provision. In the housing sector the legislator defines the term 'mass business': a person who rents out no more than 50 flats is not subject to the law.⁶⁷ Another exception also relates to the housing market: unequal treatment is lawful if it serves the purpose of establishing or maintaining socially stable housing structures and a balanced mixture concerning the economic, social and cultural composition of a neighbourhood. In November 2006, a law was passed which contains, among others, several amendments of the General Equal Treatment Act (AGG) and related laws which clarify that the AGG does not provide legal protection against discrimination on the grounds of belief in the sphere of civil law and that the AGG does not cover issues related to dismissals of employees.⁶⁸ A federal anti-discrimination body was installed at the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth. Because of its recent entry into force, there are no statistics available which demonstrate how effective the new law or the new body are in practice.

64 Provision 133a Article 2 of the Civil Procedure Code.

65 Constitutional Court of the Czech Republic, ruling No. 419/2006 Coll. (26.04.2006).

66 Germany/Allgemeines Gleichbehandlungsgesetz, BGBl. Part 1, No. 39, pp. 1897-1910.

67 The Federal Ministry of Justice also mentioned this limitation in its press release on 29.06.2006; however, according to the ministry, this limitation does not apply to unequal treatment due to one ethnic origin (or race), but only to one's sex, religion, disability, age or sexual identity.

68 Germany/Bundestag (2006) *printed matter 16/3007 (18.10.2006)*; Germany/Bundesrat (2006) *printed matter 741/06 (26.10.2006)*.

On 07.02.2006, the European Court of Human Rights issued its judgment in the case *D.H. v. the Czech Republic*⁶⁹. The applicants are 18 Czech nationals of Roma origin who were born between 1985 and 1991 and live in the Ostrava region. Between 1996 and 1999 they were placed in special schools (*zvláštní školy*) for children with learning difficulties unable to follow the ordinary school curriculum. By law, the decision to place a child in a special school is taken by the head teacher on the basis of the results of tests to measure the child's intellectual capacity carried out in an educational psychology and child guidance centre, and requires the consent of the child's legal representative. Fourteen of the applicants sought a review by the Ostrava Education Department (*školský úřad*) on the grounds that the tests performed had been unreliable and that their parents had not been sufficiently informed of the consequences of giving consent. The Education Department found that the placements had been made in accordance with the statutory rules. The Court was aware of statistics which showed that in some special schools Roma pupils made up between 80 per cent and 90 per cent of the total number of pupils. The Court acknowledged that these statistics disclose figures that are worrying, but the Court did not find sufficient evidence to conclude that the applicants' placement in special schools was the result of racial prejudice. The Court did not find a violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights, taken in conjunction with Article 2 of Protocol No. 1 (right to education). The decision was referred to the Grand Chamber of the European Court of Human Rights for review.

In **Luxembourg**, the draft bill n. 5518, designed to transpose the two Directives 2000/43 and 2000/78, has been adopted by the Parliament on 24.10.2006 and became law on 28.11.2006. The same day, draft bill No. 5583, modifying the legal framework of civil servants by integrating dispositions of the two directives for civil servants in national and local administrations, was also adopted.

In **Spain**, the Racial Equality Directive was formally transposed in 2003 without any public debate, but there is no information or evidence that the implementing legislation is applied in practice.⁷⁰ There is no evidence that an effective, proportionate and dissuasive sanction was imposed in a single case of ethnic discrimination in the reporting period in Spain. The specialised body foreseen in the legislation, the Council for the Promotion of Equal Treatment and Non-discrimination of People on the Grounds of Racial or Ethnic Origin, was not operational by the end of 2006.

In **Malta**, there was no development during 2006 on the draft bill 'Equality Act 2005' intended to transpose the Racial Equality Directive. No specialised body has existed at the time of writing this report.⁷¹

⁶⁹ Application No. 57325/00, 7.2.2006.

⁷⁰ ECRI (2006) *Third Report on Spain*, adopted 24 June 2005, available at: http://www.coe.int/t/e/human_rights/ecri/1-ecri/2-country-by-country_approach/spain/Spain%20third%20report%20-%20cri06-4.pdf (19.01.2006).

⁷¹ The National Commission for the Promotion of Equality (NCPE), set up in 2004 in Malta, works only in the promotion of gender equality.

2.1.7. Conclusions

The data confirm the central role of specialised bodies: Member States in which no specialised bodies exist or where their functioning is impaired by a lack of resources, in general, also do not have effective sanctions. Another observation is that in some Member States specialised bodies do not utilise the powers they have to their full extent, for example in Cyprus and Hungary. This could indicate a lack of resources of the specialised bodies in these countries.

The very low number of recorded complaints in some Member States, despite NGO reports and independent research surveys pointing towards the existence of ethnic discrimination in these countries, could indicate a lack of awareness of the existence and functioning of these specialised bodies: **Estonia, Greece, Latvia, Lithuania** and **Slovenia**. According to the Special Eurobarometer Survey on discrimination in the European Union published in January 2007,⁷² on average only one third of EU citizens (32 per cent) claim to know their rights should they be the victim of discrimination or harassment. However, the national results show large variations. **Finland** stands out, with 65 per cent of respondents indicating that they know their rights. **Cyprus** is the only other country where over half of the respondents (53 per cent) professed to know their rights to counter discrimination and harassment. At the other extreme, the survey shows that less than a quarter of people in **Austria** (17 per cent), **Estonia** (19 per cent) and **Spain** (23 per cent) feel that they know their respective rights. However, the question concerning awareness of rights to counter discrimination or harassment in the survey did not specifically relate to discrimination on the grounds of race or ethnic origin.

In Member States where sanctions are virtually absent, there is a strong tendency to resolve problems of racial or ethnic discrimination mainly through 'moral pressure', recommendations, mediation and settlement: **Belgium, Cyprus, Greece, Italy, Austria, Lithuania, Netherlands, Portugal** and **Finland**. Yet, sanctions play an important role in strengthening the bargaining position of victims. Where there is no serious and credible threat of sanctions and no legal tradition in this respect, settlements and mediations are unlikely to produce sustainable favourable outcomes for the victims and are also unlikely to function as an effective deterrent for discrimination.

There are huge differences in sanctions among the Member States: the **United Kingdom** stands out as the country in which a racial discrimination case led to an award of GBP 984,465 (about EUR 1,462,000). This contrasts sharply to the situation in other Member States. Of course, individual sanctions depend on the particularities of the respective case. However, severe sanctions are important because they function both as a deterrent and as an instrument to raise awareness as they can trigger media attention. Severe sanctions also attract the interest of legal professionals and companies in this area of law.

⁷² http://ec.europa.eu/employment_social/news/2007/jan/euro_baro_summary_en.pdf (30.01.2007).

Complaints data and the outcome of relevant procedures by courts, specialised bodies, other bodies or tribunals should be disaggregated according to ground of discrimination. This would improve the assessment of the effectiveness of implementation of legislation, especially in countries where specialised bodies and/or tribunals deal with all discrimination grounds.

In November 2006, the RAXEN Network reported on case law of courts regarding ethnic discrimination in the Member States. No relevant case law of courts was reported by RAXEN in **Cyprus, Estonia, Greece, Lithuania, Malta, Poland and Spain**. This means that in these countries the key concepts of anti-discrimination legislation concerning ethnic/racial discrimination have not been applied, tested or interpreted by courts.

2.2. Good practices

In **Spain**, the Spanish Observatory on Racism and Xenophobia was created. Its task is to promote the principle of equal treatment. The Observatory will provide training to public employees in matters of non-discrimination on the grounds of racial or ethnic origin, while also promoting that organisations funded by the Secretary of State of Immigration and Emigration also develop this kind of training.

Also, in **Spain**, the Spanish Parliament decided that the Spanish government should make a greater use of the reciprocity mechanism in order to allow a higher number of foreigners to take part in local elections both as voters and as candidates.⁷³ In this regard, on 17.08.2006 the parliamentary groups *Partido Socialista Obrero Español* and *Izquierda Unida-Iniciativa per Catalunya-Els Verds* proposed a motion in the Spanish Parliament in order to allow that third-country legal residents in Spain from countries with a larger representation of migrants could also vote and be elected in local elections. In order to accomplish this, the Spanish government has decided to promote the necessary reciprocity agreements.

In **France**, the Equal Opportunity Act of 31.03.2006⁷⁴ and related measures was adopted which concerns most of all the method of situation testing (or discrimination testing – see section 3.8.1). Situation testing⁷⁵ is now written into law as a means of proving discrimination. The NGO *SOS-Racisme* initiated it in 1998. The organisation compared the treatment of young people of European descent to that of young people of North African or African descent at the entrance of nightclubs, restaurants or camping sites, for job applications and rented accommodation. They were able to establish the existence or absence of discrimination with reliable certainty. The Supreme Court (*Cour de cassation*)

73 Congreso de los Diputados (2006) *Boletín Oficial de las Cortes Generales, Madrid, num. 345*, available at: <http://www.congreso.es> (21.06.2006).

74 France/loi pour l'égalité des chances 2006-396 (31.03.2006), available at: http://www.legifrance.gouv.fr/html/actualite/actualite_legislative/decrets_application/2006-396.htm (30.08.2006).

75 Random checking of discriminatory practices in night clubs, companies and real estate agencies, etc.

has already admitted the results of a situation testing into evidence three times, in 2000⁷⁶ and 2002⁷⁷ for barring entrance to a nightclub, and in 2005⁷⁸ in a housing discrimination case. By introducing into the Penal Code Article 225-3-1, the law enables a penal incrimination in the absence of a true victim. The testing or test of discrimination makes it possible to establish the existence of discriminatory practices by highlighting the differences in treatment between people presenting the same 'objective' characteristics but belonging to different groups (for example difference in origin, of appearance etc.).

In **France**, the National Agency for Social Cohesion and Equal Opportunity⁷⁹ was created. The Agency, a public body, will carry out special projects in sensitive neighbourhoods, together with the National Agency for Urban Renovation⁸⁰ (ANRU). Its activities will also target individuals nationwide who have difficulties integrating into social and professional life. In addition, it aims at fighting illiteracy and implementing voluntary civil service. It is seen as one of the responses to the urban riots of autumn 2005. It was also meant as a response to the lack of visibility in that field, and the need to rationalise the drive for integration. It was argued that too many organisations were in charge of advancing integration. It can either fund activities of local authorities and public entities or carry out projects directly in favour of social cohesion and equal opportunities.

In **Cyprus**, the entry into force on 01.03.2006 of the law ratifying the Additional Protocol to the Convention on Cybercrime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer Systems⁸¹ has created new offences in the field of combating discrimination, and has for the first time in Cyprus introduced legislation on issues such as holocaust denial and dissemination of racist material through the internet. The Protocol was also ratified by **Lithuania** in 2006.

In **Latvia**, within first eight months of 2006, in the framework of a project 'Latvia – Equality in Diversity I', the Latvian Centre for Human Rights with the support of the IUMSILS and the Latvian Judicial Training Centre and financial support of the European Commission held six training seminars for judiciary, mainly judges, on application of the Council Racial Equality Directive 2000/43/EC and the Council Employment Framework Directive 2000/78/EC.⁸² In total, 73 judges and judiciary staff were trained (Altogether there are 487 judges in Latvia).

76 France/Cass. crim./G 99-87.251 D (12.09.2000).

77 France/Cass. crim./W 01-85.560 F-D (11.06.2002).

78 France/Cass. crim./04-87354 (07.06.2005).

79 Unofficial translation of 'Agence nationale pour la cohésion sociale et l'égalité des chances'. Website of the Agency: <http://www.ancsec.gouv.fr> (05.06.2007).

80 Unofficial translation of 'Agence nationale de la rénovation urbaine'.

81 Cyprus/The Additional Protocol to the Convention against Cybercrime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer Systems (Ratification) Law N. 26(III)/2004.

82 Information about the project available at: <http://www.integracija.gov.lv/?id=785&sadala=193&setl=2> (18.09.2006).

In **Hungary**, in July 2006 the Equal Treatment Authority (ETA) proposed a legislative amendment,⁸³ which came into force on the 25.08.2006, ordering that name and data of employers legally fined for discrimination in the past five years (since the 01.01.2006) should be published on the website of ETA.⁸⁴

The programme entitled Development and Implementation of a Non-discrimination Pre-service and In-service Training Programme for Judges and Prosecutors on the Basis of Human Rights Education started in 2004 with the aim to institutionalise anti-discrimination judicial training system in **Austria, Hungary, Slovenia** and **Slovakia** on the basis of the major EU anti-discrimination directives and other relevant human rights documents. The implementing partners of this project are the European Training and Research Centre for Human Rights and Democracy from Austria (as a coordinator), NEKI – Legal Defence Bureau from Hungary, VIA IURIS from Slovakia and the Peace Institute from Slovenia. The project involved implementation of training seminars, establishing an anti-discrimination website,⁸⁵ and publication of national reports on the implementation of EU anti-discrimination directives and on judicial training systems in the partner countries.⁸⁶ In addition, the project intended to identify the weak points of the current legal system regarding equal treatment and discrimination. Eighty-five per cent of participants in the training seminars stated these were beneficial for their future work. An anti-discrimination manual for legal practitioners was published in 2005⁸⁷ and recommendations were made to the Slovenian government to address identified gaps in the legal system (e.g. to include anti-discrimination issues in pre-service and in-service training for judges, to intensify cooperation with NGOs, to disseminate relevant information regarding anti-discrimination legislation).⁸⁸ The project is funded by the European Commission.

In **Finland**, the Office of the Ombudsman for Minorities conducted a study which analysed the state of anti-discrimination counselling services against ethnic discrimination in Finland.⁸⁹ The study found that anti-discrimination counselling advisory work against ethnic discrimination is carried out not only by the Ombudsman for Minorities, but also by many authorities and several NGOs, with the problem that the operating principles and activities of the different actors are not harmonised and the advisory services are disjointed. To address this issue, the study presented a model for organising the counselling services against ethnic discrimination in Finland at municipal level. The prerequisites of the Ombudsman for Minorities for promoting good ethnic relations would become better and more intensified through the regional and local networks: clarifying the counselling network would increase the contacts with regional actors. Regular reporting of

83 Hungary/Act LXV. of 2006.

84 <http://www.egyenlobanasmod.hu/index.php?g=mfm.htm> (02.10.2006).

85 Info Platform Slovenia, <http://www.antidiscrimination.etc-graz.at/cms/index.php?id=102> (05.06.2006).

86 V. Jaichand, A. Sembacher, K. Starl, (eds) (2006) *Anti-discrimination for the Judiciary: Challenges to access to justice in Austria, Hungary, Slovakia and Slovenia*.

87 D. Zagorac (ed.) (2005) *Enakost in diskriminacija: sodobni izzivi za pravosodje* Ljubljana: Mirovni inštitut.

88 V. Jaichand, A. Sembacher, K. Starl, (eds) (2006) *Anti-discrimination for the Judiciary: Challenges to access to justice in Austria, Hungary, Slovakia and Slovenia*, p.195.

89 R. Tella (2005) *Etnisen syrjinnän vastaisen neuvonnan kehittäminen* Helsinki: Vähemmistövaltuutettu.

the situation regarding ethnic discrimination would improve the preconditions for affecting the ethnic relations in society by regulations, recommendations and initiatives. Reporting would proceed from the municipal level to the Advisory Board for a nationwide summary. The Office of the Ombudsman carried out a series of roundtable meetings during the autumn 2006, and as a consequence, a process to establish a pilot regional advisory system was started in December 2006.

3. Racism and discrimination in the employment sector, and initiatives on how to prevent it

3.1. Patterns of inequality – some examples

One indicator of labour market inequality which has been quoted each year in EUMC Annual Reports is the rate of unemployment of immigrants or minorities. In 2006, as in previous years, in most Member States their rate of unemployment was significantly higher than for the majority population. Whilst most Member States do not record ethnic or national origin in their official statistics, almost two-thirds of them provide statistics from which the rates of unemployment of ‘citizens of countries from outside the EU’ can be compared to those of ‘citizens of Member States’. Figure 3.1. shows the ratio of unemployment rates of citizens of countries outside the EU-25 to those of citizens for 16 EU Member States for the second quarter of 2006.

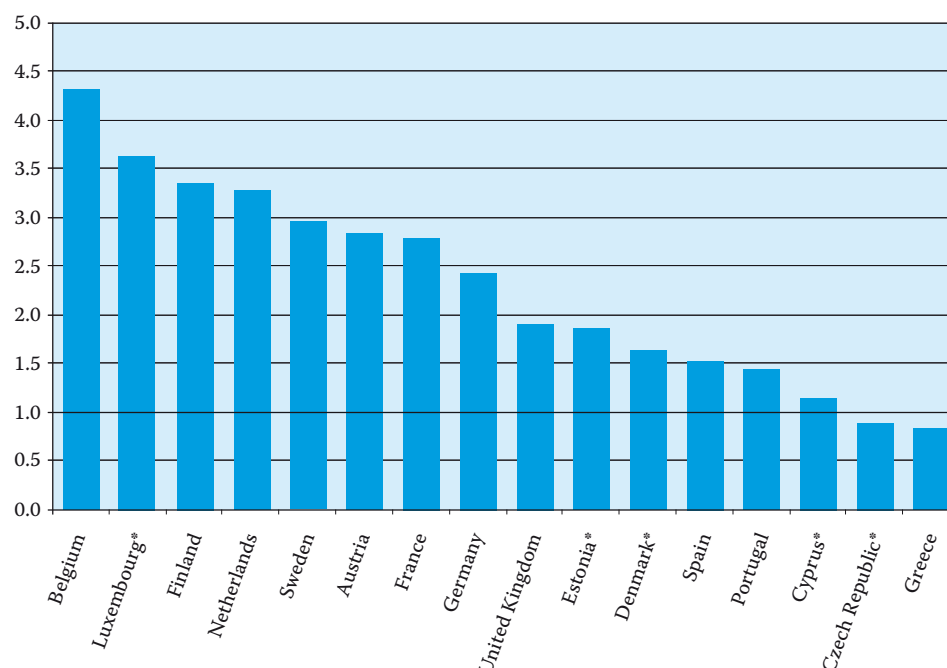
As can be seen from Figure 3.1, non-citizens from outside the EU were in most cases significantly more likely to be unemployed than citizens. However, while these figures seem to provide an initial basis for comparison of labour market integration between Member States, this comparison would be of limited value. That is because the statistics are affected by many distorting factors, such as the differing levels of skill and qualification of recent immigrants, and the different requirements for obtaining citizenship between Member States.

3.1.1. The limitations of comparison

For example, in a country where citizenship is easier for immigrants to gain, the unemployed ‘non-citizens’ group will contain proportionately more recent arrivals, whilst in a country where it takes much longer to acquire citizenship, the ‘non-citizens’ group will contain more longer-term residents. Thus in a country where the non-citizen group contains a higher proportion of more recent arrivals, the unemployment rate of immigrants is likely to be higher, but this will not necessarily reflect a higher level of discrimination. (It should be noted that there is a wide variety between EU Member States regarding the minimum periods of legal residence required to obtain citizenship – for example it varies between three years in **Belgium** and ten years in **Spain, Greece, Austria and Portugal**.)

In only two countries, the **Czech Republic** and **Greece**, do the statistics in Figure 3.1 indicate that non-citizens are less likely to be unemployed than citizens. However, a lower rate does not necessarily mean less discrimination in the labour market. In the case of these two countries it has been suggested that these lower unemployment rates may be explained by the significantly tightened eligibility conditions for obtaining a work or residence permit in the **Czech Republic**, and the fact that the majority of immigrants in **Greece** are undocumented immigrants who are not registered in official statistics.⁹⁰ Also, in those countries where being unemployed can lead to loss of residence permit, there is greater pressure for immigrants to take any job regardless of suitability. In countries where third-country nationals' insecurity leads them to accept jobs for lower pay and worse conditions than nationals, there can be a kind of 'positive discrimination' in seeking to employ such workers. Under these circumstances, the unemployment rate of non-nationals is correspondingly lower (see section 3.4), and such immigrants may well be employed in jobs below their education and skill levels.

Figure 3.1: The ratio of the unemployment rate of citizens of countries outside the EU-25 to the unemployment rate of citizens in 16 Member States, 2nd quarter 2006



* Data on the unemployment rate of citizens of countries outside the EU-25 may be unreliable or uncertain for these countries. Level '1.0' on the vertical axis denotes the level of unemployment of citizens of the Member State. Data source: EUROSTAT.

90 OECD Economic Survey of the Czech Republic 2004; OECD Economic Survey of Greece 2005.

EUROSTAT data on the unemployment rates of immigrants from outside the EU-25 were unavailable for **Ireland, Italy, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia**.⁹¹

This imperfect comparison of unemployment rates illustrates the need for improved data in this area. Statistics on citizenship alone are of limited value for examining issues of discrimination, whereas data which identify ethnic and national origin would produce a much clearer picture (see section 3.6). A more meaningful comparison of integration in the labour market would be to focus on the unemployment rates of second-generation immigrants who were born in the country and who have citizenship, or at least have the same legal rights to employment as nationals, and taking into account their educational levels.

Some individual Member States have unemployment statistics which can be broken down by ethnic or national group and these can show striking differences between groups within one country. In **Belgium** the highest unemployment rates amongst all groups are those for Turkish and Moroccan nationals (45 per cent for males, 56 per cent for females) compared to the unemployment rates for Belgian nationals of 10 per cent.⁹² In the **Netherlands**, of all the non-Western immigrant groups, unemployment among Moroccans was the highest at 20 per cent. For 'new' immigrant groups, most of whom are from refugee backgrounds,⁹³ unemployment figures are considerably higher than for the 'traditional' immigrant groups.⁹⁴

In many Member States the group with the highest unemployment rates of all are the Roma. These are not visible in statistics of 'citizens/non-citizens', but in some countries are identified in the census as a national minority. Evidence on Roma also comes from specific research or from NGO figures. In **Bulgaria** general household surveys showed that the unemployment rate for Roma in 2006 was 53.2 per cent, for Turks was 34.4 per cent, and for majority Bulgarians was 9.2 per cent.⁹⁵ In the **Czech Republic** the level of Roma unemployment was estimated to be 70 per cent,⁹⁶ compared to an overall unemployment level in 2006 of 7.9 per cent.⁹⁷ In **Poland** a report from 2005⁹⁸ identified several voivodships (provinces) where Roma unemployment levels were more than 90 per cent compared to a general

91 Details of the full dataset can be found at: http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1073,46870091&dad=portal&schema=PORTAL&p_product_code=LFSQ_URGAN (05.06.2007).

92 Source: NIS – see: Algemene Directie Werkgelegenheid en Arbeidsmarkt/Direction générale Emploi et Marché du Travail (2006) *De Immigratie in België: Aantallen, Stroom en Arbeidsmarkt – Rapport 2006/L'immigration en Belgique: Effectifs, Mouvements et Marché du Travail – Rapport 2006* Brussel/Bruxelles, p. 36, available at: <http://meta.fgov.be/pdf/pd/nldf47.pdf> (16.08.2006).

93 See: V. Van den Maagdenburg (2004) 'Arbeid en Inkomen', in: Instituut voor Sociologisch-Economisch Onderzoek *Jaarrapport Integratie 2004*.

94 J. Klaver, A. Odé (2005) 'Een weg vol obstakels: de moeizame integratie van vluchtelingen op de Nederlandse arbeidsmarkt', in: *Migrantenstudies*, 2005-2, pp. 102-118.

95 http://www.vitosha-research.com/index_en.php (18.09.2006).

96 Analysis of Socially Excluded Roma Localities and Absorption Capacity of Surrounding Subjects, carried out by GAC Ltd. for the Ministry of Labour and Social Affairs, 2006.

97 Source: the Czech Republic, the Ministry of Labour and Social Affairs.

98 Poland/Ministry of Interior and Administration (2006) *Sprawozdanie z realizacji Programu na rzecz społeczności romskiej w Polsce w 2005 roku*, available at: <http://www.mswia.gov.pl/index.php?dzial=183&id=3957> (16.10.2006).

unemployment rate in **Poland** in 2005 of between 17.3 and 19.4 per cent.⁹⁹ In **Romania** the 2002 census¹⁰⁰ identified the Roma population as the most affected by unemployment,¹⁰¹ and an unofficial analysis from 2006 found that of the total Roma population employed, only 34 per cent had a regular income (compared to 71 per cent in the case of Romanians and 79 per cent in the case of ethnic Hungarians).¹⁰² In **Slovenia** a survey conducted in five regions in 2005-2006 involving 49 per cent of Roma between 15 and 45 years of age showed that only 7 per cent of respondents were currently employed (5 per cent of women and 8 per cent of men), 26 per cent had been in employment in the past, but were currently unemployed, and 67 per cent of Roma had never been in employment at all (a striking 78 per cent of Roma women had never been employed).¹⁰³

3.2. Indirect evidence of discrimination

Statistics of higher unemployment rates for migrants and minorities do not in themselves represent evidence of discrimination. However, when unequal circumstances remain for equally-qualified people, even when other variables are controlled, then discrimination stands out as a more likely cause. For example, research in **Austria** in 2006 showed that the concentration of third-country nationals in insecure work cannot exclusively be explained by lower levels of education, and that almost 50 per cent of higher qualified people with a background outside the EU are employed in jobs below their qualification levels.¹⁰⁴ In **France**, a 2005 study of the immigrant population in Ile-de-France – where nearly 40 per cent of this population lives – concluded that whatever the age or education level, the active immigrant population is more affected by unemployment and work insecurity than the population as a whole.¹⁰⁵ And a report by the Swedish Board of Integration concludes that in **Sweden** there is still a major difference in the rate of employment between natives and foreign-born that cannot be explained by differences in human capital factors such as educational level. Irrespective of age, level of education, civil status, or the time spent in the country, the gap remains, particularly for people from Asia and Africa.¹⁰⁶

99 These figures are calculated for particular months. Central Statistical Office, Stopa bezrobocia w latach 1990-2006, available at: http://www.stat.gov.pl/dane_spol-gosp/praca_ludnosc/stopa_bezrobocia/index.htm (16.10.2006).

100 See Romania 2002 National Census, available at: <http://www.anr.gov.ro/documente/t20.pdf> (03.08.2006).

101 See 'Impreună' Agency for Community Development (2003) *Accesul Romilor pe piața muncii*, available at: http://www.agentiaimpreuna.ro/documente/Accesul_romilor_pe_piața_muncii.pdf (03.08.2006).

102 See S. Căce, M. Ionescu (eds) (2006) *Politici de ocupare pentru romi*, Editura Expert.

103 N. Babič Ivaniš, S. Urh, V. Klopčič, M. Adamič (2006) 'Raziskava izobraževalnih in poklicnih interesov Romov', in: N. Žagar, V. Klopčič (eds) *Poklicno informiranje in svetovanje za Rome – PISR*, Črnomelj: Zavod za izobraževanje in kulturo, pp. 223-225.

104 A. Gächter (2006) 'Ungenutztes Potenzial: Dequalifizierung von Migrantinnen und Migranten in Österreich', presented at: 'Wer kriegt wie viel? Bildung und Differenzen im Spiegel der Volkszählung 2001' organised by the EQUAL development partnership InterCulturExpress (03.05.2006), available at: <http://www.interculturexpress.at/index2.htm> (14.05.2006).

105 INSEE and FASILD (2005) *Atlas des populations immigrées en Ile-de-France*.

106 Integrationsverket (2006) *Rapport integration 2005*, Norrköping: Integrationsverket.

3.3. Evidence of trends over time

A 2006 study in **Spain** analysed whether migrants' employment patterns tended to converge towards those of natives over the period 2000-2004,¹⁰⁷ or whether the initial inequalities and segmentation have persisted. Its conclusion was that the segmentation had not diminished with the passage of time. Similarly in **France** an INED study¹⁰⁸ compared data on immigrants and their descendants in the French labour market to data¹⁰⁹ from 20 years previously, and concluded that the risk of unemployment for Maghrebians had hardly changed: it remained 80 per cent higher than the French reference group, and 50 per cent higher than the Portuguese.

In **Germany** statistics from the Federal Labour Agency showed that the gap between the unemployment rate of Germans and foreigners had grown wider over the past few years. Similarly in the **Netherlands** the latest available figures from Statistics Netherlands from 2005 showed that unemployment among immigrant groups had risen very slightly in comparison with 2004, whilst the rate for native Dutch unemployment remained virtually the same. However, in the other direction, the gap in employment rates between white and black/minority ethnic people in the **UK** was shown to have narrowed slightly from 16.9 to 15.7 percentage points between 2003 and 2005/6.¹¹⁰ Also, in **Denmark** whilst a report from the Danish Think-Tank at the Ministry of Integration confirmed the marginalised position of immigrants in the Danish labour market,¹¹¹ the figures also show a drop in unemployment for immigrants between 1999 and 2005, and a growth in the number of employed immigrants during the same years.

3.4. Lower unemployment and legal insecurity

In some circumstances a lower degree of exposure to unemployment can mask other experiences of insecurity. Regarding **Cyprus**, for example, Figure 3.1 suggests that the unemployment rate for non-citizens is virtually the same as that for citizens (see Figure 3.1) but that is because of the strict work permit system which means that the permit to hire 'foreign labour' must be granted to the employer in advance, in order for the migrant worker concerned to be able

107 C. Iglesias, R. Llorente (2006) *¿Integración o segmentación laboral de los inmigrantes en el mercado de trabajo? Un análisis de cohortes*, Alcalá de Henares: Universidad de Alcalá/Instituto Universitario de Análisis Económico y Social, available at: http://www.servilab.org/iuaes_sp/publicaciones/Dt7-06-esp.pdf (22.06.2006).

108 D. Meurs, A. Paillé, P. Simon (2005) *Mobilité intergénérationnelle et persistance des inégalités. l'accès à l'emploi des immigrés et de leur descendants en France*, Working document No.130 – ined.

109 E. Maurin (1991) 'Les étrangers: une main d'œuvre à part', in: *Economie et statistiques*, No. 242.

110 United Kingdom/Department for Communities and Local Government (2006) *Improving Opportunity, Strengthening Society: One year on – A progress report on the government's strategy for race equality and community cohesion*, see: <http://www.communities.gov.uk/index.asp?id=1501928> (06.06.2007).

111 Denmark/Ministeriet for Flygtninge, Indvandrere og Integration (2006) *Udviklingen i udlændinges integration i det danske samfund – Tænketanken om udfordringer for integrationsindsatsen i Danmark*.

to secure entry into Cyprus. In **Austria**, the duration of unemployment of aliens is shorter than for nationals.¹¹² However, this is because aliens are under much more pressure to find a new job, as their residence and labour market status is jeopardised by long periods of unemployment (see section 3.9).

In general, EU nationals do better in terms of employment than those from countries outside the EU, and in **Ireland**, the unemployment rate is much lower for residents from the EU Member States who joined in 2004 than for those from the EU-15.¹¹³ Nevertheless, it has been pointed out that many such migrant workers are in a different situation to local workers, in that if they lose their jobs or leave due to exploitation or discrimination they are not entitled to many social welfare payments, under the habitual residence condition.¹¹⁴

3.5. Accidents at work

There were references from several Member States in 2006 on how the legal insecurity of sections of migrant workers was seen to be linked with higher rates of industrial injury. In **Austria** it was reported that the jobs and sectors where third-country nationals work pay low wages, require irregular working hours, exhibit tough working conditions and are dangerous. Whilst 11 per cent of the potential workforce were non-nationals in 2005,¹¹⁵ they experienced 16 per cent of work-related accidents.¹¹⁶ In **Italy**, the large number of immigrant workers in the construction sector was noted,¹¹⁷ together with the fact that figures for 2005¹¹⁸ show that the construction sector is the one with the highest number of industrial accidents (104,554) and the greatest number of deaths (263).¹¹⁹ Added to this was evidence that the number of accidents involving immigrant workers rose by 7 per cent between 2003 and 2004, while the number involving Italian workers fell.¹²⁰

In **Portugal** a report on fatal industrial accidents¹²¹ also showed the construction sector, where immigrants are disproportionately employed, to be the high risk sector, with evidence of a growth in fatal accidents to foreign citizens in 2006 compared to previous years. In its report for 2005, the **Slovenian** Labour Inspectorate criticised the construction industry, with a noticeable concentration

112 Arbeitsmarktservice Österreich (2005) *111 to 118 days: Personenbezogene Auswertung zur Struktur der Arbeitslosigkeit in Österreich 2005*, available at: http://www.ams.at/neu/001_riesse_auswertung05.xls (06.10.2006).

113 P. R. Lane, F. Ruane (2006) *Globalisation and the Irish Economy*, IIIS Occasional Paper, No. 01, March 2006.

114 Refer for example to: Migrant Rights Centre Ireland (2006) *Social Protection Denied – The Impact of the Habitual Residence Condition on Migrant Workers*.

115 Own calculations and tables 'Arbeitsmarktdaten Gesamtübersicht' (GÜ000) and 'Bewilligungspflichtig Beschäftigte Ausländer nach Nationalität' (BA801), available at: <http://iambweb.ams.or.at/> (06.10.2006).

116 Statistic sent on request to the NFP Austria by the Allgemeine Unfallversicherungsanstalt on 02.10.2006, table: Meldepflichtige Arbeitsunfälle 2004, 2005 nach Staatsangehörigkeit.

117 E. Malossi, M. Mora (eds) (2005) *Lavoratori immigrati nel settore edile*, Rome: IRES-CGIL.

118 Italy/INAIL (2006) *Il fenomeno infortunistico nel 2005*.

119 As high as these figures are, they still have to be considered an underestimation, since they do not include accidents experienced by the large number of undocumented workers employed in the sector.

120 E. Malossi, M. Mora (eds) (2005) *Lavoratori immigrati nel settore edile*, Rome: IRES-CGIL.

121 http://www.igt.gov.pt/IGTi/C16.aspx?Cat=Cat_Estatisticas_CC_Quadros_2004&lang= (12.10.2006).

of workers with immigrant background, for its record regarding safety at work,¹²² and noted in particular the increasing problem of workers from Slovakia, Ukraine and Romania posted to Slovenia by contracted foreign employers who do not have safety as a high priority.¹²³

For the first time in **Spain**, official statistics on work accidents have been broken down by nationality.¹²⁴ They show that foreign workers have a higher fatal accident rate (8.35 cases per 100,000 workers) than Spanish workers (6.23 cases per 100,000 workers). Among migrants, Moroccans are shown to be the group with the highest percentage of work accidents. Similarly a study conducted in the region of Navarra confirms that foreign workers are more exposed to work accidents than natives.¹²⁵ Between January and September 2005, migrants suffered 15 per cent of all the working accidents, although they only amounted to 11 per cent of the working population in this region.

3.6. Statistics on ethnic and national origin

Previous Annual Reports have raised the issue of the collection of statistics by ethnic or national origin, and described their potential value in identifying the occurrence of discrimination, and in targeting and evaluating anti-discrimination measures. There remained a great variety in 2006 between Member States in how such statistics are used and seen.

3.6.1. An absence of statistics

In **Bulgaria** there is no reliable system for data collection on ethnic and religious minorities and on concrete manifestations of discrimination. In the opinion of human rights activists, this hinders the adoption of adequate policy measures against discrimination.¹²⁶ In the **Czech Republic** there are still no official statistical data on discrimination and racism in employment, and the monitoring of discrimination by the collection of such data is prohibited by law.¹²⁷ In **Slovakia**

122 Slovenia/Ministry of Labour, Family and Social Affairs – Labour Inspectorate of the Republic of Slovenia (2006) *Poročilo o delu za leto 2005*, p.81, available at: http://www.id.gov.si/fileadmin/id.gov.si/pageuploads/Splosno/POROČILO_2005.pdf (10.10.2006).

123 Slovenia/Ministry of Labour, Family and Social Affairs – Labour Inspectorate of the Republic of Slovenia (2006) *Poročilo o delu za leto 2005*, p.82, available at: http://www.id.gov.si/fileadmin/id.gov.si/pageuploads/Splosno/POROČILO_2005.pdf (10.10.2006).

124 Spain/Instituto Nacional de Seguridad e Higiene en el Trabajo (2006) *Avance de siniestralidad laboral. Período julio 2005-junio 2006*, available at: <http://www.mtas.es/insht/statistics/siniestro.htm> (28.12.2006).

125 A. Parra et al (2006) *Mercado de trabajo, salud laboral e inmigración*, Pamplona: Instituto Navarro de Salud Laboral, available at: <http://www.cfnavarra.es/salud/anales/textos/vol29/sup1/suple7a.html> (05.01.2007).

126 Interview with the Legal Defence Programme Director at the Human Rights Project, (14.07.2005).

127 Act No. 273/2001 Coll. on Rights of Minority Members.

the ban on collecting data based on ethnicity is reflected in the absence of statistical data on discrimination. In late 2005 a report by the EU Network of Independent Experts on Fundamental Rights pointed out that labour market discrimination occurs mainly in the case of the Roma minority, and criticised the non-existence of relevant data that could identify the extent of such discrimination in Slovakia.¹²⁸

In **Slovenia**, the Personal Data Protection Act forbids the maintenance of records or collection of data based on racial, ethnic/national origin, religion or other personal circumstances without written permission. Therefore, as the Slovenian government stated in its fifth report to the Council of Europe European Committee of Social Rights in December 2005,¹²⁹ no data on the employment and unemployment rates among ethnic minorities is available. The majority of ethnic minority workers in Slovenia originate from the other republics of the former Yugoslavia, taking up jobs in industries characterised by lower wages and harder working conditions. Yet these groups are no longer visible in the statistics, as many of these immigrants have become naturalised since the independence of Slovenia.

In 2006 the Advisory Committee on the Framework Convention for the Protection of National Minorities adopted the Second Opinion on **Finland**.¹³⁰ The Committee noted that while the situation of the Roma in the labour market is a key area of concern, the lack of statistical data makes it difficult to monitor the situation, identify underlying problems and propose remedies. The Committee recommended that the Finnish authorities should, together with Roma representatives, seek ways to obtain improved statistical data. Similarly the Third ECRI Report on **Lithuania**,¹³¹ released in 2006, recommended that the Lithuanian authorities strengthen their efforts to monitor and counter discrimination in employment, including through collection of relevant data broken down by ethnic origin.

3.6.2. Developments in statistics

There have been some developments in Member States in the direction of collecting statistics of ethnic/national origin, or of improving their existing practices of collection. As was noted in the previous Annual Report, this issue has been put on the statistical agenda in **Belgium**. On the national level the consultations on ethnic monitoring between representatives of Ministerial Cabinets, the four regional employment offices¹³² and the Centre for Equal Opportunities and Opposition to

128 EU Network of Independent Experts on Fundamental Rights (2005) *Report on the Situation of Fundamental Rights in the Slovak Republic*, CFR – CD-Rep(SV).

129 CoE European Committee of Social Rights (2006) *European Social Charter (revised): Conclusion 2006 (Slovenia)*; Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20 of the Revised Charter; available at: http://www.coe.int/t/e/human_rights/esc/3_reporting_procedure/2_recent_conclusions/1_by_state/Slovenia_2006_A4_EN.pdf (10.10.2006).

130 CoE doc. ACFC/OP/II(2006)003.

131 Adopted on 24.06.2005 and released on 21.02.2006, see: http://www.coe.int/t/e/human_rights/ecri/1-ecri/2-country-by-country_approach/Lithuania/Lithuania_CBC_3.asp#TopOfPage (20.09.2006).

132 The four regional employment and training offices are: the VDAB (Flemish Service for Employment Mediation and Professional Training), the FOREM (Walloon Employment and Training office), the BDGA/ORBEM (Brussels Regional Employment Office) and the ADG (Arbeitsamt der Deutschsprachigen Gemeinschaft).

Racism continued throughout 2006. At the regional level, the Flemish employment and training office VDAB has started to make use of a data management tool which distinguishes ethnic categories within the VDAB databases on the basis of first and last name. Although relying on names alone as an indicator of ethnic origin is imperfect, the VDAB defends this approach by stating that they are particularly interested in the labour market position of the two largest groups of non-EU immigrants on the Belgian territory, namely people with a Maghrebian or Turkish background, and that for these groups the name can be used as an effective proxy. Since the name recognition tool has become operational, VDAB publishes monthly statistics on the unemployment rates of 'non-EU ethnic' unemployed, i.e. unemployed people labelled as belonging to a non-native ethnic category, on the basis of name recognition.¹³³

In **France** the question of the recording of ethnic origin continued to be much discussed in 2006, with political parties and members of the government stating their positions for and against the issue. The minister with responsibility for the promotion of equal opportunity argued that it was now necessary to end the prohibition on the collection of such data. Reiterating its public statement made in July 2005, the national commission dealing with data processing and freedom (CNIL) also urged the public authorities to develop an ethnic and racial statistical standard to monitor diversity and discrimination in employment, and the director of the National Institute of Demographic Studies (INED) stated a similar position in the columns of the newspaper *Le Monde*.¹³⁴ Several community representatives agreed with this idea, and key players in the diversity charters argued that the utility of the charters is reduced if there is no way of monitoring the extent of their impact on the diversity of the workplace. At same time, the President of the HALDE has several times reaffirmed his opposition to 'ethnic counting'.¹³⁵

In **Ireland** the 2006 Census included an 'ethnicity' question for the first time. Results, due to be published in 2007, are expected to show a dramatic increase in the diversity of the population since the last Census in 2002, and will also provide a socio-economic profile of the situation of minority ethnic groups not available from other data sources. The **UK**, which has long had a tradition of counting ethnic origin in official statistics, has now refined them further, with the unemployment 'claimant count' now available by ethnic group via the NOMIS manpower information system,¹³⁶ monthly from April 2005. This data set includes flows of people into and out of unemployment, and by length of unemployment spell.¹³⁷

133 <http://arvastat.vdab.be/nwwz/index2.htm> (26.09.2006).

134 F. Hérain (2006) 'Statistiques ethniques, c'est possible', in: *Le Monde* (15.09.06).

135 L. Schweitzer (2005) 'Contre le comptage ethnique', interview with Louis Schweitzer, in: *Le Nouvel Observateur*, (01.-07.12.2005).

136 <http://www.nomis.co.uk> (06.06.2007).

137 http://www.nomisweb.co.uk/articles/news/files/DWP_Ethnicity_JSA.pdf (06.06.2007).

3.7. Incidents, complaints and court cases

The various incidents and cases of discrimination which came to light via the actions of NGOs or specialised equality bodies, or in court cases, in 2006 serve to illustrate the kinds of problems faced by migrants and minorities in the field of employment. Just a few exemplary cases are highlighted within this chapter.

In the **Netherlands** an increase in the number of discrimination complaints was reported. One explanation for this may be the greater attention paid in the media to the phenomenon of discrimination. In particular there was a rise in the number of complaints to do with recruitment and selection, (from 62 in 2004 to 109 in 2005), and this may reflect the increased attention in the media to the phenomenon of discrimination based on a person's surname. Job-seekers who have been rejected when they apply under their own non-Western name often find they are invited for a job interview when they use a fictitious Dutch name. A judgement made by the Equal Treatment Commission on this subject generated a great deal of attention in the media.¹³⁸

In **Latvia** in 2006, an unemployed Roma woman was sent by the State Employment Agency to salesperson's vacancy. She arrived for the interview, but was immediately refused the job without being asked to present her CV or any other evidence of her qualifications. The woman was convinced that she was refused employment because she is Roma, and the Latvian National Human Rights Office filed a complaint. In court, a representative of the shop argued that the 'look' and 'outfit' of the applicant did not correspond to the requirements of the shop. The court established that the prohibition of indirect discrimination on ethnic grounds has been violated, and awarded the victim LVL 1,000 (EUR 1,422) compensation to be paid by the respondent.¹³⁹

In some Member States, court cases could be seen to reflect a growing awareness of the issue of employment discrimination, in the context of the EU equality directives. For example, the highlighted case in **Latvia** (above) was the first-ever ethnic discrimination court case, with the court judgement based on legal norms adopted in line with the Racial Equality and Employment Directives. There was also a landmark case in **France** (below) the result of joint action between the HALDE,¹⁴⁰ the *Inspection du travail* and the Director of Public Prosecutions, with the heaviest penalty ever pronounced by a court as regards employment discrimination. The NGO *SOS Racisme* underlined the significance of the cooperation between the public authorities in this case, and there is an expectation that such cases will encourage more victims of discrimination to come forward to the HALDE.

¹³⁸ Netherlands/Equal Treatment Commission, 2005-136 (21.07.2005).

¹³⁹ Latvian National Human Rights Office, http://www.vcb.lv/default.php?show_me=zinu_arhivs (18.10.2006).

¹⁴⁰ High authority for the fight against discrimination and for equality, <http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=SOCX0500298L> (11.09.2006).

In **France**, a young black woman who was a French citizen with a diploma in hairdressing contacted the manager of a salon in Chateaubriand (Loire-Atlantique), who replied that she was not looking for an employee. However, the following day, the ANPE (National Agency for Employment) directed the young woman to a vacancy in the same salon. The manager again declared that she was not looking for an employee. The young woman then asked one of her white friends to apply for the job, and the manager agreed to meet this woman. After the HALDE authorised an investigation by the Employment Inspectorate, the manager of the salon declared to the Inspector that she 'felt better' with white employees because it better suited her customers. The Court found that illegal discrimination had taken place and in July 2006, the manager of the hair salon was fined 3,000 euros and ordered to pay additional damages for pain and suffering to the victim, and to the NGO *SOS Racisme* which had supported her.

In **Italy** in December 2006, a black Italian girl filed a complaint for racial discrimination against the owner of a restaurant who refused to employ her, saying that her skin colour could 'disturb' some of his customers.¹⁴¹ The Ministers of Social Solidarity and of Rights and Equal Opportunities announced that it would be necessary to suspend the licence or other administrative authorisation in such cases of serious discrimination.¹⁴² In **Spain** in November 2005, a Venezuelan woman reported in Oviedo (Asturias) that a temporary recruitment agency was reducing the wages of the foreign workers it recruited by 25 per cent for income tax, instead of the usual 2 per cent. The mediation of the NGO *SOS Racismo* ended this discriminatory practice. In **Cyprus** the equality body dealt with a case of refusal by the Cyprus Tourism Organisation to grant a license of operation to a tourist agency because its manager did not speak Greek. The equality body found in favour of the complainant and recommended the change of this practice.

Also in **Cyprus**, there were several cases of discrimination against people from other EU countries. In one case, following a complaint by a Greek national, the found that the conditions for appointment of a mining officer in the public service were discriminatory against EU citizens, as they require the candidates to be members of ETEK (the Scientific and Technical Chamber of Cyprus). In another case, after a complaint from an Austrian citizen, the equality body found that the requirement of 'excellent command of the Greek language' as a precondition for employment of doctors in public hospitals amounted to direct discrimination on the ground of language and indirect discrimination on the ground of ethnic or racial origin, on the basis that 'good knowledge' of Greek should suffice. A third case involved a complaint from a Greek national alleging discriminatory rejection of his application for employment at the University of Cyprus. Despite being the most qualified candidate for a teaching vacancy, the Electorates' Body of the University refused to endorse his appointment,

141 A. Manfredi (2007) 'Aosta, 'Sei di colore, in sala non vai bene', ristorante rifiuta di assumere ragazza', in: *La Repubblica.it* (04.01.2007), available at: <http://www.repubblica.it/2007/01/sezioni/cronaca/eliana-cau/eliana-cau.html> (04.01.2007).

142 This measure is already provided for in the anti-discrimination provisions of 1998 (Unified Act 286/98, Article 44).

and decided in favour of a Cypriot national. The equality body was of the opinion that the applicant had a *prima facie* case of discrimination.

3.7.1. The headscarf

Several of the cases and incidents of alleged discrimination related specifically to the wearing of headscarves. Policies regarding prohibiting or allowing the wearing of the headscarf at work vary tremendously between Member States, and also vary within a Member State when a decentralised political structure leaves such policies to be decided at a regional level.

In the report of UNHCR on the situation of refugees in **Cyprus**,¹⁴³ it was recorded that some Muslim refugees felt that their access to the labour market was hindered if they wore Muslim religious symbols.¹⁴⁴ In **Austria** six Muslim women were told that they had to wear specific caps for hygienic reasons when working for a retail chain. When they refused to take off their scarves they were threatened with the cancellation of their unemployment benefits and their health insurance. The ban was lifted after the Federal Labour Market Service had intervened.¹⁴⁵

In **Belgium** in 2006, two Islamic religious teachers in Flemish primary public schools in Etterbeek and Sint-Pieters-Woluwe were fired for wearing a headscarf outside the classrooms. According to the school board, the Flemish public school regulations only allow a headscarf to be worn during religious classes. The two teachers filed an appeal with the Flemish *Raad van Beroep van het Gemeenschapsonderwijs* (Council of Appeal of Public Education). On 16.08.2006, the Council of Appeal confirmed the school board reasoning. The Flemish Minority Forum, a platform of ethnic-minority associations advising the Flemish government on its minority policy, condemned the dismissal of the two teachers.¹⁴⁶

The following cases illustrate contrasting decisions on wearing a headscarf within one Member State. In **Germany** in July 2006, the administrative court in Stuttgart ruled that a Muslim teacher in the state of Baden-Württemberg cannot be banned from wearing her headscarf at work while nuns in the same federal state are allowed to wear their habits – which is the case in Baden-Württemberg. It was ruled that this unequal treatment violates Article 3 of the German Constitution as well as the European Convention on Human Rights.¹⁴⁷ In complete contrast, a court

143 UNHCR representation in Cyprus (2004) *The Situation of Refugees in Cyprus from a Refugee Perspective*.

144 For example, see W. Bazelya (2005) 'Sacked for her headscarf', in: *Cyprus Mail* (19.03.2005).

145 'AMS: Geld-Sperre für Moslems zurückgezogen', in: *diepresse.com* (26.09.2006), available at: http://www.diepresse.com/textversion_article.aspx?id=588061 (29.09.2006).

146 <http://www.minderhedenforum.be/2opinies/20060713opiniehoofdhoofddoeken.htm> (10.10.2006).

147 Germany/Verwaltungsgericht Stuttgart (2007) *press release*, Stuttgart/VerwG/18 K 3562/05 (07.07.2006). The State Minister for Education announced legal steps against the ruling of the administrative court in Stuttgart (FR 12.07.2006, p. 4). On 28.02.2007 the Higher Administrative Court of Baden-Württemberg allowed an appeal of the federal state Baden-Württemberg against the ruling of the administrative court in Stuttgart. Press release of the Higher Administrative Court of Baden-Württemberg (06.03.2007), available at: <http://www.vgh-mannheim.de/servlet/PB/menu/1205757/index.html?ROOT=1153033> (26.05.2007).

in the southern German state of Bavaria upheld a ban on Muslim female teachers wearing headscarves in schools, whilst allowing nuns to wear their habits.¹⁴⁸ The ban had been in force since 2005, introduced by Bavaria's Christian Social Union (CSU) government. The government and the state Parliament had argued that a teacher wearing a headscarf could not credibly impart or represent the state's educational goals, in particular the regarding equality of men and women.¹⁴⁹

Some other non-headscarf cases related to alleged discrimination against Muslim men. In **Greece** a Muslim doctor, a former citizen of Jordan who had acquired Greek citizenship, faced the refusal of the Medical Association of Thessalonica to register him as a member, although he had met all the required preconditions. After the informal intervention of the Greek Ombudsman, the registration took place.¹⁵⁰

A more newsworthy case occurred in **France** where 72 baggage handlers, mostly Muslims, lost security clearance at Roissy airport. Officials argued that the workers posed a risk because of alleged links to groups with 'potentially terrorist aims'. Some of the baggage handlers, supported by trade-unions such as CFDT and the NGO MRAP, sued the authorities, claiming they were being discriminated against because of their religion. The French High Authority, the HALDE, also put the file on its agenda, because of 'presumption of discrimination', pending its inquiry. In the meantime, the administrative court confirmed on 15.11.2006 the Ministry of Interior's decision to deprive five baggage handlers of their authorisation, for reasons relating to anti-terrorist security. By the end of 2006 the case had not been resolved. Some trade unions and anti-racist associations continued to consider that these decisions were discriminatory; others believed that they were legitimate, for security reasons.

In **Belgium** in June 2006 a security firm sacked one of its workers, a female receptionist, for wearing a headscarf. The woman had been working for them for three years. Her employer was highly satisfied with her work until she decided to start wearing a headscarf. A spokesman said that the company always asked employees to act in a neutral fashion and not to display their religious, philosophical or political beliefs.¹⁵¹ In June 2006, the Muslim woman, supported by her trade union, the ACLVB/CGSLP, and the Centre for Equal Opportunities and Opposition to Racism, (CEOOR), took the matter to a labour tribunal asking for the dismissal to be rescinded, on the basis of the general anti-discrimination law.¹⁵² The court of first instance refused this demand for cessation of dismissal, and both the CEOOR and the trade union appealed this decision, the former arguing from a general anti-discrimination approach, and the latter arguing that the dismissal was inappropriate.

148 <http://www.jusline.de/index.php?cpid=0920e51183510618590069d5c148aec4&feed=6155> (20.06.2007)

149 Bayern/Verwaltungsgerichtshof/Vf. 11-VII-05 (15.01.2007), http://www.expatica.com/actual/article.asp?subchannel_id=52&story_id=35553.

150 Greece/The Greek Ombudsman (2006) *The Greek Ombudsman's first year as a specialised body for the Promotion of the Principle of Equal Treatment*, p.9, available at: http://www.synigoros.gr/docs/discrimination_ish_metaxeirish.pdf (19.01.2007).

151 <http://www.irna.ir/en/news/view/menu-239/0606179574212737.htm> (10.10.2006).

152 Belgium/Wet ter bestrijding van discriminatie – Loi tendant à lutter contre la discrimination (25.02.2003), Belgisch Staatsblad, (17.03.2003).

3.8. Research evidence for discrimination

In 2006, various specific research projects and reports identified discrimination in employment. In **Belgium**, academic studies using regression analysis identified the extent to which wages are dependent on ethnicity, when other relevant factors¹⁵³ are held constant, and concluded that discrimination was an important factor.¹⁵⁴ Other research in Belgium in 2006 focused on the differences between allochtones¹⁵⁵ and autochtones in finding a job in the Flemish Labour Market. In June 2003, one year after leaving school, a considerably larger proportion of the allochtones than the autochtones were still unemployed, for both gender groups and for all educational levels.¹⁵⁶

In 2006 the Third ECRI Report on **Cyprus**¹⁵⁷ noted that 'there are areas where direct and indirect discrimination against members of the Turkish Cypriot community exist and still need to be recognised and adequately addressed'. In **France** a study published in 2006 looked at managers of foreign origin, and noted evidence of discrimination in their experiences. In order to become managers, people of Maghrebian origin had to possess higher levels of qualification than descendants of European immigrants.¹⁵⁸ In **Hungary** research investigating the practices of the corporate sector¹⁵⁹ showed that only around one third of companies investigated did not discriminate at all, and more than half of the companies discriminated against Roma as employees or job seekers. In **Romania**, a survey conducted in Bucharest showed that young Roma face real barriers when trying to enter the labour market.¹⁶⁰

In **Germany** the most significant research report on discrimination in employment in 2006 covered 'second-generation' Turkish people. Interviews with gate-keepers revealed that the decisions of people such as personnel managers are not only guided by relevant factors like education, qualification and work experience, but also by certain cultural stereotypes and prejudices towards Turkish migrants

153 These could be age, gender, region of residence, employment sector, company size, etc.

154 S. Vertommen, A. Martens (2006) *Ethnic Minorities Rewarded: Ethnostratification on the Wage Market in Belgium (nota di lavoro 61.2006)*, Milano: Fondazione Eni Enrico Mattei, available at: <http://www.feem.it/NR/rdonlyres/B8AFC946-5DAD-40E9-AAC8-A9B2863B4EB6/1979/6106.pdf> (10.09.2006); and S. Vertommen, A. Martens, N. Ouali (2006) *Topography of the Belgian Labour Market*, Leuven/Brussel: K.U. Leuven/Université Libre de Bruxelles.

155 The term 'allochtone' is used to denote a certain group of people with an immigrant background and a disadvantaged socio-economic position. The term is used commonly in the Flemish Region as it is in the Netherlands. 'Allochtones' are often contrasted with 'autochtones', i.e. native people. In recent years, the term 'allochtones' is being used more frequently in the Brussels-Capital and the Walloon Region.

156 Mispion, Holderbeke (2006) 'Allochtonen op zoek naar werk' in: Netherlands/Steunpunt Werkgelegenheid, Arbeid en Vorming *Jaarboek 2005: De arbeidsmarkt in Vlaanderen*, pp. 153-170.

157 ECRI (2006) *Third Report on Cyprus*, para. 104, available at: http://www.coe.int/t/e/human_rights/ecri/1-ECRI/2-Country-by-country_approach/Cyprus/Cyprus_CBC_3.asp#TopOfPage (06.06.2007).

158 E. Santelli (2006) *Les cadres d'origine étrangère face aux discriminations : du constat statistique au vécu biographique*, FASILD – Institut des sciences de l'Homme.

159 F. Babusik (without year) *Foglalkoztatási egyenlőtlenségek a munkaerő-piacon: a romák foglalkoztatási diszkriminációja*, Budapest: Delphoi Consulting (manuscript).

160 Romania/Agentia de Dezvoltare Comunitară Impreună (2004) *Tânăr rom- caut loc de muncă* available at: http://www.agentiaimpreuna.ro/documente/Tanar_rom_-_caut_loc_de_munca.pdf (03.08.2006).

(e.g. 'not ambitious', 'macho', 'incapable of working in a team'). Many gatekeepers explained that they wanted to avoid negative economic or social consequences due to (assumed) conflicts between Turkish employees and clients or between Turkish and German employees, and some employers themselves clearly displayed personal resentment towards Turkish applicants.¹⁶¹

Several studies in **Sweden** identified different aspects of discrimination. Two studies investigating the importance of social networks in obtaining work¹⁶² concluded that native Swedes benefit from the fact that most recruitment is carried out through informal channels, whereas foreign-born job-seekers generally lack access to these informal channels. A third report¹⁶³ demonstrates evidence of recruitment discrimination against men with Arabic sounding names, with every fourth employer discriminating against minorities. A fourth study concluded that changing one's name from a 'foreign sounding' name to a 'Swedish sounding' name resulted in about SEK 10,000 to 15,000 (about EUR 1,000 to 1,600) higher income per year.¹⁶⁴ Finally, a study of the hotel and restaurant business in Sweden showed that employers allocate work tasks based on criteria that have more to do with the gender and ethnic origin of their employees than their competences.¹⁶⁵

In the **Czech Republic** a Roma woman applied in response to a job advertisement displayed in a store window, but the store manager informed her that the job had already been filled. When a non-Roma employee of the civic association *Poradna pro občanství* (Counselling Centre for Citizenship, Civil and Human Rights) entered the store and pretended to be interested in the same job, the store manager proceeded to interview her for the position. In March 2005 the High Court in Prague acknowledged that the woman was discriminated against on the basis of her ethnic origin and ordered the store manager to pay compensation of CZK 25,000 (EUR 870) and to send the plaintiff a written apology by registered post.¹⁶⁶

161 N. Gestring, A. Janßen, A. Polat (2006) *Prozesse der Integration und Ausgrenzung. Türkische Migranten der zweiten Generation*, Wiesbaden: VS Verlag für Sozialwissenschaften, pp. 135-193.

162 A. Behtoui (2006) *Om de hade föräldrar födda på 'rätt plats' – om ungdomar med utländsk bakgrund i det svenska utbildningssystemet och på den svenska arbetsmarknaden, Expert bilaga till Rapport integration 2005*, Norrköping: Integrationsverket; and Å. O. Segendorf (2005) *Job search strategies and wage effects for immigrants*, Stockholm: Swedish Institute for Social Research (SOFI).

163 M. Carlsson, D.-O. Rooth (2006) *Evidence of Ethnic Discrimination in the Swedish Labor Market Using Experimental Data*, IZA Discussion Paper No. 2281, available at: <http://ftp.iza.org/dp2281.pdf> (06.06.2007)..

164 M. Arai, L. Schröder, P. Skogman Thoursie, A. Thoursie (2006) *Måste alla heta som Svensson? En empirisk studie av namnbyten och inkomster*, Stockholm: Landsorganisationen (LO).

165 P. Mulinari (2006) 'Denandra arbetskraften. Exotisering och rasism på arbetsplatsen', in: P. De los Reyes (ed.) *Arbetslivets (o)synliga murar. Rapport av Utredningen om makt integration och strukturell diskriminering*, SOU 2006:59, Stockholm: Fritze.

166 ENAR (2006) *Shadow Report 2005. Racism in the Czech Republic*, available at: http://www.enar-eu.org/en/national/czechrep/Czech_Republic_2005.pdf (06.06.2007).

3.8.1. Discrimination testing

In 2006 in **France** the ‘first national barometer’ was carried out by *Adia* in conjunction with the French observatory on discrimination. The organisation sent out 6,461 CVs during one year in response to 1,340 job offers, and a comparison was made of the chances of being called for an interview. A man of Maghrebian origin had only 36 chances to obtain recruitment interview, when a majority French man had 100. According to *Adia*, in 10 per cent of the cases (605 out of 6,461), the candidate could have lodged a discrimination complaint.¹⁶⁷ The French Prime Minister, sympathetic to discrimination testing, conferred new powers on the HALDE in this respect. The HALDE itself organised a rather less ambitious test, following job applications to three major companies. Tested discrimination criteria were gender, origin, age, disability and physical appearance. Compared to those with French names, candidates of North African background obtained fewer replies, but the difference was too small to produce statistically significant evidence of discrimination.

In 2005, the Counselling Centre for Civic and Human Rights in Košice in **Slovakia** conducted seven discrimination tests in the labour market on the grounds of nationality. One case of discrimination was brought before the court, whilst the other victims decided to take no action. In **Hungary** the independent social research centre TÁRKI conducted different kinds of tests.¹⁶⁸ They carried out a survey among local government based on photographs of job applicants (including pictures with identifiable ethnic traits), another test using phone-applications with ethnically identifiable family names, and a third where collaborators applied for real job advertisements and at a certain point during the phone-call announced that they were Roma. Results showed discrimination against Roma job applicants in different segments of the labour market, with Roma applicants rated lower than the others for no other reason than their ethnic identity.

Last year’s Annual Report reported that authorities in Sweden and France had invited the International Labour Office (ILO) to carry out discrimination testing in their respective countries. The studies were completed by the end of 2006. The study in **France**, carried out in six cities, reported that an applicant with a ‘French’ name was preferred to an applicant with a name that suggested Maghrebian or black African origin in four cases out of five.¹⁶⁹ In **Sweden**, where the testing took place in three cities, the net discrimination rate at the second stage of testing was similar (slightly lower) to that of other countries tested by the ILO. However, the tests found that there was a much greater equality of treatment of minority and majority applicants at the all-important first stage of application – the initial telephone call or initial submission of CV – than for any of the other countries where the ILO had previously carried out the test. The ILO speculated that the difference may be due to the fact that at the time of testing Sweden had

¹⁶⁷ See <http://cergors.univ-paris1.fr/docsatelecharger/Barometre2006resultats.pdf> (14.06.2007).

¹⁶⁸ TÁRKI (2006) *Az esélyegyenlőség érvényesülése az önkormányzatoknál*.

¹⁶⁹ Bureau international du Travail (2006) *Les Discriminations à raison de 'l'origine' dans les embauches en France: Une enquête nationale par tests de discrimination selon la méthode du BIT*.

a considerable history of legislation and institutions to combat discrimination, whereas in the other countries there were little or none of these elements existing at the time of the testing, or prior to it.¹⁷⁰

3.8.2. Research on the experiences of the victims

A more subjective insight into the phenomenon of discrimination is gained through research into the experiences of people vulnerable to discrimination. In **France** a study of the agency for managerial staff employment (APEC – *Agence pour l'emploi des cadres*)¹⁷¹ revealed that one quarter of managerial staff feel discriminated against because of their origins, as well as on the grounds of their gender or their age. In **Cyprus** an opinion survey¹⁷² conducted with 301 Turkish-Cypriots who live in the north and cross the checkpoints on a daily basis to work in the south (referred to as 'commuter workers'), found that most feel discriminated against. There was dissatisfaction over not being able to fully understand the rules, as documents are in Greek. A large number had no social security protection, and believed that Greek-Cypriots receive significantly more in pay and benefits. Some also complained of harassment at work.¹⁷³

A survey carried out in **Denmark** at the beginning of 2006 asked 330 unemployed immigrants why it is difficult for immigrants to find jobs. The vast majority blamed the employers and the Danish political authorities, with, for example, 81.5 per cent agreeing that 'Employers prefer to employ people with ethnic Danish background'. Having said this, research carried out by the same private research company at regular intervals showed an overall decline in self-experienced discrimination within the employment sector in 2006. It was argued that this may be a consequence of the favourable economic conditions and the concomitant demand for labour, which have reduced the level of unemployment in general, including for immigrants.¹⁷⁴

In Tallinn, **Estonia** in 2005, 17 per cent of questioned ethnic non-Estonians alleged that during the last three years they had experienced limitations of their rights or maltreatment at the workplace because of their ethnic origin. For Estonians this figure was 1.8 per cent.¹⁷⁵ In the **Netherlands** a study commissioned by the Ministry of Justice¹⁷⁶ found that around 60 per cent of a representative sample of job-seekers of Moroccan and Turkish backgrounds were of the opinion

170 http://www.integrationsverket.se/upload/aktuellt/Pressmeddelanden/Synthesis_report_ILO_Sweden_Testing_study.pdf (06.06.2007).

171 APEC (2006) *Recrutement cadre : sélectionner sans discriminer*, available at: <http://cadres.apec.fr/resource/mediatec/domain1/media25/12281-9mfq8kqmmm5.pdf> (11.09.2006).

172 O. Mehmet, M. Tahiroglu, F. Lisanailor, S. Katircioglu (2006) *Labour Mobility and Labour Market Convergence in a Possible United Republic of Cyprus*, Power Point presentation available at: <http://www.mc-med.org/Special/Labor/Program.htm> (06.06.2007).

173 Very few details were provided on the methodology of collecting this information.

174 Catinet (2006) *IntegrationsStatus 1. halvår 2006*, København, Catinet A/S.

175 K. Hallik et al (2006) *Estonia: Interethnic Relations and the Issue of Discrimination in Tallinn*, Tallinn: LICHR, p. 39.

176 I. Boog et al. (2006) *Monitor rassendiscriminatie 2005*, Rotterdam: National Bureau against Racial Discrimination.

that they had suffered rejection because of their origins, and a quarter of the questioned employees of Moroccan and Turkish origin said they had experienced harassment or discrimination in the workplace.

In **Spain** a report pointed out that 45 per cent of the Roma interviewed felt themselves discriminated against when working or studying.¹⁷⁷ In **Hungary** discrimination in the labour market was examined by two research studies in 2006.¹⁷⁸ According to the results of the European Roma Rights Centre study, less than a quarter of those Roma interviewed said they had never faced discrimination in employment, and over 40 per cent had experienced being told in person that the position was already filled, after having been previously informed over the phone that the vacancy was available.

In **Hungary** in 2005 a Roma man who was trained painter applied for a job vacancy published in a newspaper. He phoned and after introducing himself – a typically Roma family name – he was told that the job was already filled. He turned to NEKI, the Legal Defence Bureau for the Rights of Ethnic and National Minorities.¹⁷⁹ First, a member of NEKI's staff phoned the same advertisement and introduced himself with a typically Roma family name. He was refused and told the job was already filled. An hour later another person called the same advertisement and introduced himself with a typically non-Roma name. He was invited to an interview. NEKI turned the case to the ETA, the equality body created under the Equal Treatment Act. The Authority ordered the employer to pay a fine of 700,000 forint (approximately 2,800 euros). He appealed against the order, and the case went to the Court of Budapest. This court confirmed the original decision of the Authority.

In **Slovakia**, the Slovak National Human Rights Centre published the results of a representative survey covering both the minority and majority population that examined public opinion regarding discrimination on the labour market, and respondents' personal experiences of discrimination.¹⁸⁰ Although the survey found that job seekers' racial or ethnic origin is not the most frequent ground for discrimination on the labour market (age, sex or marital status were more frequent grounds), almost 41 per cent of respondents said they had a personal or second-hand experience with employers openly refusing to employ Roma job seekers. Also, respondents frequently reported experiences with discrimination on the labour market concerning ethnic Hungarians.

177 Equipo de Investigación Sociológica EDIS (2005) *Población gitana y empleo. Un estudio comparado*, Madrid: Fundación Secretariado Gitano, available at: <http://www.gitanos.org/publicaciones/estudioempleo/estudioempleo/index.html> (11.05.2006).

178 F. Babusik (without year) *Foglalkoztatási egyenlőtlenségek a munkaerő-piacon: a romák foglalkoztatási diszkriminációja*, Budapest: Delphoi Consulting (manuscript); ERRC (2006) *Research Report on the Discrimination Schemes Used against Roma in the Domain of Employment Policy* (Publication forthcoming).

179 Nemzeti és Etnikai Kisebbségi Jogvédő Iroda.

180 Slovenské národné stredisko pre ľudské práva (2006) *Terénny výskum dodržiavania zásady rovnakého zaobchádzania pri vzniku a skončení pracovnoprávného vzťahu vybraných kategórií obyvateľov*.

3.9. Legal status and vulnerability

There were many reports during 2006 indicating the vulnerability of third-country nationals to discrimination and exploitation, because of their insecure legal status. For example, in **Cyprus** the Third ECRI Report, published in May 2006, drew attention to the 'exploitation and abuse by their employers' of vulnerable domestic and other foreign workers, noting that the close link between employment with a specific employer and the residence permit means that domestic and other foreign workers were still enduring serious exploitation and abuse in order to avoid deportation. Particularly vulnerable are asylum seekers whose right to access the labour market has been restricted (by new regulations) to the agricultural sector, consisting of the most low-status and low-paid jobs in the market. Evidence of non-compliance by employers with contract terms was reported to be abundant.¹⁸¹

Similarly in **Ireland** a report by the Irish Centre for Human Rights and Amnesty International¹⁸² pointed out that exemptions in the applicability of the Employment Equality Act to domestic workers remain in Irish law in spite of the fact that these exemptions have a disproportionate negative impact on women from ethnic minority groups. Also in Ireland a National Economic and Social Forum (NESF) report in 2006¹⁸³ highlighted the problems that the work permit system can cause for migrant workers, through an over-dependence on employers who hold these permits. They also tend not to be considered for training opportunities because of the short-term nature of their employment. Similarly in **Austria**, a study of first generation of labour migrants showed that the strong legal pressure on them to avoid unemployment impeded acquisition of additional language competence and further vocational training.¹⁸⁴

In **Slovenia**, in 2006, for the third year running, a quota on the employment of foreigners was imposed.¹⁸⁵ Access of third-country nationals to the Slovenian labour market is strictly linked to the demands of the labour market. As a consequence, third-country nationals take up jobs that are not taken up by Slovenian nationals, characterised by harder working conditions in less-advantageous and lower-paid sectors, such as the construction industry, trading, agriculture, metal and manufacturing industries or catering.¹⁸⁶

181 ECRI (2005) *Third Report on Cyprus*, available at: http://www.coe.int/t/e/human_rights/ecri/1-ECRI/2-Country-by-country_approach/Cyprus/Cyprus_CBC_3.asp#TopOfPage (06.06.2007).

182 Irish Centre for Human Rights National University of Ireland, Galway, Amnesty International/L. Beirne, V. Jaichand (2006) *Breaking Down Barriers: Tackling racism in Ireland at the level of the State and its institutions*.

183 NESF (2006) *Creating a More Inclusive Labour Market*, available at: <http://www.nesf.ie/dynamic/docs/No%2033%20Creating%20a%20More%20Inclusive%20Labour%20Market.pdf> (11.06.2007).

184 R. Latcheva et al. (2006), *SiM – Between Equal Opportunity and Marginalisation: A Longitudinal Perspective on the Social Integration of Migrants*, Wien: ZSI, pp. 108-109, available at: http://www.zsi.at/attach/1Endbericht_SiM.pdf (29.09.2006).

185 Slovenia/SOP: 2006-01-1232, (23.03.2006).

186 Employment Service of the Republic of Slovenia (2005) *Mesečne informacije: Junij 2005*, p.18; Employment Service of the Republic of Slovenia (2006) *Mesečne informacije: December 2005*, p.21.

In **Cyprus**, the equality body ruled that the treatment of foreign domestic workers in Cyprus is discriminatory on the grounds of 'race' or ethnic origin. Indirect discrimination is reflected in the low salaries paid to migrant domestic workers¹⁸⁷ compared to Cypriot workers. The report by the equality body found that the hourly wage provided in the contract for a migrant domestic helper is about five times less than the hourly wage of a Cypriot domestic helper.¹⁸⁸ Previous research studies¹⁸⁹ have also pointed to evidence of discrimination in the working condition of domestic workers. The number of migrant female domestic workers in Cyprus in 2005 was stated to be more than 16,000.

An example of legal restrictions leading to inequality of treatment could be found in **France**, where the HALDE recommended to the Minister for Health and Solidarity to put an end to the systematic inequalities suffered by medical doctors who obtained their diplomas outside the EU. The *Syndicat National des Praticiens à Diplôme Hors Union Européenne* (SNPADHUE – National Trade Union of Doctors with a Diploma from outside the EU)¹⁹⁰ collected tens of thousands of signatures for a petition¹⁹¹ complaining about the fact that such doctors, often living in France for many years, and sometimes becoming French by way of naturalisation, still receive a salary which is 30 to 50 per cent lower than their colleagues trained in France or the EU.¹⁹²

A case in **Greece** concerned complaints of discrimination in access to specific professions. A Ministerial Decision¹⁹³ introduced the requirement of Greek or EU citizenship, or Greek ethnic origin, in order to obtain a permit for open market trading.¹⁹⁴ In this case the Ombudsman concluded that the difference in treatment due to citizenship was acceptable according to the legislative framework for the combating of discrimination due to race or ethnic origin (Ombudsman case No. 6343/2005).¹⁹⁵ However, the immigrant market traders themselves protested that this was a racist measure and organised a protest march in the centre of Athens

187 A low salary for migrant domestic workers is CYP 0.82 (about EUR 1.40) per hour, contrasted by CYP 4 to 5 (about EUR 7 to 8.5) per hour for Cypriots carrying out the same work: Ombudswoman (2005) *Ombudswoman Report File No. A.K.I 2/2005*, p. 4.

188 The contract provided a monthly salary of CYP 150, which converted to an hourly wage is CYP 0,82 per hour. By virtue of a Council of Ministers Decision (No. 288/2005) the lowest monthly salary for clerks, nursing assistants, kindergarten and nursery assistants, school assistants and shop assistants for 2005 is CYP 362 (about EUR 624) for the first six months and after this CYP 385 (about EUR 664).

189 See N. Trimikliniotis (1999) 'New Migration and Racism in Cyprus: The Racialisation of Migrant Workers', in: F. Anthias, G. Lazarides (ed.) *Into the Margins: Exclusion and Migration in Southern Europe*, Avebury; see also N. Trimikliniotis, P. Pantelides (2003) 'Mapping Discriminatory Landscapes in the labour market', in: *The Cyprus Review*, Vol. 15, Spring 2003, No. 1; see also N. Kadir (2001) *A Preliminary Report: Labour Conditions of Asian Domestic Workers*, Fulbright (unpublished).

190 Constitutive Assembly (21.05.2006).

191 F. Lamdaoui (2006) 'Discrimination d'Etat. L'hôpital public emploie des médecins étrangers, sous-payés et sans statut. Ce scandale doit cesser', in: *Le Monde* (14.01.2006).

192 'Les médecins étrangers réclament un statut officiel. 7000 praticiens extracommunautaires exerçant en France demandent que leur expérience soit reconnue', in: *Le Monde* (31.01.2006).

193 Through provisions of the new migration bill (law n.3386/2005).

194 Ministerial Decision K1-186/18-1-06.

195 Nevertheless, the Ombudsman underlined that this may cause serious problems to immigrant traders regarding the renewal of their residence and work permits, and made suggestions to the Ministry on the appropriate administrative practice to make allowances for the particular situation of such immigrants. At the end of 2006 the response from the Ministry was still pending.

in June 2006.¹⁹⁶ Similarly a decision by the Education Minister ruled that music-school teachers must have Greek or EU citizenship, or be of Greek ethnic origin.

3.9.1. Exclusion from the public sector

In a few Member States there is a specific barrier regarding jobs in the public sector. For example, in **France** only people with French nationality can access public sector jobs, with the exception of certain provisions relating to EU citizens. Access to almost all public sector jobs and more than one million jobs in the private sector is closed for foreigners. The fact that six million jobs, about one third of the French labour market, are restricted in this way has been criticised for weakening the position of immigrants in the French labour market.¹⁹⁷

A similar rule exists in **Italy**, and this was reported to have adversely effected the situation of foreign nurses working in Italy. Because of the requirement for Italian citizenship, immigrant nurses cannot be hired directly in the public sector, and so work with temporary contracts set by employment agencies or in organisations to which the local health councils sub-contract hospital services.¹⁹⁸ They therefore experience working conditions far worse than those of their Italian colleagues, characterised by longer hours, wages on average 25 per cent lower than the wages of Italian nationals, non-recognition of allowances and benefits, assignment to the least-qualified jobs, and barriers of access to training courses.¹⁹⁹

During 2006 there was contrasting case law on the issue of access by non-nationals to public sector employment in Italy. The Tribunal of Venice ruled as legitimate the exclusion of an Albanian citizen from the competition for assistant cook in a municipal school, considering the requirement for Italian citizenship to be still valid.²⁰⁰ And in November 2006, the *Corte di Cassazione* (Court of Cassation) ruled that non-EU citizens with a regular residence permit cannot be employed by public institutions with an open-ended contract,²⁰¹ and confirmed that laws which declare Italian citizenship an essential requirement for taking civil service exams were still applicable.

In complete contrast, the Tribunal of Pistoia ruled that the exclusion of a foreign doctor from a competition for public-sector employment constituted unlawful discrimination.²⁰² Similarly, two other rulings, by the Florence Court of

196 Eleftherotipia, 06.06.2006.

197 'Une forme méconnue de discrimination : les emplois fermés aux étrangers' in: *Note du GELD* (15.03.2000).

198 M. A. Bernadotti (2006), 'Sindacati e discriminazioni razziali nella Sanità italiana: il caso degli infermieri', in: A. Megale. et al. (eds) *Immigrazione e sindacato. IV Rapporto Ires*, Rome: Ediesse.

199 Università di Venezia/Laboratorio Immigrazione (2006) *Racism and Trade Unions in the Health Sector, public report 4, RITU Project*; see also Università di Venezia/Laboratorio Immigrazione (2006) *Inclusione ed esclusione delle donne immigrate in Alto Adige*, pp. 113-130.

200 Italy/Tribunal of Venice, Labour Division/Decision No. 181 (19.02.2005).

201 Italy/Court of Cassation/Sentence No. 24170 (13.11.2006).

202 Italy/Tribunal of Pistoia/Decree of 7 May 2005, on the petition ex section 44, Legislative Decree No. 286 of 1998, No. 4149/04 R.G.

Appeal²⁰³ and the Tribunal of Florence,²⁰⁴ ruled that the citizenship requirement was discriminatory regarding public sector vacancies, and the Court of Justice of Perugia issued two judgements against this restriction, one allowing an Iranian citizen to take part in a civil service examination,²⁰⁵ and another recognising the right of a non-EU citizen to be an anaesthetist in the local health service.²⁰⁶

The same subject is tackled in a report on **Estonia** by Amnesty International, which notes that third-country nationals are prohibited by law from working as state or municipal public officials and argues that ‘this affects non-citizens and persons belonging to the Russian-speaking linguistic minority negatively in terms of employment opportunities, and constitutes indirect discrimination.’²⁰⁷ In **Luxembourg**, whilst in theory non-nationals are eligible for jobs in certain parts of the public sector, such as research and education, it was reported that the public sector is, in practice ‘reserved’ for Luxembourgers. This privileged access to public administration allows Luxembourgers greater job security and higher earnings for lower levels of qualification.²⁰⁸

In 2006 other legal restrictions came to light regarding access to trade unions and related bodies. In some Member States there have been legal restrictions on access of non-nationals to trade union activities, but after pressure from various sources, many of these barriers have been removed over recent years. (For example, in **Lithuania** the restriction of trade union membership to citizens and permanent residents was removed in 2003.)²⁰⁹ In 2006 there were similar examples of removal of restrictions in this area. Previous EUMC Annual Reports have pointed to the law in **Austria** which prohibited third-country nationals from standing as candidates in the Chamber of Labour and works’ council elections. In 2006, the Chamber of Labour Act and the Work Constitution Act were finally changed, and this barrier was removed.²¹⁰ Last years’ Annual Report also noted that the standard contract prepared by the immigration authorities in **Cyprus** for migrant domestic workers prohibited the employee from participating in trade union or political activity. In 2006, following criticism by the equality body, this prohibition was removed, and new contracts were issued. In **France** the HALDE recommended the modification of the decree of 2004²¹¹ which had removed the right for foreign craftsmen to vote at the elections of the *chambres des métiers* (guild chambers).²¹² As it could find

203 Italy/Court of Appeal of Florence, Division I/Decree of 21 December 2005.

204 Italy/Tribunal of Florence/Decree No. 4640 (14.01.2006).

205 Italy/Court of Justice of Perugia/Ordinance of 29.09.2006.

206 Italy/Court of Justice of Perugia/Ordinance of 06.12.2006.

207 Amnesty International (2006) *Estonia: Linguistic minorities in Estonia: Discrimination must end*, EUR 51/002/2006, 7 December 2006, section 4.4.1.

208 S. Besch, L. Bodson, C. Hartmann-Hirsch, M. Legrand (2005) *Discrimination à l'emploi*, PSELL No.151, Luxembourg: CEPS/INSTEAD.

209 Law Amending the Preamble and Article 1 of the Law on Trade Unions and Associations, Lithuania/03.11.2003/ No. IX-1803 (19.11.2003).

210 Änderung des Arbeiterkammergesetzes 1992 und des Arbeitsverfassungsgesetzes, Austria/BGBl I 4/2006 (13.01.2006).

211 France/decret No. 2004-896 du 27 août 2004 modifiant le décret No. 99-433 du 27 mai 1999 relatif à la composition des chambres de métiers et à leur election, available at: <http://www.legifrance.gouv.fr/WAspad/Visu?id=714664&indice=1&table=JORF&ligneDeb=1> (09.10.2006).

212 These are public institutions, administered by elected craftsmen, performing some functions similar to trade unions in terms of acting as the representation of the craft to the authorities.

no objective justification for this restriction, in 2006 the HALDE asked the Prime Minister and the Minister for small and medium-sized enterprises to repeal this discriminatory measure.

3.10. Good practices

Initiatives for preventing employment discrimination during 2006 can be roughly categorised under a number of different headings:

3.10.1. Training and counselling of migrants and minorities

In August 2006 in **Slovakia**, the International Organisation for Migration established two Migration Information Centres,²¹³ one in Košice and one in Bratislava. These Centres provide counselling to legal migrants, or those who in the long term intend to live and work within the Slovak Republic. Additionally, the Centres provide various stakeholders the opportunity to employ migrants through counselling and training activities in employment. The Centres also carry out activities promoting a multicultural society, aimed at eliminating discrimination against foreigners and migrants in the labour market. Information is provided in Slovak, English and Russian.²¹⁴

3.10.2. Cultural awareness or anti-racism training of the majority

The Police Force in **Malta** has continued giving training on racism and xenophobia, and on the relevant Maltese legislation, and on how trainees, as part of the police force, should deal with incidents of racism. This course has been repeated seven times in 2006 as part of police in-service training.

In **Germany** the Hanover-based DP ALBuM,²¹⁵ an EQUAL-supported project, targets training at both the majority and the minority. The initiative consists of nine sub-projects which all aim at combating discrimination and the exclusion of migrations from the labour market. These include training measures for migrant employees in job-related German skills, and for business owners with a migration

213 <http://www.domavsr.sk/mic/> (20.09.2006).

214 <http://www.ludiaakomy.sk>, <http://www.domavsr.sk/mic/> (20.09.2006).

215 ALBuM is the abbreviation for 'Arbeitsprozessorientiertes Lernen und Beraten mit und für Migrantinnen und Migranten' ('work process-oriented learning and counselling with and for migrants').

background on how to set up or improve their human resources management, as well as sub-projects are aimed at preventing intercultural conflicts and misunderstandings in companies. For example, one project trains representatives of the middle management (such as supervisors) and members of the work council to become 'Intercultural Commissioners', to help them detect intercultural conflicts between employees at an early stage and mediate between the parties.²¹⁶

3.10.3. Equal opportunity or anti-discrimination policies and activities

In **Italy** the project 'Leader' – *Lavoro e occupazione senza discriminazioni etniche e religiose* (Labour and employment without ethnic and religious discrimination) aims at developing a strategy of fighting discrimination in the labour market.²¹⁷ The project, financed by the EQUAL programme, has created an experimental network called Rita – Network of Territorial Initiatives against Discrimination – made up of trade-unions, migrants' associations and NGOs.

In the **Netherlands** the National Bureau against Racial Discrimination (LBR), in cooperation with a number of centres working in the area of equal treatment, and with the Equal Treatment Commission, has produced a manual called '*Discrimination? Not in our organisation!*'²¹⁸ The manual is partly financed by funds from the EQUAL programme, and is part of the campaign '*Discrimination? Not me!*'. It offers employers instruments for preventing, detecting and combating discrimination. The manual contains information on the nature and scale of discrimination in the employment sector, and also contains an organisation scan which employers can use to check on the organisation's diversity and culture with respect to minorities. The manual provides an example of a code of conduct, and information on how such a code can be effectively introduced. The manual was published in May 2006 with a spoken version on CD for people with visual disabilities.

In **Spain** the *Asociación Española del Pacto Mundial de Naciones Unidas* (ASEPAM) produced 2,500 copies of an anti-discrimination guide²¹⁹ to be distributed in small and medium-sized companies throughout 2006. The guide provides tools to detect and avoid discrimination against migrant and disabled workers. In relation to the former, these include instructions to refrain from demanding a precise knowledge of spoken or written Spanish if such requirements are not necessary, to eliminate the requirement of Spanish nationality for certain jobs, to be receptive to qualifications acquired in other countries, to diversify and adapt the menus of workplace meals, to translate security instructions into several languages and to set up mechanisms and indicators to prevent and detect cases of discrimination.

²¹⁶ This ALBuM project is coordinated by the organisation 'Arbeit und Leben'.

²¹⁷ <http://www.leadernodiscriminazione.it/> (10.11.2006).

²¹⁸ S. Scheve (2006) *Discriminatie? Niet in onze organisatie!* Rotterdam: LBR.

²¹⁹ ASEPAM (2006) *Guía para implantar el Principio 6 del Pacto Mundial*, Madrid, available at: <http://www.pactomundial.org/index.asp> (22.06.2006).

In the **UK** the arbitration and conciliation service ACAS has established 'Equality Direct', a confidential telephone advice service, specially designed for small businesses, providing help on managing issues such as disability, race, sex, age and other equality issues.²²⁰

3.10.4. Positive action in recruitment

In **Germany** there were several special initiatives to recruit migrants into the public sector. The State Commissioner for Integration and Migration in Berlin introduced a campaign to encourage young migrants to apply for vocational training (apprenticeships) in the public service (administration, police and fire service). Information leaflets addressed young migrants and their parents in six languages (Polish, Arabic, Vietnamese, Turkish, Russian and German), and a website was set up.²²¹ The leaflets point out that applicants do not need a German passport, and that proficiency in a foreign language is seen as an advantage. In the Berlin police preparatory training for migrants was introduced, in cooperation with the Turkish Council in Berlin,²²² and a newspaper and poster campaign encouraged migrants to apply for an apprenticeship with the police, stating that language skills in Turkish, Serbo-Croat, Arabic, Polish or Russian were particularly welcome.²²³ Only an estimated 150 persons of the 16,000 police officers in Berlin have a migrant background. However, the Berlin police aim at increasing the quote of migrant police officers to 10 per cent.²²⁴ In the State of North Rhine-Westphalia, the State government released the 'Action Plan Integration' in June 2006. As part of this, young people with a migration background are encouraged to become teachers, and schools are called upon to encourage people with a migration background to apply for teaching positions.²²⁵

Also in Berlin, within the framework of the federal support programme BQE, 15 young migrant women (between 16 and 23 years old) received five-month courses (on German skills, maths, computer skills, communication skills, mother-tongue competence, etc.) to prepare them for the application test and a future apprenticeship in the civil service. After they found an apprenticeship, the support and assistance continued for a further 23 months. In addition, their instructors were offered further training courses on intercultural competence. The goal of

220 <http://www.acas.org.uk/index.aspx?articleid=381> (11.06.2007).

221 <http://www.berlin-braucht-dich.de> (11.10.2006).

222 Those migrants who have completed a specific training measure for young migrants are not obliged to fulfil certain formal application criteria regarding the average high-school grade.

223 <http://www.berlin.de/polizei/beruf/ausbildung/gds.html> (26.05.2007). The campaign seems to be successful: Among the 10,350 applicants 1,362 had a migration background. After those who did not meet the minimum requirements were excluded, some 6,000 applicants, among them 627 migrants, remained for 300 open training positions [O. Diedrichs (2006) 'Migranten rennen der Polizei die Tür ein', in: *taz Berlin lokal* (06.04.2006), p. 21]. In the end, 21 applicants with a migration background were accepted and ready to start their apprenticeship in September 2006.

224 *taz Berlin lokal* (26.05.2007), pp. 26-27, available at: <http://www.taz.de/dx/2007/05/26/a0211.1/text> (26.05.2007).

225 Nordrhein-Westfalen/Ministry for Generations, Families, Women and Integration (2006) *Land der neuen Integrationschancen – Aktionsplan Integration*, available at: <http://www.mgffi.nrw.de/pdf/integration/aktionsplan-integration.pdf> (26.05.2007).

the project was not only to increase the proportion of migrants in the public administration, but also to contribute sustainably to more intercultural awareness in public administration.²²⁶

In **Finland** three cities of the metropolitan area, Helsinki,²²⁷ Espoo²²⁸ and Vantaa,²²⁹ all committed themselves in their equality plans to increasing the number of ethnic minority or immigrant employees. This is not required by the Non-Discrimination Act, but is a voluntary action on the part of these cities. The plans aim to achieve their goals using measures such as targeted job advertisements and extra training, so as to increase the proportion of ethnic minority and immigrant employees, including in managerial positions. This initiative is seen as significant, given that the majority of the immigrant population of Finland lives in this one metropolitan area.

The city of Graz in **Austria** has committed itself to be an equal opportunities employer and is adopting positive action measures in recruitment as part of this. As a member of the European Coalition of Cities against Racism, Graz is developing an action plan for fighting racism, xenophobia and discrimination. Its commitment to becoming an equitable service provider includes training staff to enhance their ability to manage ethnic and cultural diversity, to promote intercultural dialogue, to develop competence in anti-discriminatory practice, and acquire the necessary competences in order to provide culturally sensitive and appropriate services. Positive action measures are being applied to open up employment opportunities to under-represented minorities.²³⁰

3.10.5. Public procurement / contract compliance

The **Austrian** city of Graz (see above) is also using the powers of the city as a purchaser to include non-discrimination clauses in its local contracts. Also the eligibility criteria for public subsidies mean that applicants have to prove that they neither intend to nor practice discriminatory exclusion of groups within the city's population.

226 <http://www.tio-berlin.de/interkulturell.html> (11.10.2006); <http://www.good-practice.de/gp/suche.php?source=4&action=view&id=592> (11.10.2006).

227 Finland/City of Helsinki (2005) *Rasismien ja etnisen syrjinnän ehkäiseminen Helsingin kaupungin toiminnassa*, p. 6, available at: http://www.yhdenvertaisuus.fi/mp/db/file_library/x/IMG/31594/file/rasismiestaminen.pdf (16.10.2006).

228 Finland/City of Espoo (2006) *Monimuotoisuussuunnitelma vuodelle 2006*, p. 9, available at: http://www.yhdenvertaisuus.fi/mp/db/file_library/x/IMG/31809/file/YVS_Espoo.pdf (16.10.2006).

229 Finland/City of Vantaa (2005) *Työkirja tasa-arvosta ja yhdenvertaisuudesta – Tasa-arvon ja yhdenvertaisuuden edistäminen Vantaan kaupungin toimintatapana*, p. 15, available at: http://www.yhdenvertaisuus.fi/mp/db/file_library/x/IMG/31926/file/Tasa-arvotyökirja.pdf (20.11.2006).

230 ETC Graz (2006) *Implementation of the ten-point plan of action*, p. 7, available at: http://www.hs-perspectives.etc-graz.at/typo3/fileadmin/user_upload/ETC-Hauptseite/MRS/Microsoft_Word_-_eccar_10punktegraz_juni06.PDF (11.06.2007).

Other examples of combating of discrimination through administrative measures such as contract compliance in public procurement were also mentioned in 2006. The Act on Customer Liability²³¹ was passed in **Finland** to promote compliance with proper employment conditions. This act obliges companies to set preconditions for ensuring that enterprises which they sub-contract to supply goods, services or labour meet their statutory liabilities, so that before agreeing a contract, companies have to request from the contracting party information *inter alia* about collective agreements and general employment conditions. The act entered into force on the first day of 2007, and aims to improve compliance with general conditions of employment, including equality conditions. If such information is not obtained, a company may be ordered to pay a fine for negligence.

In **Sweden** the government issued a decree that went into effect on 1 July 2006 requiring the use of anti-discrimination clauses in the public contracts of the 30 largest government agencies.²³² The purpose of the decree is to raise awareness as well as compliance in relation to the laws against discrimination. The adoption of this decree relates to an increasing policy awareness regarding the effectiveness of this type of measure. At the local level, anti-discrimination clauses have been introduced into the public procurement contracts of, among others, the cities of Stockholm, Malmö and Botkyrka.

Similarly in the **UK** there has been increasing recognition of the potential of public procurement to promote employment for ethnic minorities. In early 2006, the Ethnic Minority Employment Task Force started a limited trial, using contract management processes, to promote 'race'/ethnic equality within suppliers.²³³ The support of the Confederation of British Industry and the Trades Union Congress has been obtained.

3.10.6. Anonymous CVs

In **France** two separate research studies in 2006 confirmed how the name of a job applicant is the first in the hierarchy of criteria which determine his or her success.²³⁴ In the light of the growing awareness of this phenomenon, in March 2006 there was an attempt by the Senate to amend the Equal Opportunity Act (31.03.2006) to make companies of more than 50 workers accept anonymous CVs.²³⁵ This was not accepted by the government – nevertheless, some companies

231 Finland/1233/2006 (01.01.2007).

232 Decree (2006:260) on anti-discrimination clauses in public procurement contracts <http://lagen.nu/2006:260> (11.06.2007).

233 Ethnic Minority Employment Task Force (2006) *Second Annual Report*, available at: http://www.emetaskforce.gov.uk/pdf/annual_report_final_180106.pdf (11.06.2007).

234 BVA/ODT *La diversité en entreprise* (opinion poll of 1,405 workers in public and private sectors between 13.01.2006 and 28.01.2006); APEC (2006) *Recrutement cadre: sélectionner sans discriminer*.

235 The government accepted the view of the social partners that anonymous CVs undermine the freedom of recruitment. 'The anonymous CV will be tested, in accordance with the request of the social partners', explained the Minister delegated to employment, affirming that it will not be completely abandoned. Source: Le Monde 18.10.2006. <http://abonnes.lemonde.fr/web/article/0,1-0@2-3226,36-824721,0.html?xtor=RSS-3208> (18.10.2006).

in France adopted the practice voluntarily. The software firm Norsys implemented a system of anonymous selection of CVs in January 2006, removing the name, address, photo, age, sex, and experience of more than 15 years from the CVs which are sent to the recruiters. Candidates can find a model of an anonymous CV to be downloaded on the Norsys site.

Meanwhile in April 2006 the French minister responsible for equal opportunity launched a new website²³⁶ dedicated to diversity and employment, which will operate with anonymised CVs. The initiative invites companies to post their job offers on the site, to which will be affixed the logo 'pro-diversity'. The aim is to bring together recruiters and applicants from disadvantaged districts on the basis of CVs which display neither the name, nor the origin or address of the candidates, so as to facilitate recruitment based only on the skills of the candidates.

In **Belgium** in 2006, an advocacy campaign promoting diversity in the Federal Public Service was launched by the Minister of Civil Service and Equal Opportunities. As part of this, one of the initiatives aimed at the increasing the employment of people of foreign origin in the federal public service was the introduction of anonymous CVs for all candidates for statutory as well as contractual vacancies.²³⁷ Similarly in **Sweden** a governmental inquiry has proposed that anonymous job-applications should be used at least voluntarily in recruiting for the public sector.²³⁸ To this end the government has decided to carry out a project with anonymous job-applications in seven government authorities.²³⁹ The purpose is to evaluate whether this is an effective way to increase ethnic diversity. Some municipalities are also testing this method.

3.10.7. Diversity polices

In **Belgium** in July 2006 the Brussels-Capital government²⁴⁰ decided to recruit three diversity managers to monitor the implementation of the Brussels-Capital Charter of Diversity. Throughout 2006 the Brussels-based Centre for Equal Opportunities and Opposition to Racism organised five round tables on the issue of equal opportunities and diversity in conjunction with the network 'Business and Society', (a Belgian business network for corporate social responsibility, covering 41 organisations).²⁴¹ At the end of the cycle the aim was to publish a manual on diversity management for all labour market actors – politicians, social partners, NGOs and private companies.

236 <http://www.diversite-emploi.com/> (11.06.2007).

237 http://www.christiandupont.be/Page_Generale.asp?DocID=8257 (10.10.2006).

238 Anonymitetsutredningen (2006) *Avidentifiera jobbansökningar – en metod för mångfald*, SOU 2005:115, Stockholm: Fritze.

239 <http://www.sweden.gov.se/sb/d/140/fromdepartment/107/page/3> (07.09.2006).

240 This is as part of its Pact Territorial pour l'Emploi / Territoriaal Pact voor Werkgelegenheid – see <http://www.pactbru.irisnet.be/> (10.10.2006).

241 For more information see: <http://www.businessandsociety.be> (04.10.2006).

In **Germany** there seems to be an increasing emphasis on diversity-oriented initiatives. For example, in December 2006 the companies Deutsche Bank, Daimler Chrysler, Deutsche BP and Deutsche Telekom jointly signed a Diversity Charter, where they commit themselves to promoting diversity in their companies. The Charter elements include evaluating internal personnel processes to make sure they take into account the diverse talents of the workforce, positively acknowledging and making use of diversity within and outside of the company, and making the broader public aware of their progress in the promotion of diversity within the company. The representatives of the four companies aim to exchange 'best practice' with other companies, and expect more companies to join the initiative.²⁴² The initiative is coordinated by the Federal Government Commissioner for Migration, Refugees, and Integration.

In **France** a diversity awareness is also growing. The new official new website for diversity in employment²⁴³ has already been mentioned (see section 3.10.6). In 2006 the French army's new chief of staff (*chef d'état major*) publicly regretted the absence of 'visible minorities' among officers. He declared to the press that it was appropriate for the army to mirror the French nation as closely as possible and that he would be attentive to this.²⁴⁴ In March 2006, the leaders of France Televisions made public their diversity plan for the public TV channels. This plan includes encouraging directors and producers to take better account of French social diversity in both the allocation of acting roles and technicians, to work with *Centre National de la Cinématographie* (National Centre for Cinematography) to create projects to promote social cohesion, to support with grants the training of students of minority origin as writers, to allow RFO, *Réseau France Outre-mer*, the radio and television of the overseas departments and territories, to produce its own fiction programmes, and to organise broadcasts and debates within schools located in the ZEP, the priority education zones in disadvantaged areas. An assessment of these various measures was to be carried out in March 2007.

Also in **France**, after nine months of negotiations, an agreement on diversity in companies was signed in October 2006 by all the employers' confederations and four trade unions, the CFDT, FO, CFTC and CGT.²⁴⁵ (The CFE-CGE refused to sign.) This text acknowledges 'the right to difference' and aims to ensure non-discrimination and the right of employees to equal treatment without distinction of origin.

In **Italy**, one measure to promote diversity management came to notice in 2006: the training course in the hotel-tourism sector 'Cultural Diversity as Resource', promoted by UNAR (the Italian equality body) specifically for the

242 Diversity als Chance – die Charta der Vielfalt von Unternehmen in Deutschland. By May 2007, 72 private and public sector organisations had joined the 'Charta'. <http://www.bundesregierung.de/Content/DE/Artikel/2006/12/2006-12-20-ib-charta-vielfalt-wie-geht-es-weiter.html> (26.05.2007).

243 <http://www.diversite-emploi.com/> (11.06.2007).

244 J. D. Merchet (2006), 'Le chef d'état-major de l'armée de terre veut des officiers plus colorés' in: *Libération* (23.09.2006), available at: <http://www.liberation.fr/actualite/politiques/206297.FR.php> (11.06.2007).

245 The text of the agreement is available at: http://www.medef.fr/medias/files/101419_FICHER_0.pdf (12.06.2007).

management personnel of the Rome Cavalieri Hilton Hotel.²⁴⁶ This course is aimed at promoting cultural diversity in the workplace and training executives to deal with discriminatory behaviour, and to avoid practices of exclusion or harassment.

3.10.8. Trade union policies

Trade unions are increasingly using the language of diversity policies. In **Ireland** SIPTU (Services Industrial Professional and Trade Union) has organised Diversity Awareness training for its Officials and Shop Stewards.²⁴⁷ For International Day for the Elimination of all Forms of Racial Discrimination on 21.03.2006, SIPTU and the Irish Congress of Trade Unions (ICTU) launched two publications: 'Diversity in the Workplace – a Guide for Shop Stewards'²⁴⁸ and 'Guidelines for Combating Racism and Planning for Diversity'.²⁴⁹

Trade unions have also become involved with government in diversity management initiatives. In the Flemish region of **Belgium** the Flemish government collaborates closely with the trade unions ACV, ABVV and ACLVB on labour market equality, and partly subsidises diversity consultants in the unions, who have the task of awareness-raising and advising on diversity policy mainstreaming in the union and at work. In the framework of its updated diversity policy the Flemish Minister of Work stated in May 2006 that, in agreement with the unions, the number of diversity consultants in the Flemish region would increase from 12 to 24 people.

In **Denmark** the Centre for Knowledge on Integration (FVI),²⁵⁰ established by the Danish Confederation of Trade Unions (LO), has made several efforts to promote ethnic equality and diversity in the private and public labour market sector, sometimes in conjunction with major private and public sector employers. The latest project began demonstrating the under-representation of shop stewards with a minority background compared to their proportion in the labour force, and then implements special training for immigrants who want to know more about the trade union movement and to be active representatives.²⁵¹

In **Belgium**, the trade union ABVV/FGTB published a manual on legal instruments and actions against discrimination in Belgian enterprises under the title *Discriminations, non merci! / Discriminatie, neen bedankt!* (Discrimination,

246 UNAR *Un anno di attività contro la discriminazione razziale. Rapporto 2005. Relazione al presidente del consiglio dei ministri sull'attività svolta dall'ufficio nazionale antidiscriminazioni razziali*, Rome: Ministero per le Pari Opportunità, pp. 109-110.

247 K. Glackin, D. Joyce (2006) 'SIPTU/ICTU Launch Publications', in: Spectrum, The Journal of the National Consultative Committee on Racism and Interculturalism, Issue 11: May 2006, pp.11-12, available at: <http://www.nccri.ie/pdf/Spectrum11.pdf> (12.06.2007).

248 <http://www.siptu.ie> (12.06.2007).

249 <http://www.siptu.ie> (12.06.2007).

250 <http://www.fvi.dk> (12.06.2007).

251 <http://www.ugebreveta4.dk/smcms/Ugebrevet/10046/11901/11917/11930/Index.htm> (13.10.2006).

no thanks!). This document is a tool for victims, activists and trade union representatives to support their actions against discriminatory treatment. At the same time it gives an overview of the ABVV/FGTB actions in this field at the federal, regional and local-company level.²⁵²

In **Ireland** the Homeless Agency carried out research²⁵³ in response to a perceived increase in numbers of people from the 'EU10 States' seeking to access homeless services, possibly as a result of the habitual residence condition (see section 3.4). It found that reasons for destitution and homelessness among EU-10 Nationals in Ireland could often be traced back to worker exploitation and the false promises of employment agencies based in Poland and Ireland. In response to the problem of migrant worker exploitation the Services Industrial Professional and Trade Union (SIPTU) appointed Polish and Lithuanian organisers to the staff of its Organising Unit and they, along with union officials and activists, became actively involved in recruiting and organising migrant workers. This included travelling to the countries of origin to inform people in advance of the potential pitfalls.²⁵⁴

3.10.9. Improving access to public sector jobs

Some positive initiatives are more relevant to some Member States than others, because of differences in contexts, such as the extent to which 'legal discrimination' excludes non-nationals from certain areas of employment (see section 3.9). As stated earlier, in **Estonia** the lack of citizenship can be an obstacle for employment, particularly in the public sector. Therefore, projects which aim to speed up the tempo of naturalisation may be seen as positive for the equality of minority and majority members in the labour market. A new project 'Support to naturalisation of people with undefined citizenship' was started in spring 2006 to prepare stateless residents for a naturalisation exam on knowledge of the Constitution and the Law on Citizenship.²⁵⁵ Free training was to be available to 10,000 stateless persons in 2006-2007. By October 2006 418 persons completed the training.²⁵⁶

In **Ireland** the requirement of certified proficiency in both the Irish and English languages for recruitment to the *An Garda, Síochán*, the Irish police force,

252 'Nous ne produisons pas des dessins animés', in: *Agenda interculturel*, 243, Mai 2006, pp. 20-21, French version available at: <http://www.fgtb.be/PDF/fr/documents/2006/Discrimination/Discrimination.pdf> (10.10.2006), Dutch version available at: <http://www.abvv.be/PDF/nl/documents/2006/Discriminatie/Discriminatie.pdf> (10.10.2006).

253 Homeless Agency (2005) *Away from home and homeless: Quantification and profile of EU10 Nationals using homeless services and recommendations to address their needs*, available at: <http://www.homelessagency.ie/downloads/publications/101.pdf> (05.05.2006).

254 Interview with SIPTU National Organiser (15.09.2006).

255 Non-Estonians' Integration Foundation (2006) *Information of 29.09.2006*, available at: <http://www.meis.ee> (01.10.2006).

256 Additionally, by the amendments in the Law on Citizenship of 15 June 2006 (Estonia, RT I 2006, 29, 224) the naturalisation procedures for former Soviet citizens residing in Estonia were further shortened by six months.

was recognised as a barrier to the recruitment of ethnic minorities. In 2005 the Minister for Justice, Equality and Law Reform announced that this requirement would be replaced by a requirement to hold a qualification in two languages, at least one of which must be Irish or English. This change followed consultations with a number of Government departments, *Gárda* representative associations, representatives of ethnic minority groups and the National Consultative Committee on Racism and Interculturalism (NCCRI). It was accompanied by an awareness campaign to ensure that minority ethnic groups were aware of the proposed change. Post-recruitment training in Irish is still to be provided to all those who did not have a prior qualification in Irish, and members of the public will continue to have right to deal with the *Gárda*, if they so wish, in Irish. Consultations about related issues such as dress code, religion and integration within the *Gárda* are ongoing.

3.10.10. Religion

In **Austria** procedures²⁵⁷ regarding members of religious minorities who are involved in any kind of military training were adapted to cover religious requirements like food, rooms and times for prayer, the attendance of religious events, and day-release for religious holidays. Exemptions are allowed for the wearing of religious headgear, beards and scalp hair.²⁵⁸

In **Germany** the banking company Commerzbank in Frankfurt/Main, following a suggestion from a Muslim employee, set up a 'silence room' which can be used, amongst other things, as a place of prayer for Muslim employees.²⁵⁹ Another banking company, the Deutsche Bank, is establishing 'All-Faith Rooms' as private worship and meditation rooms for employees of all religious beliefs, as one element within its diversity policy.²⁶⁰

Whilst in **Sweden** there were no significant new measures in 2006 that specifically address discrimination on the grounds of religion at the workplace, the Ombudsman against ethnic discrimination successfully dealt with one complaint over the desire to wear the headscarf at work. The Swedish police force has also included in their plan for diversity (*Mångfaldsplan*) the right for a police officer to wear a turban, headscarf or Jewish kippah on duty.²⁶¹

257 These were first issued by the Federal Ministry of Defence in 2004: Austria/Bundesministerium für Landesverteidigung, 65. Dienstbetrieb; Behandlung religiöser Minderheiten – Einberufung und Verwendung; zusammenfassende Richtlinien – Neufassung, GZ S93109/7-FGG1/2004, VBl I 65/2004 (16.06.2004).

258 Austria/Bundeskanzleramt (2006a) *Rückmeldung zum Informationsersuchen Focal Point 2006*, Vienna, unpublished manuscript, p. 14. No further details were disclosed to the Focal Point.

259 The notion of explicitly expanding the diversity concept to ethnic and religious diversity is rather new at the Commerzbank Frankfurt and will be promoted further in the future. (Telephone interview with the leader of the Commerzbank Diversity Unit, Barbara David, on 31.07.2006); K. Dillmann (2006) 'Ford lebt Diversity voll aus', in: *AiD, Integration in Deutschland*, 22, 2/06, p. 6.

260 Information (on request) given by Global Diversity Department, Deutsche Bank, on 20.08.2006. See http://www.db.com/careers/de/files/DB_Diversity_Broschure_ENG.pdf (26.05.2006).

261 M. Wising (2006) 'Poliser får bära turban', in: *Tidningen Svensk Polis* (09.03.2009).

In the **UK** in November 2005, the Advisory, Conciliation and Arbitration Service (ACAS) published an updated booklet advising employees and employers about the implementation of the Employment Equality (Religion or Belief) Regulations 2003, which came into force on 02.12.2003.²⁶² The booklet presents examples demonstrating employee rights, and the ways in which employers should accommodate religious needs. It also argues that monitoring the ethnic and religious background of staff by employers is desirable, even though this is not required of the private sector, and advises employers to use exit interviews to identify possible problems of religious discrimination faced by their staff.

3.10.11. Measures regarding Roma

In 2004 in **Bulgaria** the National Employment Agency started the implementation of the strategy for work with unemployed Roma, to improve the labour-related services provided by the state to the Roma.²⁶³ Forty information and reception offices were opened in the state labour offices in 2005 to provide access to information on available work opportunities, government employment programmes, conditions for work abroad, and so on. The employees of the labour offices in regions with Roma population were also trained in specific skills related to working with the Roma minority. According to the 2006 plan, 1,180 people will be included in activities to encourage entrepreneurship. In 2005 the state labour offices employed a further two Roma people, increasing to 14 the number of Roma employees in the Employment Agency.

In the **Czech Republic** the 'Minibus' project is aimed at people who are long term unemployed and vulnerable to social exclusion, mostly Roma. The aim is to create a network of regional labour agencies – centres that will share methods of work and databases of prospective employers and potential clients – using personal counsellors. Training is offered to clients based on the needs of employers, and the databases allows the needs of clients and employers to be matched. Part of the project entails cooperation with municipalities, and the project is financed by European initiative EQUAL and carried out by the Roma centre.²⁶⁴

In **Finland** the 'Romanies out to work – Forward with Open Minds' project is also being funded by the European programme EQUAL.²⁶⁵ The target groups are the unemployed Roma who already have a professional qualification, and Kosovo Roma, living in the city of Jyväskylä region. The objective of the project is to promote employment opportunities of the Roma in the city of Jyväskylä region, to prevent exclusion, reduce prejudices and bring about a change in attitudes of

262 Advisory, Conciliation and Arbitration Service (2005) *Religion or Belief and the Workplace: A guide for employers and employees*, London: ACAS, available at: http://www.acas.org.uk/media/pdf/f/l/religion_1.pdf (12.06.2007).

263 Letter to the Center for the Study of Democracy from the Deputy Executive Director of the National Employment Agency (13.09.2006).

264 <http://www.drom.cz> (12.06.2007).

265 <http://www.equal.fi/default.asp?sc3=3507&sc2=3709&sc=3756> (16.10.2006).

the majority population. The managing organisation is the city of Jyväskylä Centre for Social and Health Services, Office of Rehabilitative Social Work and Social Security. The project has found jobs and job placements *inter alia* in teaching and youth work, in household and health care services as well as in cleaning and in other service branches.

In **Romania** in accordance with the provisions of the governmental *Strategy on the Improvement of the Roma Situation*,²⁶⁶ public employers have begun to make jobs available for Roma, for example in the police forces, and Roma experts are now working with local administration, health mediators, school mediators and regional offices. As a continuation of this Strategy, a series of *General Plans for Measures to Implement the Strategy* and plans for each of the major fields (health, labour, housing, education) and county-level and local plans have been adopted. At the local level protocols and agreements have been signed between local authorities²⁶⁷ and Roma NGOs. Projects focusing on developing Roma human resources and income generating projects for Roma communities are planned. Such projects include job fairs for Roma, caravans for Roma employment, and professional training programmes conducted jointly by Roma NGOs and the local labour agencies. Some of the county level authorities are periodically visiting Roma communities and informing them about these opportunities.

In **Spain** the latest report of activities concerning the Acceder Operational Programme²⁶⁸ (December 2005), states that the forecasts made at the beginning of the programme (2000) of contacting 15,000 individuals have been clearly surpassed, as this figure is now 28,231 – 68 per cent of whom are Roma people. This means that about one third of the people assisted by the programme have been able to find a job, 30 per cent of these representing their first job. Just over half of those helped are women. The programme is rooted in nearly all the autonomous communities through a network of 45 assistance points.

Another good practice in **Spain** is an initiative conducted by a Barcelona-based association of Roma women called *Drom Kotar Mestipen*. This consists of the training plan *Romí Pa o Chalavipén*²⁶⁹ that promotes lunch-time monitor work for Roma women in schools which are attended by Roma students, so that Roma boys and girls can relate to adults who belong to their ethnic group. The association organises a free training course, delivered in flexible hours, with a free nursery service for the children of the Roma women when they attend the course. This course, recognised by the Catalan government (which issues an official certificate), was an absolute success: all the women found a job in schools of the Barcelona Metropolitan Area. This programme is just the first step – it is intended that Roma women should be present in all sectors of work.

266 See Romania/Government Decision 522/2006, regarding the modification and adjustment of the Government Decision 430/2001 regarding the Romanian Government's Strategy on the Improvement of the Roma Situation (19.04.2006), available at: <http://www.anr.gov.ro/strategia-anr/> (23.06.2006).

267 Prefect, local agencies for employment, etc.

268 Fundación Secretariado Gitano (2005/2006) 'Programa Acceder: Balance a diciembre de 2005', in: *Gitanos. Pensamiento y Cultura*, Vol. December 2005/January 2006, No. 32/33, available at: <http://www.gitanos.org/upload/73/74/dossier.pdf> (31.05.2006).

269 Asociación Gitana de Mujeres Drom Kotar Mestipen, <http://www.dromkotar.org> (13.06.2006).

4. Racism and discrimination in the housing sector and initiatives on how to prevent it

This chapter offers an overview of developments on racism and discrimination in housing with a special focus on gatekeepers and complaints of discrimination. It is still difficult to detect a trend based on the number of complaints received by specialised bodies or by NGOs. The impact and results of the specialised bodies vary across countries, and higher or lower figures for complaints should not be taken as indicative of real levels of discrimination. Nevertheless, for those countries whose collecting mechanisms seem to be more reliable, complaints regarding discrimination in the housing sector have tended to reach a level of steadiness that shows no indication of regressing. Whilst better monitoring and greater awareness on the part of the target groups also explain a growth in cases, some Member States face serious difficulties in trying to cope with what seems to be a deep-rooted problem. In a number of cases, evidence from research shows levels of discrimination in housing which are quite disturbing.

A particular issue of concern is the systematically precarious housing situation of Roma in many Member States. Inadequate housing, combined with high levels of unemployment, locks the Roma population in a vicious circle of segregation and social exclusion which Member States seem to have been unable to satisfactorily tackle so far. Nevertheless, there are some ways open to Member States to make inroads into the problem. Evictions from irregular housing should be only on the basis of alternative accommodation being made available.

4.1. Developments in data collection on housing discrimination in the Member States

In general, data collection has not undergone significant improvements. In a number of countries the official evidence base is still meagre, and generally inconsistent with the evidence of research on the ground. The relatively few complaints received by official bodies in various countries contrasts with the rather high proportion of respondents in surveys who state that they have been discriminated against in the housing market. It may be that victims do not seem to be aware of (or do not have access to) the proper channels for presenting their grievances. This report highlights examples which suggest that there is an area of hidden discrimination that does not reach the courts.

Nevertheless, in some countries there are some new sources of data on ethnic discrimination and some new mechanisms that allow for an improved collection of data. In **Italy**, the first major report of the National Office against Racial Discrimination (UNAR) was published in 2006. The report provides data on discrimination complaints received by UNAR's toll-free number and presents a breakdown according to the most significant social variables.²⁷⁰ These show that housing is a major area of complaint (see section 4.3.1). Similarly in 2006, the **German** anti-discrimination bodies in Cologne,²⁷¹ Hanover,²⁷² Munich²⁷³ and Berlin²⁷⁴ have analysed the cases of their advisory services and published figures of complaints on discrimination in the field of housing. Furthermore, a new federal anti-discrimination body was established at the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth; but until now no data has been released. In Austria, a number of Anti-Discrimination Contact Points and Commissioners for Equal Treatment, in the nine provinces of Austria, were recently established.²⁷⁵ These bodies take stock of complaints of discrimination in all areas covered by the Racial Equality Directive, although so far they have not reported on any housing complaints.

There are also new sources of data on housing inequality (although not directly on discrimination). In **Ireland**, the 2006 Census included an ethnicity question for the first time. The data will also provide a socio-economic profile, including information on inequality in housing. Results of new surveys on the living conditions of Roma have been regularly published in most of the ten Member States who joined the EU in 2004. Examples are the **Czech Republic**, **Hungary**,²⁷⁶ **Slovakia** and **Slovenia**, where such studies have been contributing towards a clearer picture of the Roma situation in countries where this group makes up a sizable community. Also in the two new Member States, large scale surveys on the Roma population are noteworthy. In **Bulgaria**, the National Programme for Improvement of Living Conditions of Roma in Bulgaria 2005-2015, adopted in March 2006, includes an analysis of Roma housing conditions.²⁷⁷ And in **Romania**, studies on the Roma which include information on housing have been conducted.²⁷⁸

A major omission which hampers the collation of evidence on racial discrimination in many Member States is that of discrimination testing. Previous EUMC Annual Reports have regularly pointed out the value of testing in exposing racial discrimination. However, in contrast to last year, in 2006, only one country,

270 Italy/Ufficio Nazionale Antidiscriminazione Razziali (UNAR) (2006) *Un anno di attività contro la discriminazione razziale*.

271 <http://www.oegg.de/modules.php?name=Content&pa=showpage&pid=8&active=2> (31.07.2006).

272 http://www.hannover.de/de/gesundheits/soziales/verbaende/interkul/ref_inku/auf_arbe/antidisk/index.html (31.07.2006).

273 <http://www.muenchen.de/Rathaus/dir/antidiskriminierung/149416/grundgesetz.html> (31.07.2006).

274 <http://www.berlin.de/sengsv/auslb/leitstelle.html> (31.07.2006).

275 Mainly during the period 2005-2006.

276 A. Bernát (2005) 'A magyarországi cigányság helyzete közép-kelet-európai összehasonlításban' in: T. Kolosi, I. Gy. Tóth, Gy. Vukovich (eds) *Társadalmi Riport 2005*, Budapest: TÁRKI, pp. 118-137. However, among other factors, this index of segregation is largely dependent on the settlement structure of the given country.

277 UNDP (2005) *National Programme for Improving the Living Conditions of Disadvantaged Ethnic Minorities in Urban Areas*, available at <http://www.undp.bg/publications.php?id=1498> (19.09.2006).

278 *Antipoverty and for the Promotion of Social Inclusion Commission Report 2003*, quoted by C. Berescu, M. Celac (eds) (2006) *Housing and Extreme Poverty – The Case of Roma Communities*, Bucharest: Ion Mincu University Press.

France, published results of discrimination testing in the housing sector, once more presenting strong evidence of differential treatment according to background (see section 4.3.2).

Finally, **Estonia**, **Poland** and the **Czech Republic** have only partially transposed the Racial Equality Directive so that it does not cover housing, and in **Spain**, a specialised body is not yet in operation to provide any statistics.

4.2. The problematic housing situation of the Roma

Evidence suggests that discrimination plays a significant role in Roma exclusion. Highly visible cases, such as forced evictions or aggression by locals are often reported by NGOs and Roma rights defence organisations, and these are the most conspicuous cases of direct discrimination with racist undertones.

Some examples of violent episodes and forced evictions have loomed large in the reporting from NGOs. It is noticeable that in a number of these events, authorities endorsed local movements and played a role themselves in ostracising the Roma population. This was the case in **Slovenia**, where around 300 inhabitants of Ambrus, a village in the Municipality of Ivančna Gorica in the Dolenjska region, gathered at a protest meeting to demand that the municipality permanently remove a Roma family (around 30 persons, among them some 14 children aged between three months and 15 years) from the settlement of Dečja Vas within a week. Endangered by serious threats, the Roma fled to a nearby forest the same night, and stayed there for several days. As a consequence the Roma family abandoned their land. The removal of the Roma family was criticised by the Human Rights Ombudsman and NGOs as well as by the Council of Europe Commissioner for Human Rights.²⁷⁹

In the case of **Bulgaria**, repeated cases of forced evictions and other systematic violations of the right to adequate housing led the European Roma Rights Centre to lodge a complaint with the European Council of Europe Committee of Social Rights, and to start a collective complaints procedure.²⁸⁰ In the same vein, a group of Bulgarian citizens of Roma origin filed a complaint against Bulgaria with the European Court of Human Rights, claiming to be victims of forced evictions.²⁸¹

²⁷⁹ The CoE Commissioner for Human Rights paid a visit to Slovenia on 15.11.2006. With regard to the recent incidents he asserted: 'Irrespective of the background and history of the tensions, it is unacceptable that a group of people have to leave their homes because the majority population in the neighbourhood so requires and that the safety of the minority group is at risk.'

²⁸⁰ The European Committee of Social Rights/Complaint No. 31/2005 (10.10.2005). The European Roma Rights Centre outlined: 'At issue in this Collective Complaint are residential segregation, substandard housing conditions, lack of legal security of tenure and forced evictions, and other systemic violations of the right to adequate housing falling disproportionately against Roma and other persons regarded as 'Gypsies' in Bulgaria, as banned under international law provisions to which Bulgaria is a party, including but not limited to Article 16 of the Revised Charter, independent of and/or in conjunction with its Article E non-discrimination provisions.'

²⁸¹ Interview with M. Ilieva, lawyer, Bulgarian Helsinki Committee (2006), in: *Sega Daily* (29.06.2006), p.13.

The forced eviction in **Bulgaria** of approximately 200 citizens from Batalova Vodenitsa, a Roma neighbourhood in Sofia, was suspended after a letter from four members of the European Parliament to the Bulgarian Prime-Minister and a number of protests not only of the affected people but also of human rights organisations, such as the Centre on Housing Rights and Evictions (COHRE), European Roma Rights Centre (ERRC) and the Bulgarian Helsinki Committee. The mayor of the Sofia Municipality suspended the execution of the forced eviction order and announced that a working group had been established to develop a permanent solution to the problem of illegal Roma housing.

Examples of forced evictions were also reported in the **Czech Republic, Hungary, Greece, Romania** and **Italy**. In **Greece**, a controversy has arisen regarding forced evictions of Roma. The Council of Europe Commissioner for Human Rights and The World Organisation Against Torture expressed their concerns over the continual threat of forced eviction of Greek Roma families living in the city of Patras. Subsequently, the European Committee of Social Rights (ECSR) concluded that the 'situation in Greece is in violation of Art. 16 of the European Social Charter' due to the lack of adequate housing alternatives according to the number and needs of Roma families.²⁸² Reports on **Hungary, Romania** and **Italy** have highlighted that forced evictions are carried out by authorities without providing adequate housing alternatives to Roma families.²⁸³ In another instance, the CoE European Committee of Social Rights, following a collective complaint by the European Roma Rights Centre, ruled that, by policy and practice, Italy systematically violates the right to adequate housing where Roma are concerned.²⁸⁴ Accordingly, Italy was unanimously found by the CoE Committee of Ministers to be violating Article 31 paragraphs 1, 2, 3 of the revised charter.²⁸⁵

In **Romania**, reports of segregation and the expulsion of Roma families continue to surface. Forced evictions followed by demolitions have been reported in a number of localities raising protests from NGOs.²⁸⁶ In the **Czech Republic**,

282 European Committee of Social Rights (2006) *Conclusions XVIII-1 (Greece)*, available at: http://www.coe.int/t/e/human_rights/esc/3_reporting_procedure/2_recent_conclusions/1_by_state/GreeceXVIII-1_en.pdf (26.06.2007).

283 European Parliament/Committee on Women's Rights and Gender Equality (2006) *Report on the Situation of Roma Women in the European Union*, available at: http://www.soros.org/initiatives/women/news/landmark_20060602/EP_resolution.pdf?search=%22%3A%20Report%20on%20the%20Situation%20of%20Roma%20Women%20in%20the%20European%20Union%22 (02.10.2006); International Helsinki Federation (IHF) *Human rights in the OSCE region. Report 2006*, available at: http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4255 (10.09.2006). On the housing situation of Roma and Sinti populations see also: EU Network of independent experts on fundamental rights (2005) *Thematic Comment No. 3. The protection of minorities in the European Union*.

284 European Committee of Social Rights (2006) *Decision on the merits. European Roma Rights Centre v. Italy*, available at: <http://www.errc.org> (15.07.2006).

285 Resolution ResChS(2006)4. Collective complaint No. 27/2004 by the European Roma Rights Centre against Italy (adopted by the Committee of Ministers on 03.05.2006 at the 963rd meeting of the Ministers' Deputies), available at <https://wcd.coe.int/ViewDoc.jsp?id=996303&BackColorInternet=9999CC&BackColorIntranet=FFB55&BackColorLogged=FFAC75> (12.06.2007).

286 See Romania/Agentia de Dezvoltare Comunitara Impreună, CRISS (2006) *Overview of the Roma Situation in Romania for European Commission consideration at the 2006 Country Report*, on file with the NFP. Also see *Antipoverity and for the Promotion of Social Inclusion Commission Report 2003*, quoted by C. Berescu, M. Celac (eds) (2006) *Housing and Extreme Poverty – The Case of Roma Communities*, Bucharest: Ion Mincu University Press.

forced evictions and relocations have been noted, such as those in the beginning of October 2006, when more than 300 Roma were relocated on the periphery of the town of Vsetin due, allegedly, to problems with rent arrears and inadequate housing conditions. The Roma families were relocated in Portakabin residential complexes specifically prepared for them. In spite of the criticisms voiced by civil society agents and politicians, in November the mayor of Vsetin had another 26 Roma people resettled in two villages outside the region, characterising his actions as the 'cleaning of an ulcer'.²⁸⁷

Regarding travellers, in 1994 in the **UK**, the duty on local authorities to provide sites was removed. As a result, the number of caravans on unauthorised encampments from July 1994 to July 2005 has increased by 7.5 per cent. Also, as regards local authority sites, in July 2005 the number of caravans recorded there was at the highest level ever at 6,458 – up 8 per cent in comparison to July the previous year due to insufficient authorised sites. Nevertheless, a CRE report in May 2006 set out findings of its inquiry into local authorities' race and community relations work around sites for Gypsies and Irish Travellers. Some 236 councils agreed to take part anonymously in the research into how they treated travelling people. A further 400 bodies ranging from police forces to health authorities also gave their views. Almost 50 per cent of councils admitted to the CRE that they were failing to deal with community tensions and promoting good relations, despite a legal duty to do so. Two thirds of councils said there had been tension between Travellers and other members of the public.²⁸⁸ In **Ireland** a High Court decision found that one County Council failed in its statutory duty to provide for the accommodation needs of two Traveller families. The two families were refused Traveller-specific accommodation at a serviced halting site, which contradicts the 1998 Traveller Accommodation Act.²⁸⁹

287 For example: 'Resettlement of Roma from Vsetin is considered inadmissible in Kladno district', in: *CNA news* (03.11.2006).

288 Travellers say that a nationwide shortage of sites and stopping places, documented by experts and the government, has forced many communities to take drastic measures. Ministers recently changed the law to force councils to think more about the needs of travellers. The new rules mean councils are obliged to consider the potential needs of travellers alongside other groups when they work out their local housing plans. Local councils have also gained more powers to stop unauthorised encampments. http://www.cre.gov.uk/downloads/commonground_report.pdf (12.06.2007).

289 The Traveller Accommodation Act places a statutory duty on a council to specify the provision of accommodation for Traveller families.

4.3. Evidence of direct discrimination in housing across Europe

Complaints data collected by official and unofficial organisations cannot be said to reflect accurately the real extent of discrimination. Victims of discrimination may not be aware of the channels and institutions where they can present their complaints, or various factors may discourage them from making a complaint. The situations in Member States are uneven. Some have effective systems to collect data, and therefore numbers are more relevant than those in Member States which have not yet reached the same level of effectiveness. Complaints can be complemented by research on discrimination as experienced in the housing market by migrants and ethnic minorities. The gap between the two sources can be informative.

4.3.1. Complaints data and significant events

In **Italy**, UNAR monitored the advertisements of rent offers from 1 April to 3 May 2005, finding 69 advertisements with the specification ‘not for foreigners’. Housing is one of the sectors most affected by discrimination, with an incidence of 13.3 per cent in the total of episodes reported to UNAR’s Contact Centre.²⁹⁰

The Centre for Equal Opportunities and Opposition to Racism (CEOR) in **Belgium** reports that advertisements explicitly excluding foreigners constitute one of the types of discrimination surveyed in the housing market. In December 2006, the correctional court of Mechelen sentenced a defendant to a suspended imprisonment of three years for publishing a real estate advertisement in a Brussels newspaper stating that the apartment on offer was situated in a ‘foreigner-free’ building. A total of 54 out of 987 complaints received by CEOR were housing-related.

Data collected by anti-discrimination bodies in **Germany** shows that housing discrimination ranks as the second most frequent kind of discrimination in Cologne, Hanover, Munich and Berlin. In **Finland**, according to the Ombudsman for Minorities, 29 per cent out of a total of 302 complaints on the grounds of ethnic discrimination were related to the housing sector. **France** reported an average percentage of slightly more than 4 per cent referrals to the HALDE relating to housing over the course of 2006, which roughly corresponds to the previous level (6.5 per cent for 2005). However, it seems that these relatively low figures do not reflect the level of housing discrimination discovered in research by the HALDE, as described in section 4.3.2.

²⁹⁰ National Office Against Racial Discrimination (UNAR) (2006) *Distribuzioni di frequenza del database UNAR (11.12.2005-10.12.2006)*, data provided to the Italian NFP on request.

In **Sweden**, data from the Discrimination Ombudsman (DO) is the only source from which a – limited – picture of discrimination occurring in housing can be obtained. Between January and September 2006 the Ombudsman received seven cases. The DO estimates the extent of hidden statistics for 2006 to be around 95 per cent due to the hesitance of victims to make a complaint. Landlords were identified as the main perpetrators of ethnic discrimination in housing. In one case the Ombudsman brought a case of discrimination against a landlord for locking out a family by changing the lock on their apartment after having discovered they were not Thai but Roma.²⁹¹ The landlord was sued for 120,000 Swedish kronor (about 13,000 euros), but by the end of 2006 a final court decision on this had not been made.

Insulting wording targeting foreigners and minorities, and direct refusal to let flats by private landlords, are still the main reasons for filing a complaint under equal treatment provisions, as the following examples illustrate.

The **Hungarian** NGO NEKI filed a complaint under the Equal Treatment Act denouncing an advertisement for a private rental flat indicating that ‘pets and coloured skin’ would not be accepted. Settlement was reached so that the company that launched the advertisement undertook in a written agreement that it would publish an advertisement stating regret for its action. Since the defendant acted in compliance with its pledge, NEKI dispensed with its request for a penalty to be paid by the defendant. The Municipal Court of Budapest approved the settlement made by the parties.²⁹² NEKI reported 16 cases of discrimination of which three were related to housing.

In **Austria**, a decision was taken by the Equal Treatment Commission (ETC) concerning discrimination in the area of housing. A man of Italian origin was denied a flat in the city of Innsbruck, as the estate agent stated that the flat would not be rented to aliens.²⁹³ The ETC established direct discrimination and suggested that the defendant should in the future respect the legal provisions of the Equal Treatment Act by not asking potential tenants for their ethnic origin. The Ombud for Equal Treatment (III)²⁹⁴ reported 171 consultations, ten of which concerned housing (5.9 per cent) for the period between July-December 2006. The consultations were followed by 676 further contacts of which 71 concerned housing (10.5 per cent).

In **Denmark** the NGO DACoRD registered two cases in 2006 regarding racism in the housing market and registered three cases regarding racist incidents

291 The Ombudsman against Ethnic Discrimination (2006) *DO stämmer hyresvärd som bytte lås hos romsk familj*, available at: <http://www.do.se/o.o.i.s/2193> (12.06.2007).

292 <http://www.neki.hu/news/cpkft.html> (09.01.2007), referring to Hungary/Fővárosi Bíróság/16. KP. 631984/2005/7.

293 Austria/Senat III der Gleichbehandlungskommission beim Bundesministerium für Gesundheit und Frauen (2006) *Auszug aus dem Prüfungsergebnis zum Antrag III/6/05*, available at: http://www.bmgf.gv.at/cms/site/attachments/9/1/3/CH0271/CMS1147954825402/gbk_iii_6.doc (06.01.2007).

294 OET III is responsible for equal treatment regarding ethnic origin in areas other than employment.

in the neighbourhood. The *Complaints Committee on Ethnic Equal Treatment* decided on 19 September 2006²⁹⁵ that it did not find that a company letting out summer houses had violated the prohibition against indirect discrimination in the Act on Ethnic Equal Treatment by having different prices for customers residing outside Denmark. The Committee found that the company's price policy pursued a legal purpose and was appropriate and necessary.

In **Ireland**, the National Consultative Committee on Racism and Interculturalism (NCCRI) noted that a number of racially-motivated attacks and verbal abuse are suffered in people's own homes or in their local neighbourhood and that neighbours are often the perpetrators. From January to October 2006, seven racist incidents were reported in relation to accommodation.²⁹⁶

In **Spain** a number of xenophobic advertisements were published in newspapers. Signs of xenophobia are revealed by refusals to rent or to sell a flat to people 'because they are foreigners'. Additionally, the *Fundación Secretariado Gitano* reported frequent cases of refusing to rent housing to Roma, as well as public demonstrations against associations that support the Roma. The Ombudsman of Galicia described instances of discrimination against Roma.²⁹⁷ For example, ten Roma families had been squatting in an abandoned factory for over 20 years. When trying to find proper accommodation for these families, the town council was confronted with a general refusal from homeowners; the issue is still unresolved. According to the *Fundación Secretariado Gitano*, the situation is not significantly better in many other provinces. In Zaragoza, a Roma woman had to agree to disguise her Roma background in order to have access to a flat; while other instances of discrimination were reported in the Communities of Andalusia, Aragón, Asturias, Galicia, Murcia and Valencia. In **Finland**, 61 per cent of the housing complaints reaching the Ombudsman concerned the Roma.

In **Estonia, Latvia, Lithuania, Slovenia** and **Romania** there were conspicuously few cases of reported discrimination. The Latvian Human Rights Office registered only one case of housing discrimination on the grounds of ethnic or national origin. Similarly, the Advocate of the Principle of Equality, the specialised body in **Slovenia**, recorded just one complaint claiming alleged ethnic discrimination in the field of housing in 2006. In **Lithuania**, during 2004, the Office for Equal Opportunities registered four complaints regarding housing discrimination. And in **Estonia** the equality body – the Legal Chancellor – did not receive any complaints regarding racial, ethnic or religious discrimination in housing.²⁹⁸ Similarly in, **Slovakia** the specialised body did not receive any complaints about housing.

295 Denmark/Complaints Committee on Ethnic Equal Treatment/Decision of 19. September 2006/j.nr. 740.16, <http://www.klagekomite.dk/Media/afg/740.16-AFG-190906.pdf> (16.01.2006).

296 The NCCRI's racist incidents reports contain both criminal incidents and reports of discrimination.

297 O Valedor do Pobo (2006) *Informe extraordinario do Valedor do Pobo sobre a situación da poboación xitana de Galicia. Ano 2005*, available at: <http://www.valedordopobo.com/repositorio/uploads/Informe%20Poboacion%20xitana.pdf> (04.07.2006).

298 Estonia/Legal Chancellor (2007) *Written communication no. 5-3/0608588 of 5 January 2007*.

4.3.2. Evidence from research

As with the area of employment, research on discrimination in housing tends to provide more evidence than is gleaned from complaints. For example, in **Spain**, according to a study carried out by Colectivo IOE, 72 per cent of Africans, 40 per cent of Latin Americans and 25 per cent of Eastern Europeans state that they have faced such prejudiced reactions when seeking accommodation, some of them on more than five occasions.²⁹⁹

In **Germany**, the latest findings of the seventh Multi-Topic Survey 2005 indicate that amongst the fields where discrimination takes place, discrimination whilst looking for an apartment ranked second (as in 2004), after discrimination in the workplace, school or university. Discrimination in the neighbourhood was ranked in sixth place in 2005 (fifth place in 2004).³⁰⁰ Turks, who are the biggest minority ethnic group in Germany, are affected both by individual discrimination as well as by institutionalised forms of discrimination such as quotas on foreign households established by housing associations.³⁰¹ Evidence of direct discrimination in the housing market was corroborated by a study carried out in Cologne in 2006.³⁰² An online survey was conducted among 209 people (landlords, estate agents, apartment supervisors etc) who placed flat advertisements on an online estate portal. By analysing their selection preferences and the extent of ethnic discrimination in the local housing market of Cologne the researchers showed that all foreign nationalities were assessed more negatively than German, but that the assessment varied greatly between the individual nationalities.³⁰³ Nationality coupled with poor language proficiency affected the gate-keepers' decision more strongly than the applicants' social status.

A study on subjective experiences of racism and xenophobia carried out in **Portugal** revealed significant levels of experiences of discrimination in the housing sector, whilst the official records only registered 17 complaints for the period 2002-2006.³⁰⁴ One of the findings was that experiences of discrimination are differentiated according to national groups. For example, Brazilians are more likely to experience discrimination in access to housing (44 per cent) than Cape-Verdeans and Guinea-Bissauans, and the least likely to experience discrimination

299 Colectivo IOE (2006) *Inmigración y vivienda en España*, Madrid: Ministerio de Trabajo y Asuntos Sociales, available at: http://www.colectivoioe.org/ficheros_externos/Inmigracion%20y%20vivienda%20en%20Espana_lib_inm_viviend.pdf (30.06.2006).

300 A. Goldberg, M. Sauer (2006) *Türkischstämmige Migranten in Nordrhein-Westfalen. Stand der Integration. Einstellungen und Meinungen. Inanspruchnahme von Unterstützung bei der Erziehung. Ergebnisse der 7. Mehrthemenbefragung* Duisburg-Essen: Stiftung ZfT, pp. 245 and 136, available at: <http://www.zft-online.de/UserFiles/File/NRW%202005-Bericht5.pdf> (26.05.2006)

301 N. Gestring, A. Janßen, A. Polat (2006) *Prozesse der Integration und Ausgrenzung. Türkische Migranten der zweiten Generation*, Wiesbaden: VS-Verlag für Sozialwissenschaften.

302 C. Kowalski et al. (2006) *Die Wohnungssuche als Alltagsproblem von Menschen nicht-deutscher Herkunft? Eine empirische Untersuchung am Beispiel Köln*, available at: http://www.migration-boell.de/downloads/diversity/Bericht_Wohnungsvergabe.pdf (02.10.2006).

303 For the Japanese, nationality hardly has any impact, whereas for Russians their nationality had a greater impact on the decision of gate-keepers than the criteria of income.

304 EUMC (2006) *Migrants' Experiences of Racism and Xenophobia in 12 EU Member States. Pilot Study*, available at: <http://fra.europa.eu/fra/material/pub/merx/Migrants-Experiences-web.pdf> (14.05.2007).

are the Ukrainians. But the most significant finding is that roughly 60 per cent of Roma feel like they have been denied the opportunity to buy or rent an apartment or house,³⁰⁵ making them the group that is most likely to have experienced higher levels of discrimination in housing.

In **France** in May 2006, the HALDE led a testing campaign of which was conducted by the market research firm ASDO in three regions to identify discrimination in access to private housing. It scrutinised 126 housing advertisements and tested 100 estate agents. Three profiles of potential victims of discrimination (North African origin, Sub-Saharan origin, and single-parent families) were compared to a reference candidate profile. All the candidates were French, earning equivalent income (three times the minimum wage), and had permanent contracts. Over the phone, the reference candidates were scheduled for a visit in 35 per cent of cases, whereas this was only 20 per cent for candidates of North African descent and 14 per cent for Black candidates. Upon visiting, reference candidates got a positive reply in 75 per cent of cases, whereas only 22 per cent of Black candidates and 17 per cent of candidates of North African origin got favourable answers. Differences are clear and may prove to be the result of discrimination. The HALDE will look into each discrimination case and follow up on them.

The example of **Greece** is another illustration of a disparity between official data and data from surveys of experienced discrimination. Whilst Greece's specialised body has received scarcely any complaints, according to a study on victims' experiences of discrimination, a total of 66 per cent of the interviewees declared having been denied accommodation in the past.³⁰⁶

In **Latvia**, according to a public opinion poll about discrimination in 2006 commissioned by the Latvian National Human Rights Office (the national equality body), 23 per cent of respondents claimed that they experienced unequal treatment over the last three years.³⁰⁷ Among these, 3 per cent named housing as a problematic area. And in **Estonia**, a survey commissioned by the Legal Information Centre for Human Rights carried out in Tallinn showed that 12.5 per cent of non-Estonians had experienced discrimination because of their ethnic origin within the last three years in the field of housing (e.g. upon renting or buying of apartments or houses, contacts with landlords, communal services etc).³⁰⁸

In addition to the above surveys of minority experiences, there was one survey reported on the attitudes of the majority population to migrants and minorities as neighbours. In **Lithuania**, in 2006 the Centre of Ethnic Studies carried

305 M. Lages (2006) *Os imigrantes e a população Portuguesa. Imagens reciprocas*, Lisboa: ACIME.

306 EUMC (2006) *Migrants' Experiences of Racism and Xenophobia in 12 EU Member States. Pilot Study*, p. 41, available at: <http://fra.europa.eu/fra/material/pub/merx/Migrants-Experiences-web.pdf> (14.05.2007).

307 Baltijas Sociālo Zinātņu institūts (2006) *Pētījums par cilvēktiesībām Latvijā. Grafiku atskaite*, available at: http://www.vcb.lv/zinojumi/Petijums_par_cilvektiesibam_Latvija_2006.doc (25.09.2006).

308 K. Hallik et al. (2006) *Estonia: Interethnic Relations and the Issue of Discrimination in Tallinn*, Tallinn: LICHR, p. 39.

out a survey on attitudes towards minority groups in Lithuania. The results indicate that ethnic intolerance has been growing among general members of Lithuanian society, especially towards Roma, Chechens, refugees and Muslims. The results of the study show that 75 per cent of the interviewees were likely to refuse to live in the same neighbourhood with Roma people, 45 per cent were likely to refuse to live with refugees and 58 per cent with Muslims.³⁰⁹

4.3.3. Migrants' housing conditions

Sometimes differentials between housing conditions of immigrants and ethnic minorities are related to the legal status of migrants. Clearly, undocumented migrants are the group facing more hardships regarding accommodation. The lack of a recognised status hinders undocumented migrants from finding lawful solutions to housing, and the fact that they are not under the protection of the legal system intensifies their vulnerability. In several Member States similar situations of extreme deprivation for migrants can be found, characterised by a combination of insecure status, concentration in the same employment sector – frequently in agriculture – and seasonal working.

In **Italy**, anti-racist organisations continued to report the conditions of almost 'slavery' which seasonal farm workers from third countries endure in the south of Italy. Following up on a survey carried out by the NGO *Medici Senza Frontiere* (MSF) in 2005, this same organisation reported in 2006 the substandard conditions in which migrant workers still live. In an area near Syracuse, more than 300 workers were reported to live in huts without any facilities, including water systems. According to MSF many of the workers were suffering from illnesses resulting from an unhealthy environment, mainly because of unsuitable accommodation. The bulk of these workers were asylum seekers. In **Spain**, the situation of seasonal workers is no less dramatic. Shanty-towns, usually attributed to the Roma community, have increased recently because migrant workers do not find other suitable housing. The precariousness of their dwellings is often coupled with the precariousness of their jobs – they appear to be temporary and are directly linked to seasonal work in agriculture. The main features of these locations are the complete lack of infrastructure and poor health conditions. Migrants can also be found squatting in old abandoned factories and derelict farmhouses.³¹⁰

In **Portugal** the housing situation of migrant workers continues to be problematic. The group most affected by bad housing conditions are the Eastern Europeans, who are more likely to lack proper housing conditions without sanitation, running water, electricity or heating. Ukrainian citizens (the biggest national group among Eastern Europeans) are over-represented when substandard

309 See press release of the Centre of Ethnic Studies, available at: <http://www.ces.lt/downloads/structure/files/ETC%202007%2002%2005-19%20apklausa.pdf> (20.05.2007)

310 Defensor del Pueblo Andaluz (2005) *Informe especial al Parlamento. Chabolismo en Andalucía*, available at: <http://www.defensor-and.es/informes/ftp/chabolismo/chabolismo.htm> (04.07.2006).

accommodations are considered. Three per cent of Eastern European immigrants live in their place of work.

Census data corroborates evidence of disadvantages for migrants. Across Member States migrant households are more likely to be severely overcrowded than households of the majority population, and when nationality is considered separately, specific differences across the various groups surface. Whilst it is difficult to have cross-national data, since not all Member States collect this information, some data is presented below for countries where differences between occupancy patterns are particularly relevant.

In **Spain**, according to a survey conducted by Colectivo IOE, 19 per cent of migrants live in less than ten square metres, a clear indicator of overcrowding, compared to 2.5 per cent of natives; and 61 per cent of migrants have less than one room per person.³¹¹ In France, according to data from the 2002 Census, 28 per cent of immigrants' households were overcrowded compared to only 5 per cent of the majority households.³¹² In **Luxembourg**, the average size is 25.2 square metres per person for African citizens contrasting with 60 square metres for Luxembourgers. In **Portugal**, more than 50 per cent of foreigners with Asian, African and Eastern European nationalities live in overcrowded dwellings. For Ukrainians the figure is above 60 per cent, contrasting with the majority rate of 22 per cent. In the **UK**, overcrowding rates in 2004/2005 were 29 per cent for Bangladeshi households, 20 per cent for Pakistani households, and 15 per cent for Black African households compared to 2 per cent for Whites. Research by CNEL³¹³ on the integration of immigrants in **Italy** calculated an indicator that shows, for each region, the percentage of non-EU migrants or stateless persons living in conditions of extreme overcrowding.³¹⁴ This percentage ranged between 10 and 14 per cent in Puglia, Lombardia, Campania, Sardinia and Val d'Aosta, compared to a percentage of Italians living in conditions of overcrowding of only 0.9 per cent.

4.3.4. Roma housing conditions

Surveys continue to show high levels of housing deprivation for Roma, particularly in many of the Member States which joined the EU in 2004. Whilst the situation of the Roma minorities seems not to have undergone major improvements, there are now more surveys and research on Roma housing conditions and new elements were brought to public attention. This data consistently shows that the quality level of Roma settlements and housing facilities is sub-standard when compared with the average population.

311 Colectivo IOE (2006) *Immigración y vivienda en España*, Madrid: Ministerio de Trabajo y Asuntos Sociales.

312 <http://www.insee.fr/fr/ppp/sommaire/IMMFRA05.PDF>, p. 105 (12.06.2007).

313 National Council for Economy and Employment.

314 CNEL used data from the Istat 2001 Census, which takes into consideration the then new acceding countries (except for Malta) and all countries of Central-Eastern Europe, Africa, Asia (except for Israel and Japan) and Central-Southern America. Extreme overcrowding is the condition of a person living in a house with a rate between number of residents and number of rooms which is higher than two.

The **Czech Republic** reports a growth in the number of ghettos, apparently all over the country. In **Lithuania**, the UN Committee on the Elimination of Racial Discrimination highlighted the 'isolation of the Roma community in ghetto-like neighbourhoods and their critical situation with respect to housing conditions, especially in Vilnius, where the Roma community is concentrated'.³¹⁵ In **Hungary**, the Roma are over-represented in disadvantaged areas with approximately 36,000 people living in colony-like environments without any amenities. Data from the 2001 census, published recently, shows that slightly more than 17 per cent of the Roma live in 'bad' conditions (e.g. lack of flush toilet, sanitation, bathroom, proper foundation; and adobe as construction material).³¹⁶ **Slovakia** also presents a problematic picture of the housing-related problems faced by Roma. In most cities, enduring patterns of ghetto-like spatial exclusion affect the Roma community with high unemployment rates, low educational attainment and low health quality. This is clearly illustrated by the municipal housing project of Luník IX in Košice as described by the 'Report on Activities of the Office of Government Plenipotentiary for Roma Communities'. The separate district of Luník IX in Košice is almost 100 per cent inhabited by socially excluded Roma and comprises 666 flats that should officially be inhabited by 4,000 tenants, but in reality, based on physical surveys, was estimated at between 7,000 and 8,000. The report describes an unemployment rate of nearly 100 per cent, with dire consequences for the capacity of families to pay rent arrears and for the level of indebtedness. Other examples have surfaced in a number of cities in Slovakia, showing that this does not constitute a singular case, but is instead a deep-rooted problem.³¹⁷

Roma in **Slovenia** also live in disadvantaged conditions compared to the majority population. A survey conducted under the auspices of the PISR project revealed that 60 per cent of Roma live in brick houses, 33 per cent in shacks and only 2 per cent in flats. Moreover, there are marked differences between regions. For example, more than 50 per cent in the region of Kočevje and 90 per cent in the regions of Grosupeljsko and Trebanjsko live in shanty towns.³¹⁸

The two Member States which joined the EU most recently have similar problems. In **Bulgaria**, surveys have shown striking differentials between Roma living conditions and all other groups. While 92 per cent of all Bulgarian-occupied buildings in the total housing stock are supplied with electricity, running water and sanitation, only 46 per cent of Roma dwellings have such utilities.³¹⁹ In **Romania**, there are more than 1,000,000 people living in shanty towns, of which the vast majority are Roma.³²⁰ Among other disadvantages, 23 per cent of the Roma

315 <http://www.ohchr.org/english/bodies/cerd/docs/CERD.C.LTU.CO.3.pdf> (see paragraph 21) (10.10.2006).

316 B. Edgar (2004) *Policy measures to ensure access to decent housing for migrants and ethnic minorities*, Dundee: Joint Centre for Scottish Housing Research, available at: http://ec.europa.eu/employment_social/social_inclusion/docs/decenthousing_en.pdf (02.10.2006).

317 Source: Social Affairs Department of the Košice City Council.

318 Slovenia – survey on the situation of Roma, introduced within the framework of the PISR project: N. Babič Ivaniš, Š. Urh, V. Klopčič, M. Adamič (2006) 'Raziskava izobraževalnih in poklicnih interesov Romov', in: N. Žagar, V. Klopčič (eds) *Poklicno informiranje in svetovanje za Rome – PISR*, Črnomelj: Zavod za izobraževanje in kulturo, pp. 210-212.

319 National Statistical Institute (2001) *Census of Population, Housing Stock and Agriculture Farms*.

320 C. Berescu, M. Celac *Housing and Extreme Poverty. The Case of Roma Communities*, Ion Mincu University Press, Bucharest 2006.

communities that were assessed in a World Bank study from 2005 have acute problems with infrastructure, 11 per cent are situated in the vicinity of a garbage pit and 10 per cent are affected by a chronic lack of water.³²¹

4.4. Good practices

There are several examples of significant practices, projects and programmes which fall under the heading of ‘good practices’ in the housing sector in 2006. These can be grouped according to different target groups and other criteria. The first section pays special attention to positive initiatives towards the Roma, and the second towards migrants.

4.4.1. Good practices targeting Roma

In August 2006, the municipality of Casalmaggiore (CR), in **Italy**, officially presented the project ‘*Sucar Plaza*’ (‘Beautiful Square’ in the Sinti language),³²² financed by the Lombardy Region and aimed at local Sinti populations. The project deals with housing, employment and education. A residential neighbourhood consisting of houses and parking spaces reserved for caravans was built, in order to offer Sinti families a decent accommodation and to start dismantling an unauthorised camp progressively. This project is a pioneering example of a planned and built habitat for an ethnic minority. The Roma community was involved in the project from the outset and the municipality took the specific needs of the Roma families into account. Among these, there is the size of the family cell, the spatial distribution of the houses as well as the adaptability of the physical structure to traditional celebrations and modes of commerce. Cultural mediators have worked in liaison with the Roma families over the course of the planning and construction phase.

Another example of resettlement of Roma families with a view to improve their living conditions is the Dual project³²³ in the city of Burgos in **Spain**. The Dual is a municipality-based programme, which is managed by the *Fundación Lesmes* through an agreement with the town council to eradicate shanty houses and other substandard forms of housing. The project includes the provision of information to the families targeted, guidance for each family before and after their re-accommodation in flats all over the city, and the purchase and maintenance of flats for the re-accommodation of such families, as well as the gradual eradication of Bakimet, one of the two Roma settlements in the city. The section on family education is the central strand of the programme and covers all areas (health and hygiene, home economy, social skills and relations, training and employment, and

321 World Bank (2005) *Roma Social Mapping. Targeting by a Community Poverty Survey*.

322 http://www.sivola.net/download/allegato_B_prerp_2002_2004_progetto_2006.doc (27.09.2006).

323 Fundación Lesmes, Programa Dual, available at: <http://www.fundacionlesmes.org> (11.08.2006).

home maintenance). Since its inception, the programme has worked with 98 families and has successfully re-accommodated 52 of them. Its strong points are individual work with each family, comprehensive action, a scattered re-accommodation, the existence of incentives (social wage) and the promotion of access to training and employment as the main way for integration.

Similarly, at the level of urban and physical space intervention, the **Bulgarian** government adopted a National Programme for Improvement of Living Conditions of Roma in Bulgaria 2005-2015, as part of the National Housing Strategy of the Republic of Bulgaria. This programme contributed towards implementing provisions of the Framework Programme for Equal Integration of Roma in Bulgarian Society. Measures include improvement of the technical and social infrastructure within the districts where Roma live, construction of new social housing, and training programmes. The programme's budget amounts to 644 million euros, of which the government is to contribute 40 per cent, while municipalities 17 per cent. The programme targets 412,500 Roma (approximately 85,900 households) located in 88 towns and provides for building 30,065 new houses and rehabilitating 47,000 Roma dwellings.³²⁴

In **Hungary** broad-ranging measures were launched in order to improve Roma social conditions. The draft National Development Plan for 2007-2013 includes elements on community development, education, employment, the creation of workplaces, and the improvement of housing conditions. In regions of multiple disadvantages it seeks to increase the mobility of the work force and employment opportunities as well as attract highly skilled professionals. Urban ghettos and areas where Roma are over-represented are to be among the target areas of such developments. For disadvantaged areas the programme defines as core goals the increase of employment opportunities, the strengthening of local enterprises and the development of education consistent with local demands, together with labour market reintegration programmes.

4.4.2. Good practices targeting migrants

Programmes aimed at curbing spatial segregation and promoting social integration were launched in a number of Member States. In **Portugal** the Immigrants' Integration Plan laid out by the High Commissioner³²⁵ places particular emphasis on the housing situation of migrants. It proposes eight different measures targeting problems immigrants have to face, including: the development of social housing avoiding segregation; the development of new social housing solutions promoting partnerships with immigrants' associations, NGOs and cooperatives; the implementation of a Network of Housing Support Cabinets in partnership with

³²⁴ Bulgaria/Ministry of Regional Development and Public Works *National Programme for Improvement of the Living Conditions of Roma in Republic of Bulgaria 2005-2015*, available at: [http://www.ncedi.government.bg/en/NRP-071%2003%202006%20Final%20en%20\(2\).htm](http://www.ncedi.government.bg/en/NRP-071%2003%202006%20Final%20en%20(2).htm) (16.09.2006).

³²⁵ http://www.acime.gov.pt/docs/PII/PII_Ing.pdf (12.06.2007).

immigrant associations and NGOs to help immigrants to fight discrimination in access to housing; the facilitation of access of young immigrants to rent support programmes, and the raising of awareness amongst banks of the need for new products and solutions aimed at the immigrant population. Finally, the intention to strengthen the specialised body's role and action in cases of ethnically-motivated refusals to rent houses or to enable their purchase has been formally expressed.

In the same vein, the **Swedish** Ombudsman for Ethnic Equality offered another example of the role played by a specialised body in facilitating migrants' housing integration. During the second term of 2006, the Ombudsman started a 'housing project' focusing on three main areas:³²⁶

- The improvement of information channels for immigrant populations from an 'empowerment' perspective. Rather than earlier strategies which focused almost exclusively on giving information to members of the majority population, the focus today is on informing members of the immigrant community about their civic rights and the channels and procedures to follow when feeling discriminated against.
- The improvement and completion of statistics and other data sources that provide information about the problem of discrimination in housing, and its causes and consequences.
- The improvement and formalisation of collaboration with researchers dealing with the study of housing and ethnic discrimination. Contacts have been established with the Institute of Housing and Urban Research, Uppsala University, where two parallel projects on discrimination in the housing market are being carried out.

Two examples of good practices directly focused on preventing and combating discrimination should be noted. In **France**, the first convention between the HALDE and the FNAIM in order to prevent discrimination in housing was signed.³²⁷ The FNAIM (*Fédération Nationale de l'Immobilier*), representing some 10,000 administrators of real estate agencies, signed a convention in December 2005 with the HALDE aimed at fighting discrimination in the property sector. This convention proposes several lines of work. First, the FNAIM will begin work on information and awareness-raising amongst its members. It also pledges to create anti-discriminatory tools, and emphasises the need to train real estate agents and workers about anti-discrimination issues. The convention, which is the first partnership set up by the HALDE since its creation, was signed for one year and will be the subject of an evaluation, and, if necessary, corrective action. This convention follows up on an initial project which began in 2005 within the

³²⁶ Interview with John Stauffer and Lars Lidgren by Irene Molina at DO-office (19.09.2006).

³²⁷ http://www.halde.fr/actualite-18/communiqués-presse-98/convention-partenariat-9601.html?var_recherche=fnaim (13.10.2006).

FNAIM with the production of a Code of Ethics which emphasises the law and the principles of non-discrimination.

In the **UK**, the publication 'Race Equality: Guidance for Small Housing Associations' by Managing Diversity Associates, was produced with funding from the Housing Corporation. This was based on a project that reviewed progress made by small housing associations in the south of England, and provides guidance and practical ideas on how to develop race equality as part of their overall efforts to achieve equality and diversity. It also addresses small associations' concerns over why they need to tackle race equality specifically.³²⁸

Additionally in the **UK**, the Housing Corporation published an Internal Audit Guide – Equality and Diversity, funded by their Innovation and Good Practice Programme. This regards equality and diversity as a commitment to be free from prejudice, and not to discriminate in any way, for example on grounds of race, religious beliefs, gender, sexuality, age, or disability. From a housing perspective, ensuring equality and diversity can be seen as everyone having access to the housing they need, and that their views are heard and taken into account in the provision of such services.³²⁹ Also, the National Housing Federation has produced a guide 'Equality and Diversity: A Framework for Review and Action'. This offers a complete guide for housing associations to help bring equality issues back to the centre of their strategic thinking and action, placing equality and diversity at the heart of their daily activities. This summary document brings together the legal and regulatory requirements in all equality areas; age, disability, faith, gender, race and ethnicity and sexuality.³³⁰

328 http://www.housingcorp.gov.uk/upload/pdf/Race_equality_guidance.pdf (12.06.2007).

329 http://www.housingcorp.gov.uk/upload/pdf/IAPG_Equality.pdf (12.06.2007).

330 The document sets out the basic principles of this guidance and includes a model for conducting an initial impact assessment to help associations decide whether a detailed equalities review is required. It is a tool for everyone involved in social housing, including board members, senior managers and frontline staff. <http://www.housing.org.uk/Uploads/File/Policy%20briefings/summary.pdf> (12.06.2007).

5. Racism and discrimination in the education sector and initiatives on how to prevent it

Available information points to an increased public and political awareness as regards discrimination and related inequalities in education in the European Union. The rising number of political and civil society initiatives aimed at countering discrimination in education is a clear indicator of this development. At the same time, however, many of the governmental anti-discrimination and support programmes are not as effective as they could be. Measures and projects in EU Member States not only suffer from chronic under-funding, but from a range of problems undermining their effectiveness, which are discussed in this chapter. The chapter also examines available indicators and information on racism and discrimination in the education sphere. The social groups most affected are addressed and several themes of particular interest are discussed from the perspective of the policies and debates in the 27 EU Member States. Finally, selected examples of good practice enhancing the position of vulnerable groups and diminishing discrimination are provided.

5.1. Availability of data

There is a lack of active and systematic recording of racist incidents and discriminatory practices in the field of education in most Member States. In some countries there are no available official or unofficial statistical data on racism and discrimination in education at all. In several countries it is predominantly NGOs that register cases of racism and discrimination in education. Few Member States have well functioning local and/or national reporting systems.

France is currently the only EU Member States with a comprehensive national data collection system on racist and anti-Semitic incidents at school. In 2001 the National Ministry of Education implemented in most primary and secondary state schools a software tool for collecting data on severe acts of violence. Since 2005, 70 per cent of state schools have got access to the software.³³¹

The **Netherlands** have established in 2005 a new reporting centre for discrimination and extremism in schools. The reporting centre, which is part of

³³¹ The French data collection system suffered a serious setback after a weekly magazine published a list of the 'most violent' schools for the period 2005/06. This caused the indignation of school headmasters, teachers and parents. It should be noted that data registration and declaration is left to the judgement of the headmaster, and between September and November 2006, the Ministry registered a significant fall in the recording of acts in the SIGNA (Signalement des actes de violence par les établissements du second degré) software. It then announced in December 2006 the creation of a new software, which is to be operational as from September 2007.

the Schools Inspectorate, receives both complaints of discrimination and signals or concerns about radicalisation of pupils. In some federal states of **Germany**, cases of right-wing extremist incidents at schools are systematically registered. In the **UK**, since 1999, all schools have a mandatory obligation to locally collect and keep annual records of racist incidents in schools. However, there is currently no national data collation initiative regarding such figures.

Besides data relating to direct indicators of discrimination, such as the occurrence of racist incidents and cases of unequal treatment, data related to indirect indicators of discrimination, such as unequal distribution and achievement rates of pupils of different ethnic background, is also of great importance for evaluating the present situation and for taking adequate counter-measures. However, in most EU Member States there is either no or only fragmentary data on the distribution and attainment of pupils available. In fact, in large parts of the EU, the only source of relevant information on attainment differences and unequal distribution of ethnic groups in education are research studies. The number of research projects dealing with such issues has increased over the past years, nevertheless, the present amount of research only partly compensates for the lack of information through insufficient data collection by the Member States.

The **UK** is the Member State with the most comprehensive and reliable data collection system on attainment in education. This provides the UK with the necessary analytical tools to effectively identify and counter practices and structures that lead to unequal opportunities.

5.2. Access to education

Open access to education includes both the right and the obligation to be educated and it includes the provision of the necessary means in order to enable all pupils to make use of their right (and fulfil their obligation). While on a legal basis most Member States secure open access to education, in reality, vulnerable groups face many difficulties. Particularly affected by practical barriers to education are children of Roma, Sinti and Travellers and children of asylum seekers and undocumented migrants.

In **Finland**, the Ombudsman for Minorities reported that, even though asylum seekers have a constitutional right to free basic education, there were some cases in which asylum seekers in the compulsory education age were not offered a place in a comprehensive school, or there had been delays in obtaining a place in the school.³³² In the **Czech Republic**, the Counselling Centre for Refugees (PPU) and the Organisation for Aid to Refugees (OPU) pointed out that the current Educational

³³² Ombudsman for Minorities *Annual Report 2005*, p. 6, available at: http://www.mol.fi/mol/fi/99_pdf/fi/06_tyo-ministerio/02_organisaatio/02_vahemmistovaltuutettu/vuosikertomus2005/vuosikertomus_englanti2005.pdf (16.10.2006).

Act does not provide for underage foreigners who do not possess a Czech Republic residence permit to take part in compulsory basic education. In **Poland**, according to a UNHCR report, many reception centres are located far away from cities. Thus, many children have difficulties in reaching schools. As a result, nearly half of school-age asylum applicants do not attend school at all.³³³ In **Ireland**, access programmes to higher education have been evaluated by the Higher Education Authority's National Office for equity of access to higher education. A major finding is that regulatory and administrative issues faced by some students from ethnic minorities place significant barriers to their participation in higher education.³³⁴

There have, however, also been some improvements in Member States as regards providing for access to education. Some countries have expanded the obligation of school attendance to all refugee children and some have started to provide for transportation of children of asylum seekers to education facilities. For example, in **Slovenia**, schools provide free textbooks and free transportation for asylum seekers, and the Ministry of the Interior and the Ministry of Education and Sport allocate support for meals, school requisites and excursions.³³⁵

5.3. Racist incidents and discriminatory practices

Most Member States were unable to provide comprehensive data on discriminatory incidents in 2006. Below, figures for France, the German federal state of Berlin as well as the results of investigations by the Dutch School Inspectorate shall be provided. In addition, some examples of cases which emerged in 2006 shall be highlighted.

In **France**, according to the SIGNA incident registration system, during the school year 2005/06, the number of racist and anti-Semitic acts decreased by 22 per cent as compared to the school year 2004/2005. This decrease is even more significant for anti-Semitic incidents (minus 40 per cent). According to the annual reporting system on violent incidents at schools of the German federal state of **Berlin**, during the school year 2005/2006, 80 such incidents were reported.³³⁶ This represents an increase of 29 per cent compared to the school year 2004/2005. The Berlin Administration of Education traces this increase of reported incidents

333 UNHCR, Regional Representation Budapest (2005) *Listening to Refugees: Report in the Gender, Age and Diversity Roll-Out in Hungary, Poland, the Slovak Republic and Slovenia*, pp. 8-9, available at: <http://www.unhcr.pl/files/333/GAD-english.DOC> (16.10.2006).

334 Higher Education Authority (2006) *Towards the Best Education for all: An Evaluation of Access Programmes in Higher Education in Ireland*.

335 Information submitted by the Asylum Section at the Ministry of the Interior upon request.

336 Berlin/Senatsverwaltung für Bildung, Wissenschaft und Forschung, Presse und Öffentlichkeitsarbeit (2006) *Gewaltsignale an Berliner Schulen 2005/2006. Handout zur Pressekonferenz am 13.12.2006*, available at: http://www.berlin.de/imperia/md/content/sen-bildung/hilfe_und_praevention/gewaltpraevention/handout_gewalt.pdf (04.01.2007).

back to the increased willingness of the schools to register such incidents.³³⁷ In the **Netherlands**, according to the new reporting centre for discrimination and extremism located in the School Inspectorate, white extremism³³⁸ and inter-ethnic incidents between students do occur especially in denominational or special pedagogical schools. Moreover, incidents between students occurs far more frequently in secondary schools than in primary schools. Between a quarter and a third of secondary schools report such incidents. In general, a large majority of schools have occasional problems, but only a small minority report weekly recurring incidents.³³⁹

Examples of cases of racist violence in schools

In **Spain**, according to the annual report by *SOS Racismo*,³⁴⁰ there was a racist outbreak in a school in Palma de Mallorca. Several students and the father of one student insulted and hit four boys of South Saharan origin. In **Cyprus**, an incident took place during which Turkish-Cypriot pupils at the English School were physically attacked by Greek-Cypriot pupils connected with a far right nationalist student group called EFEN. After the event the 'Inter-communal Forum against Racism and Nationalism' was founded in order to combat such phenomena.

Example of case of racist statements by a lecturer

In the **UK**, Leeds University announced the suspension of a lecturer considered to have racist views after a campaign by the students' union attracted widespread support and publicity. The lecturer had sparked uproar when he said that he considered Black people to have genetically lower intelligence than white people and that multiculturalism was 'corroding' Britain.³⁴¹

Examples of cases of religious discrimination

In **Lithuania**, the Office of Equal Opportunities Ombudsperson (OEOO) decided that the official English language exam for secondary school graduates in 2006 contained a task that was easier for those who have a Catholic background and

337 Press release, Berliner Senatsverwaltung für Bildung, Wissenschaft und Forschung (13.12.2006).

338 Students who wear Lonsdale brand clothing and/or use white power symbols.

339 Schools Inspectorate (2006) *De staat van het onderwijs 2004/2005*. The Hague: Schools Inspectorate.

340 Federación de Asociaciones de SOS Racismo del Estado Español (2006) *Informe anual 2006 sobre el racismo en el Estado español*, Barcelona: Icaria Editorial.

341 <http://www.timesonline.co.uk/article/0,,2-2100633,00.html> (12.06.2007).

concluded that this was a case of indirect discrimination against non-Catholics.³⁴² In the **Netherlands**, a Muslim student was not admitted to a training programme for class assistants because she avoided physical contact with persons of the opposite sex as a matter of religious conviction. The Equal Treatment Commission decided that by excluding the woman, the school acted in violation of the equal treatment legislation.

Examples of cases of discriminatory content in educational textbooks

In **Denmark**, two school books for the subject ‘Religious knowledge’ mentioned Islam only in a chapter on terrorism. After some public debate the publisher withdrew the newly revised school books from the market. In **Italy**, a textbook with anti-Semitic content was chosen as reading material for a course at the Faculty of Education Science of the University of Cagliari.³⁴³ In **Hungary**, a school book for young children portrayed a Roma character as thief. The Ministry of Education banned the textbook until the racist part was displaced.

5.4. Educational opportunities and attainment

Discrimination manifests itself not only through concrete incidents, but also through provisions and structures that lead to an unequal distribution and unequal achievement of pupils of different background in the education system.

Strong learning dispositions, but low performance levels

In 2006, the OECD published an evaluation report, reviewing performance and engagement of students with immigrant background on the basis of the results of the PISA 2003 study.³⁴⁴ The evaluation report covers 17 countries, among them the EU Member States Belgium, Denmark, Germany, France, Luxembourg, the Netherlands, Austria and Sweden. In addition to the fact that performance

³⁴² Press release of the Office of Equal Opportunities Ombudsperson (OEEO) *Rekomenduota vengti egzaminų temų, susietų su mokinių etnine, tautine ar konfesine tapatybe* (28.07.2006), available at: <http://www.lygybe.lt/news.php?strid=1071&id=2365> (02.10.2006).

³⁴³ P. Melis (2005) *Scontro tra culture e meta cultura scientifica: l'Occidente e il diritto naturale*, Cagliari: Università di Cagliari.

³⁴⁴ OECD (2006) *Where immigrant students succeed – A comparative review of performance and engagement in PISA 2003*, available at: <http://www.pisa.oecd.org/dataoecd/2/38/36664934.pdf> (12.06.2007).

levels of immigrant students vary strongly across countries, four main conclusions of the OECD report shall be quoted here:

- School performance does not necessarily correlate with the number or share of immigrants in a country.
- Immigrant students have in many cases strong learning dispositions. Nevertheless, they often perform at significantly lower levels than their native peers.
- Socio-economic background characteristics of immigrant students cannot fully explain differences in performance.
- Language support that is of high standard and easily accessible is one important key to reducing performance gaps.

The OECD study indicates that certain types of school systems, discrimination in education as well as insufficient language support³⁴⁵ are important factors leading to unequal achievement rates.

Unequal distribution of pupils

Data from a range of research studies as well as by official bodies in Member States indicate that, in general, minority groups and foreign nationals are overrepresented in primary and secondary education special schooling, while they are underrepresented in higher education. In addition, minority groups and foreign nationals are in general more likely to repeat classes and to drop-out from school early. Moreover, there are disparities in completion rates of vocational training.

Positive exceptions

However, there are also some exceptions to this general negative image. In some Member States certain minority groups perform better than the majority population. Moreover, **Germany** reported of a slightly positive trend as regards leaving certificates,³⁴⁶ and the **UK** reported that performance differentials between ethnic groups show signs of narrowing. Most ethnic groups have made more

³⁴⁵ Studies claim that the lack of adequate bilingual tuition has a negative impact on equality in education. See for example Danish Technological Institute (2005) *Explaining Student Performance*, p. 105, available at: http://www.danishtechnology.dk/_root/media/19176%5FFinal%20report%20web%20version.pdf (17.01.2006); W. P. Thomas, V. P. Collier (2001) *A National Study of School Effectiveness for Language Minority Students' Long-Term Academic Achievement*, available at: http://www.crede.org/research/llaa/1.1_final.html (14.03.2006); S. Krashen (1999) *Bilingual Education: Arguments For and (Bogus) Arguments Against*, University of Southern California, available at: <http://ourworld.compuserve.com/homepages/jwcrawford/Krashen3.htm> (14.03.2006).

³⁴⁶ The proportion of those non-Germans who leave school without any certificate has slowly, but continuously decreased (20.9% 1991/92; 18.1% 2003/04, 17.5% in 2005/06).

progress than White British pupils with similar characteristics and levels of prior attainment. Indian, Chinese, Irish, and White and Asian pupils consistently have higher levels of attainment than other ethnic groups across all the key stages.³⁴⁷ In contrast, Gypsy/Roma, Traveller of Irish Heritage, Black, Pakistani and Bangladeshi pupils consistently have lower levels of attainment than other ethnic groups across all the key stages.³⁴⁸

5.5. Social groups most vulnerable to racism and discrimination

Across the Member States, a number of different social, national, ethnic and religious groups are at risk of being directly or indirectly discriminated against. Particularly, but not only, children with a migrant background from (present or former) non-EU-countries as well as ethnic and language minorities are reported as being exposed to discriminatory practices and structures. In addition, religious minorities, particularly Muslims and Jews are subject to discriminatory treatment and/or Islamophobic or anti-Semitic insults. However, the groups most vulnerable in many of the Member States as regards discrimination in education are children of asylum seekers and undocumented migrants as well as Roma, Sinti and Travellers.

5.5.1. Asylum seekers

Despite laws granting the right to education, in practice, asylum seekers and undocumented migrants are in many Member States at risk of being excluded from education. Particularly problematic is the situation in those countries where asylum seekers have to live in detention camps and are not offered education at or nearby these camps. Severe problems also exist for children of undocumented migrants in countries where school authorities have to record the legal status of the child and report this information to state authorities. In **Denmark**, asylum seeking children often receive their education at special asylum schools at the asylum centres. Most of the teaching is conducted in Danish and only at one of the asylum centres children have so far been taught in their mother tongue. While asylum children are taught in maths, Danish and English and in other selected subjects, they are not taught all subjects foreseen in the curriculum as prescribed by the law.³⁴⁹

³⁴⁷ In the UK state education system, key stages set the educational knowledge expected of students at various ages.

³⁴⁸ <http://publications.teachernet.gov.uk/eOrderingDownload/DFES-0208-2006.pdf> (11.05.2007).

³⁴⁹ L. E. Schnabel (2006) 'Asylbørns skolegang på kant med loven', in: *Kristeligt Dagblad* (09.03.2006).

5.5.2. Roma, Sinti and Travellers

In the past year, the number of strategies and programmes for the education and integration of Roma children has further increased. At the same time, however, discriminatory policies and practices against Roma remained at a very high level in the EU. Roma, Sinti and Travellers are still confronted with unfit education systems that neglect cultural diversity and cause segregation and unequal opportunities.

Examples of discrimination of Roma

In **Bulgaria**, the report on *Human Rights in Bulgaria in 2005*, published by the Bulgarian Helsinki Committee in April 2006, notes that for the first time, not only in Bulgaria, but in all of Europe, a court found that there was segregation of Roma children in a school. The Sofia District Court ruled that School No. 103 in the Roma neighbourhood of Filipovtsi in Sofia, the pupils of which are exclusively Roma, was racially segregated in violation of the law, and that the parties responsible were the Minister of Education and Science and the municipal authorities. According to the claim, Roma children generally received an inferior quality of education. The government's appeal of the ruling was pending in 2006.³⁵⁰

The European Roma Rights Centre estimates that up to a half of Roma pupils in the **Czech Republic** attend schools designed for mentally handicapped children and children with special educational needs.³⁵¹ By the act effective from January 2005, the schools were changed to normal schools, however, the effect of this measure has not yet been evaluated. In **Ireland**, in one case before the Equality Tribunal in 2006, a mother was awarded 4,000 euros when it was found that the management of a special needs school did not provide education for her son because he was a Traveller.³⁵² In **Latvia**, since 2003, there have been eight segregated education facilities for Roma.³⁵³ In 2006, the two largest facilities have remained. In **Hungary**, despite significant governmental efforts to stop segregation, the practice is still prevalent, partly due to Roma classes, foreign language classes and partly as a symptom of inequality related to the high selectivity of the educational system as a whole.³⁵⁴ Other forms of educational segregation are special schools or classes for mentally slightly handicapped.

³⁵⁰ Bulgarian Helsinki Committee (2006) *Human Rights in Bulgaria in 2005*, p. 21.

³⁵¹ Conclusions of European Roma Rights Centre research (ERRC), available at: <http://www.diskriminace.cz/do-etnicka/> (12.06.2007).

³⁵² Nora Faulkner v St Ita's & St Joseph's School, Tralee (DEC-S2006-037), decision available at: <http://www.equalitytribunal.ie/index.asp?locID=110&docID=1271> (12.06.2007).

³⁵³ Latvian Centre for Human Rights and Ethnic Studies (2003) *The Situation of Roma*, p.24.

³⁵⁴ For detailed description of different practices that result in ethnic segregation see J. Zolnay (2006) 'Oktatás-politika és etnikai szegregáció Miskolc és Nyíregyháza általános iskoláiban', in: *Esély*, Vol. 17, No. 4, available at: <http://www.eokik.hu/publikaciok/MHT/MHT16.pdf> (02.10.2006).

The **Hungarian** organisation ‘Chance for Children Foundation’ (CFCF)³⁵⁵ successfully sued Miskolc city local authority for not complying with regulation on anti-discrimination and desegregation. CFCF provided evidence that Roma children receive significantly lower quality education than their non-Roma peers.³⁵⁶ However, despite the groundbreaking judgement of the Debrecen Court (see section 2.1.1), so far no changes have been made in the referred Miskolc schools. The 2006/2007 semester began in the same – segregating – organisational structure. CFCF has sued two other municipalities as well (Hajdúhadház and Kesznyéten) for their practice of segregating children in school.³⁵⁷

In **Romania**, according to a report produced by the Romanian *Liga Pro Europa*, in addition to indirect discrimination against particularly Roma minority students, there have also been cases of direct discrimination. The report also accuses school textbooks of creating and enforcing negative stereotypes about minorities.³⁵⁸ In **Slovakia**, the League of Human Rights Activists reported in 2006 cases of violating Romany children’s right to education dealing with unlawful treatment of Romany pupils by their teacher, segregated education of Romany pupils in one school and segregated catering of Romany pupils in one school.³⁵⁹

Positive developments and good practice against discrimination of Roma

In the course of pilot desegregation projects in **Bulgaria**, since the year 2000 more than 3,500 children of Roma origin were taken out of segregated schools and placed together with their non-Roma peers to study in mixed schools. In addition, the number of the Roma pupils in so-called subsidiary schools decreased. Twelve hundred children with special needs were integrated in the general schools, aided by 220 specially trained teachers. In addition, several NGO desegregation projects have been launched in the past years.³⁶⁰ While some of these projects faced various difficulties and opposition from local authorities, the relative success of projects laid the groundwork for the launch of similar desegregation projects in other towns.³⁶¹

355 <http://www.cfcf.org> (02.10.2006).

356 http://www.cfcf.hu/?nelement_id=3&article_id=31 (02.10.2006), see also Part 2.1.1. of this Report.

357 In May 2007 the court found that the local government of Hajdúhadház also violated the principle of equal opportunities, however the decision did not come into effect since the local government appealed against the decision. In case of Kesznyéten no decision had been made by that time.

358 Discriminarea rasială în județele Arad, Cluj, Harghita, Sibiu și Timiș, produced within the project ‘Minority Rights. Monitoring – Advocacy – Networking’, funded by Open Society Institute 2005 (manuscript).

359 Information provided to the NFP by the League of Human Rights Activists via e-mail (14.09.2006).

360 Ministry of Education (2006) *Informazia za osushtestvenite deinosti ot Ministerstvoto na obrazovaniето i naukata vuv vruzka s reshavane na obrazovatelните problemi na dezata i uchenizite ot etnicheskite malzinstva*, p.4.

361 According to the Bulgarian Helsinki Committee, out of 730 children involved in this project, only 125 dropped out from their new mixed schools, see: K. Kanev, E. Cohen, D. Simeonova (2006) *Five Years Later: The Non-Governmental Projects for Desegregation of Roma Education in Bulgaria*, Sofia: Bulgarian Helsinki Committee, pp. 55-56, available at: <http://www.bghelsinki.org/upload/resources/06desegregation.pdf> (05.05.2006).

In the **Czech Republic**, the government passed in 2006 the Implementation Plan of Roma Integration Concept 2006-2009 aiming to train social workers in Roma communities and to use more effectively assistant teacher positions.³⁶² Also in the Czech Republic, the project 'Re-Integration of Roma Pupils'³⁶³ aims at identifying Roma pupils who were inappropriately placed in special schools, and at creating a model of school success of Roma pupils. In **Greece**, the project 'Integration of Roma children into school' aims at enrolling and integrating Roma children into the school system, and will be implemented in 170 schools. The project provides for infrastructure, musical training and various entertainment activities, a web portal, as well as for elaboration of schoolbooks and educational material.³⁶⁴ In **Spain**, the 'Comprehensive Plan for the Roma Ethnic Group in Catalonia' has been publicly presented.³⁶⁵ Roma culture is to be included in educational programmes; Roma parents will receive training; Roma will get access to all educational levels and particularly to university; educational volunteers will assist Roma women, and Roma educational professionals will join schools. Also in Spain, a group of Roma youngsters called JOVES.COM have created a website (<http://www.chavorrillos.cat>) and produced a DVD,³⁶⁶ where they describe their concerns, expectations and problems as well as the situation of the Roma ethnic group. In **Ireland**, the Department of Education and Science published the results of a survey showing that there has been significant progress in Travellers access to and participation in primary and post primary education. Almost all Travellers attend primary school and there has been a three-fold increase in the number of students attending post primary schools in the past eight years. However, the survey reveals that only around 10 per cent of Travellers who enrol in post-primary schools complete their post-primary education.³⁶⁷ In **Latvia**, the draft National Action Plan 'Roma in Latvia' 2007-2009 includes development of professional training programmes for Roma teacher assistants.

In 2006, the **Latvian** Centre for Education Initiatives completed a project 'Roma in local community and school',³⁶⁸ which was the third in a series of projects. The objective of all projects was to include Roma children in mainstream classes through establishing local structures, such as the Roma Parent Support Centres, and training schoolteachers to work with Roma children. The projects covered 12 municipalities and claim to have integrated about 200 Roma children into mainstream classes over a three-year period.

362 <http://www.vlada.cz/scripts/detail.php?id=20252> (14.06.2007).

363 <http://www.sbscr.cz/> (12.06.2007).

364 Official Document of the University of Thessaly addressed to the NFP 'Antigone', prot.n.75/5.10.2006 and 2065/17.5.2006.

365 Generalitat de Catalunya, Departament de Benestar i Família (2006) *Pla Integral del Poble Gitano a Catalunya*, Barcelona, available at: http://www.gencat.net/benestar/pdf/poble_gitano.pdf (29.05.2006).

366 Joves.Com (2005) *Chavorrillos d'avui en dia*, Girona.

367 <http://www.education.ie/home/home.jsp?maincat=10861&pcategory=10861&ecategory=10876§ionpage=13637&language=EN&link=link001&page=1&doc=30944> (17.11.2006).

368 Centre for Education Initiatives, <http://www.iic.lv/en/projects/romainschool.html> (09.10.2006).

In **Lithuania**, there has been a noticeable increase of attendance of Roma children in primary and pre-school education in Kirtimai, the largest Roma settlement. In **Hungary**, strong governmental efforts are made to combat the placing of Roma children who have been unjustly labelled as 'mentally handicapped' in special classes or schools. In the framework of the programme 'From the last form' more than 10 per cent of the approximately 2,100 students who were re-examined were declared to be able to go back to normal classes.³⁶⁹ A large number of schools participate in the integration programme of the National Integration Network. In **Poland**, the numbers of Roma children taking advantage of extracurricular activities as well as the number of Roma education assistants and assistant teachers have increased.³⁷⁰ In **Romania**, the Ministry of Education and Research grants for the 2006/2007 school year 3,000 places per each ninth grade for Roma students who have completed eight grades. In universities 415 places have been granted for Roma ethnic candidates, which means 17 places more than in the previous academic year. Furthermore, 200 further Roma school mediators will be trained for 2007. The Roma Education Fund³⁷¹ supports the training of 50 Roma teachers, out of whom 10 will become teacher trainers themselves.³⁷²

In the PHARE project 'Access to education for disadvantaged groups', implemented by the **Romanian** Ministry of Education and Research in 15 counties,³⁷³ cases of segregation of the Roma children were identified in 37 schools, which is about one third of the schools included in the project. By September 2005, 33 initiatives of desegregation commenced, and another four schools began preparing for desegregation in September 2006. By May 2006, 22 of the above-mentioned schools had recorded significant progress in implementing desegregation measures.³⁷⁴

In **Slovenia**, the Regulations on Norms and Standards for the Performance of Elementary School Programmes³⁷⁵ include provisions for additional assistance for Roma children in the form of additional tutoring lessons. Also the number of pupils in classes with at least three Roma children is limited to 23 pupils, whereas classes with non-Roma children can include up to 28 children. In addition, the Ministry of Education and Sport subsidised meals for approximately 50 per

369 http://www.okm.gov.hu/letolt/reformok_az_oktatasban_2002_2006_07_fejezet_egyenlo_eselyekert.pdf (25.05.2007).

370 Poland/Ministry of Interior and Administration (2006) *Sprawozdanie z realizacji Programu na rzecz społeczności romskiej w Polsce w 2005 roku*, available at: <http://www.mswia.gov.pl/index.php?dzial=183&id=3957> (16.10.2006).

371 <http://www.romaeducationfund.org> (12.06.2007).

372 United Nations Development Programme, Regional Bureau for Europe and the Commonwealth of Independent States, Bratislava (2006) *At Risk: Roma and the Displaced in Southeast Europe*, especially pp. 29-41, available at: http://europeandcis.undp.org/?menu=p_cms/show&content_id=A3C29ADB-F203-1EE9-BB0A277C80C5F9F2 (20.08.2006).

373 Press release of the Delegation of the European Commission in Romania, available at: <http://www.edu.ro/index.php/articles/c486/> (25.07.2006).

374 Romania/Ministry of Education and Research (2006) *Acces la educație pentru grupuri dezavantajate, Desegregarea în educație*, Buletin informativ nr.3, WYG International Ltd.

375 Slovenia/SOP: 2005-01-3355 (09.08.2005).

cent of the Roma children enrolled in primary schools in 2005/2006.³⁷⁶ **Slovakia** continued in 2006 its 'Zero-grade classes' programme. Zero-grade classes have been used since 2002 as a tool for preparing Romany children for education in regular primary schools. Beginning with January 2006, each school that decides to open a zero-grade class is entitled to receive 170 per cent of funds it receives for regular pupils. The special primary school in Žiar nad Hronom is one of very few schools of its kind in Slovakia to apply alternative educational methods and principles of multicultural education. The project aims at applying an alternative educational method called Step by Step. Almost 95 per cent of children of this school continue to study at secondary vocational schools. In the **UK**, the Equality Commission for Northern Ireland utilised input from both parent and children Travellers in developing a strategy to improve the educational achievements of Traveller children.

5.6. Issues and debates concerning racism and discrimination in 2006

Of the recurring topics and debates related to discrimination or unequal opportunities in education, the issues of segregation, religious symbols and minority languages are perhaps the currently most pressing concerns in EU Member States.

5.6.1. The issue of segregation

A phenomenon that is prevalent in large parts of the EU is partial or even total segregation in education. Research studies have pointed to the fact that segregation produces and reproduces inequality. This is also true for highly differentiated education systems that lead to a high concentration of disadvantaged and/or discriminated pupils in the lowest educational tracks. Such highly differentiated education systems operate in countries like **Belgium**, the **Czech Republic**, **Germany**, **Luxembourg**, **Hungary**, the **Netherlands**, **Austria** and **Slovakia**.³⁷⁷ Another problem area regards special needs schools, where in many cases a high concentration of migrant pupils as well as of pupils with a Roma background can be found.

³⁷⁶ Government of the Republic of Slovenia, Office for Nationalities (2006) *Splošne informacije o romski etnični skupnosti v Republiki Sloveniji*, p.5, available at: <http://www.uem.gov.si/fileadmin/uem.gov.si/pageuploads/Izred-naGradivo3.pdf> (16.01.2007).

³⁷⁷ Danish Technological Institute (2005) *Explaining Student Performance*, available at: http://www.danishtechnology.dk/_root/media/19176%5FFinal%20report%20web%20version.pdf (17.01.2006).

Many Member States have become increasingly aware of the importance of providing forms of education that abolish segregation and enhance the opportunities of vulnerable groups. However, integrated education is still neither a common practice nor a common task in all Member States of the European Union.

5.6.2. The issue of religious symbols

The question of permitting or prohibiting the displaying of religious symbols in education has led to recurring debates and legislative measures in the past years. Current policies range from nationwide prohibition of displaying any religious symbol in public school to complete freedom of pupils and/or teachers to wearing any religious symbol.

In **Belgium**, the number of public secondary school institutions in Antwerp that have issued a ban on headcover wearing in schools has risen in 2006. Currently, 17 out of 19 public secondary school institutions have issued a ban. In **Germany**, in the federal state of Baden-Württemberg the ban on teachers wearing headscarves³⁷⁸ has been extended to educators in kindergartens that are run by public institutions.³⁷⁹

In **Bulgaria**, two girls from a Secondary School of Economics in the town of Smolian refused to wear the obligatory pupils' uniforms and insisted on wearing Islamic headscarves in school. With the intermediary of an NGO they submitted a complaint with the school's director. The two students asked for permission to wear the Islamic headscarves in school.³⁸⁰ In its decision, the Commission for Protection from Discrimination rejected the complaint stating that the ban of wearing headscarves in those schools that have officially introduced obligatory uniforms for all pupils does not constitute a case of discrimination. Furthermore, the commission found that wearing headscarves is a violation of the rules of such a school and therefore allowing individual pupils to wear headscarves is indeed a case of direct discrimination towards the majority of pupils who comply with the obligatory uniform.

In **Ireland**, female Muslim medical students approached the National Consultative Commission on Racism and Interculturalism (NCCRI) to report not being allowed by their college to wear headscarves in theatre. The NCCRI mediated on the issue with the college and recommended purchasing theatre headscarves as

378 The administrative court in Stuttgart decided in July 2006 though that the school authority cannot ban Muslim teachers from wearing a headscarf in class while nuns are allowed to wear their habits as is the case in Baden-Württemberg – see Section 3.7.1. However, on 28.02.2007, the Higher Administrative Court of Baden-Württemberg allowed an appeal of the federal state Baden-Württemberg against the ruling of the administrative court in Stuttgart. Press release of the Higher Administrative Court of Baden-Württemberg (06.03.2007), available at: <http://www.vghmannheim.de/servlet/PB/menu/1205757/index.html?ROOT=1153033> (26.05.2007).

379 Baden-Württemberg/Gesetz zur Änderung des Kindergartengesetzes (02.02.2006).

380 <http://www.vsekiden.com/news.php?topic=1&id=14101> (02.8.2006).

used in other countries. The college purchased theatre headscarves and the issue was resolved. In the **Netherlands**, the Equal Treatment Commission dealt with a case concerning the way in which two professional training schools acted after receiving indications of indirect discrimination by host schools that were accused of refusing to admit wearing headscarves, veils and other expressions of religion. The Commission decided that despite their efforts, the professional schools

had taken too little effort to guarantee their students an education environment free of discrimination.³⁸¹

In **France**, the wearing of symbols or clothes by which students ostensibly manifest a religious belief is banned in state schools.³⁸² The Minister of Education made public in February 2006 a report relating to the application of the law on the wearing of religious symbols in state schools.³⁸³ The report makes a positive assessment of the law: for the school year September 2004-June 2005, the Ministry of National Education listed cases relating to 639 religious emblems (two large crosses, 11 Sikh turbans, 626 Islamic headscarves), by 50 per cent fewer than the previous year. The majority of the pupils (496) agreed to withdraw their religious symbol. Among the 143 refusals, 47 led to final exclusion from the school by a decision of the disciplinary board (44 for the wearing of Islamic headscarves and three for Sikh turbans) and 96 pupils decided voluntary to leave the state school, to be registered in private schools or follow courses by correspondence. Regarding the following academic year, 2005/2006, in September 2006, the Ministry of National Education listed only 12 cases of pupils wearing religious symbols, and in October only three cases remained problematic.

5.6.3. The issue of minority languages

Policies on minority languages are an important issue in many Member States. Even in those countries where legislation guarantees minority rights, minority pupils often face problems making use of their rights.

In **Germany**, an order of the City Council of Dietzenbach (Hessen) decreed German to be the one and only common language in the 12 city nursery schools.³⁸⁴ The order has provoked criticism by migrant organisations and the teachers' trade union.³⁸⁵ In **Estonia**, national authorities continued preparation

381 CGB judgement 2005-91.

382 Law France 2004-228 (15-03-2004) encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics, <http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=MENX0400001L> (12.06.2007).

383 H. Chérifi (2005) *Application de la loi du 15 mars 2004 sur le port des signes religieux ostensibles dans les établissements d'enseignement publics*, Paris: La documentation française, available at: <http://www.ladocumentation-francaise.fr/rapports-publics/064000177/index.shtml> (12.06.2007).

384 Press Release, Stadt Dietzenbach (06.12.2006) *Integration in den Kindertagesstätten (PM 290-2006)*, available at: <http://www.dietzenbach.de/> (05.01.2006).

385 Press Release, Gewerkschaft Erziehung und Wissenschaft GEW (11.10.2006), available at: http://www.gew.de/Deutschpflicht_in_Kindergaerten.html (05.01.2006).

of transition of Russian upper secondary schools to Estonian as main language of instruction. In early 2006, a head of the Department of National Minorities' Education of the Ministry of Education and Research visited 52 Russian medium upper secondary schools (out of 63). She found that 32 schools were well prepared for the transition, eight schools were partly prepared and 12 schools were not prepared.³⁸⁶ In **Latvia**, implementation of transition to Latvian as the main language of instruction at secondary schools continued in 2006. Some experts highlighted a lack of preparation by schools.³⁸⁷

In **Lithuania**, some pupils protested against the municipal decision³⁸⁸ to reduce the number of schools with instruction in Russian and to change their status from secondary to basic or primary schools.³⁸⁹ In August 2006, the Representative of the government of the Republic of Lithuania in Klaipėda County initiated a case on the basis of the violation of the Law on Public Administration and Law on Education with regard to Pajūrys and Santarvė secondary schools' ability to retain the eleventh grades.³⁹⁰ The case is pending. All decisions of the Klaipėda municipality regarding school network reorganisation have been suspended.³⁹¹

In **Finland**, the situation of the Roma, the Sámi and the Russian-speakers is deemed to be problematic with regard to provision of mother-tongue teaching. There is also concern with regard to the provision of Finnish as a second language to non-native Finnish speakers. A survey of the National Board of Education and the Ministry of Education found that a lack of resources, teachers and teaching material is characteristic for language teaching.³⁹² From the beginning of 2006, Finnish municipalities have been provided with additional state support concerning pupils with minority language background.

386 Ц. Лауд (2006) 'О подготовке к переходу гимназий с русским языком обучения на частичное преподавание предметов на эстонском языке. Реализация – Программа деятельности до 2010 года (стенограмма)', in: Образование на русском языке в Эстонии: необходимость и возможности. Сборник материалов республиканской конференции 19 мая 2006 года, Tallinn: Integratio, p. 11.

387 Open Society Institute (2002) 'Monitoring the EU Accession Process: Minority Protection in Latvia', in: Open Society Institute *Monitoring the EU Accession Process. Minority Protection*, Volume I, p. 325.

388 By a decision of Klaipėda City Municipality, several schools with instruction in Russian would not be able to have an eleventh grade, therefore their status will change to basic or primary (ten grade schools). This decision is available in Lithuanian on Klaipėda City Municipality's official website: <http://www.klaipeda.lt/stotisFiles/uploadedAttachments/dalis120047313524.doc> (09.10.2006).

389 www.DELFI.lt (2006) *Piketavę rusai pasipuošė nacionalbolševikų simbolika*, DELFI (19.08.2006), available at: <http://www.delfi.lt/archive/article.php?id=10411133> (11.10.2006).

390 Since a basic education level foresees ten years of studies, having an eleventh grade means a secondary level of education.

391 A. Gližarienė (2006) *Klaipėdos mokyklų kova persikėlė į teismą*, DELFI (31.09.2006), available at: <http://www.delfi.lt/archive/article.php?id=10549038> (11.10.2006).

392 National Board of Education (2005) *Perusopetuksen loppuvaiheessa Suomeen tulleiden maahanmuuttajanuorten opetuksen järjestäminen*, available at: <http://www.edu.fi/pageLast.asp?path=498,526,7008,52893> (16.10.2006).

5.7. Good practices

In 2006, a range of measures have been implemented by governmental institutions and civil society organisations in Member States in order to improve the situation of migrants and minorities in the education sector. However, the impact of policies and measures is in many cases limited because they are not accompanied by improvements of the education system as a whole. In addition, many government programmes contain only very general guidelines and are only marginally translated into concrete long-term initiatives. Moreover, many programmes suffer from lack of adequate funding and in many cases there is no evaluation of effectiveness and impact of measures. Finally, there were cases where attempts to introduce measures based on affirmative action were blocked by anti-discrimination legislation.

5.7.1. Programmes for awareness raising

In **Germany**, the 'Coloured Glasses' project attempts to provide pupils and teachers of all school types with the idea of 'changing their perspective'. Workshop modules focused on different topics in the field of intercultural education: stereotypes and prejudices, ethnocentrism, mechanisms of discrimination, and reflections about the meaning of culture.³⁹³

5.7.2. Programmes for the support of migrant and minority pupils

In **Belgium**, the Social Work division of the Antwerp Bachelor School started in 2002 a project targeting the low enrolment and success rates of migrant students. A community worker of foreign ethnic origin functioning as a role model for the students and a mediator between the students and the teaching staff was hired to this end. The impact of this project is now visible in quantitative terms. The success rates of migrant students have considerably increased.

In the **Czech Republic**, the project 'Rozlety' (Flights Away)³⁹⁴ aims at supporting children of vulnerable groups before entering secondary school through language and support classes, preparation for high school as well as help with choice of a high school. In **Denmark**, in the municipality of Vejle a new coaching programme was started at three schools. The coaching approach is considered to

³⁹³ <http://www.toleranzworkshops.de/de/home.html> (16.02.2007).

³⁹⁴ <http://romove.radio.cz/cz/clanek/21141> (12.06.2007).

be very successful.³⁹⁵ Also public libraries offer coaching for school children in the afternoon. In **Cyprus**, refugees are to be provided Greek language lessons free of charge through the Training Centres of the Ministry of Education and Culture. In **Luxembourg**, the system of compensation, '*les critères de promotion*',³⁹⁶ has been modified and has already produced a significant decrease of repeating classes.³⁹⁷ In the **UK**, a strategy was adopted in January 2006 to enable schools and Local Education Authorities to raise the attainment of Black and Minority Ethnic (BME) pupils. The strategy involved consultation via a conference for BME parents, and developing positive action to recruit more BME teachers and governors, as well as working with supplementary schools.³⁹⁸

Improvement of school curricula and teaching material

In several Member States – for example, **Belgium**, **Ireland** and **Italy** – cultural diversity is being more firmly accommodated within school curricula.

The Inter Project³⁹⁹ is the result of a partnership between **Spain**, Colombia, the **Czech Republic**, **Lithuania** and Norway. Its main objective is to improve education and contribute towards innovation in schools via an intercultural approach, reflecting upon cultural diversity and promoting instruments for basic and continuous training of teachers. Amongst the diverse activities of the project, a guide was prepared on intercultural education.

In **Hungary**, the Ministry of Education introduced a Guide Book to the Application of Intercultural Pedagogic Programmes.⁴⁰⁰ In **Poland**, the project 'Multiculturalism on an Everyday Basis – material for teachers' was implemented in 2006 by the Villa Decius Association in cooperation with the ZNAK Christian Culture Foundation and the British Council. It is primarily directed at teachers from smaller cities and towns where various minorities reside. The **Swedish** National Agency for Education has examined Swedish education textbooks.⁴⁰¹ Though it is stated in the Swedish curriculum that pupils ought to be educated about the minority groups in Sweden, the textbooks nevertheless contain little information. There is disproportionate attention given to certain minority groups while other groups are not dealt with at all.

395 H. Mørch, J. Jensen (2005) *Evaluering af lektiecafeen på Nørremarksskolen*, Videncenter for Integration.

396 Allowing students with results under the average (failure) for certain areas to compensate with positive results (success) in other areas and so to be entitled to reach the next class.

397 According to officials, data are not yet available.

398 http://www.bristol-cyps.org.uk/services/pdf/eit_supp_schools_newsletter1.pdf (12.06.2007).

399 Developed within the Socrates-Comenius Programme 2.1 Inter Project, No. 106223 – CP-1-2002-1. Training of School Education Staff, available at: <http://inter.up.pt/> (10/10/2006).

400 Oktatási Minisztérium (2006) *Útmutató az interkulturális pedagógiai program iskolai bevezetéséhez és alkalmazásához*, Budapest: Oktatási Minisztérium, available at: http://www.okm.gov.hu/doc/upload/200506/interkulturális_pedagogiai_program.pdf (02.10.2006).

401 The Swedish National Agency for Education (2006) *I enlighet med skolans värdegrund?*, available at: <http://www.skolverket.se> (12.06.2007).

Teacher-training programmes

In **Bulgaria**, over 2,000 teachers have undergone various forms of training for work with Roma children for their adaptation in an ethnically mixed environment. In **Denmark**, Ellsinore municipality is one among several giving priority to in-service training of teachers in Danish as a second language. Ellsinore will conduct workshops for other municipalities to stimulate more programmes. In **Latvia**, a series of five regional seminars for teachers on 'How to Teach Diversity' was held during 2006.⁴⁰² Seminars provided information on various cultures, possibilities for introducing diversity aspects in the curriculum and become diversity trainers at their schools. In total, about 120 teachers attended six seminars. In **Malta**, in-service courses with specific emphasis on human rights have been organised for Social Studies teachers. In **Finland**, a new website for teachers provides information on multiculturalism and integration.⁴⁰³

Members of vulnerable groups as teachers

In the Flemish Community in **Belgium**, an NGO has been running a campaign to increase the participation of people of foreign origin as teachers. In several Member States there are schemes for minority assistant teachers. In **Finland**, an increasing number of Finnish residents with foreign backgrounds are being trained as teachers. The University of Helsinki has been doubling the quota for new students to be taken into the multicultural class teacher training programme in 2007.⁴⁰⁴

Support and involvement of parents

In **Germany**, the federal state of Berlin supports projects for parents with a migrant background. Among these projects are parents' cafes, training of parents and the education of parent advisors.⁴⁰⁵ In **Latvia**, the NGO 'Citizenship. Education.Culture.' implemented a project on the participation of parents in official educational processes.⁴⁰⁶ In the **UK**, the Scottish Executive Education Department (SEED) published a Race Equality Impact Assessment on 'Promoting Better Parental

402 Summary of the project at: <http://www.integracija.gov.lv/index.php?id=785&sadala=193> (09.10.2006).

403 The website is a joint production of the Mannerheim League for Child Welfare, the Finnish League for Human Rights, the home tree project of the Family Federation and the Multicultural Women's Association. Funding is obtained from the Finnish Slot Machine Association and the European Refugee Fund. Information available at: <http://www.ahaa-avaimia.fi/> (16.10.2006).

404 'More immigrants studying to become teachers in Finland', in: *Helsingin Sanomat* (20.11.2006), available in English at: <http://www.hs.fi/english/article/More+immigrants+studying+to+become+teachers+in+Finland/1135223109937> (19.01.2007).

405 Press-release of the Berlin Senatsverwaltung für Gesundheit, Soziales und Verbraucherschutz (22.05.2006), available at: <http://www.berlin.de/landespressestelle/archiv/2006/05/22/40517/index.html> (26.05.2007).

406 Information about the project available at <http://www.organika.lv/ksp/gp/school-democracy-parents-lv.doc> (09.10.2006).

Involvement in Education Policy'.⁴⁰⁷ The aim is to improve parental involvement in education, covering three aspects: (1) helping parents to support their own child's learning at home; (2) strengthening the links between parents and schools; (3) parental representation through Parent Forums and Parent Councils.

Financial aid programmes for schools in disadvantaged areas

In **Cyprus**, so-called Educational Priority Zones (EPZ) have been established.⁴⁰⁸ There are currently three EPZ in operation, located in areas with increased numbers of immigrants, covering 17 school units. During the pilot implementation of the EPZs plan, the following measures have been taken: (1) reduction of the number of children per classroom; (2) employment of teachers speaking the mother tongue of foreign language speaking pupils; (3) offer of free meals to Turkish-speaking pupils of the all-day school; (4) two educationalists in each EPZ as coordinators; (5) all-day functioning of the schools covered by EPZs. In **Slovakia**, in 2006, the formula for financing primary schools was changed: for each individually integrated pupil, primary schools are now entitled to receive 250 per cent of funds they receive for regular pupils.

Recent activities in the field of Holocaust education

Of 27 Member States, 18 have so far joined the Task Force for International Cooperation on Holocaust Education. Only **Bulgaria, Cyprus, Estonia, Spain, Ireland, Malta, Portugal, Slovenia**, and **Finland** have so far not become member of the Task Force.

In **Ireland**, the Holocaust Educational Trust of Ireland (HETI) was established in 2005 and aims to educate and inform about the Holocaust. In **Austria**, 'A letter to the stars' is the name of a school project addressing the Holocaust since 2003.⁴⁰⁹ Once a year, activities prepared by teachers and pupils culminate in a big public event. In May 2006, victims of National Socialism were remembered when almost 80,000 white roses bearing tags with the victims' names were placed in front of the houses where the victims had lived before their deportation. The **Romanian** Ministry of Education and Research made available on its website a guidebook⁴¹⁰ for teachers who wish to teach about the Holocaust. In the **UK**, the research project 'Never Again!: Does Holocaust education have an effect on pupils' citizenship values and attitudes?' sets out to examine whether teaching the Holocaust in the upper primary

407 <http://www.scotland.gov.uk/Resource/Doc/143665/0036493.pdf> (12.06.2007).

408 Cyprus/Ministry of Labour and Social Insurance (2006) *National Report on Strategies for Social Protection and Social Inclusion 2006-2008*.

409 <http://www.lettertothestars.at> (10.10.2006).

410 http://www.edu.ro/index.php/met_rep_reg_ins_etc/4782 (24.09.2006).

classes has an impact, both immediate and longer term, on pupils' citizenship values and attitudes (and particularly those values and attitudes relating to various minority or disadvantaged groups in Scotland). The main findings indicated that on the whole, the pupils who had studied the Holocaust tended to have more positive values and attitudes than those who did not; and, that there was a notable improvement in values and attitudes immediately after the lessons on the Holocaust, which was still evident after 10 months (though these were not universal findings).⁴¹¹

⁴¹¹ <http://www.scotland.gov.uk/Resource/Doc/147037/0038530.pdf> (13.06.2007).

6. Racist violence and crime

Antwerp, **Belgium**: On 11 May 2006 an 18 year old man was shot and arrested by police after he'd shot three victims. A Malian au-pair and a two year old white child were killed, and a Turkish woman severely wounded. The perpetrator confessed that he'd intentionally targeted 'coloured' people, and that the death of the white two year old was an 'accident'. On 26 May around 20,000 people took part in a march against racism in Antwerp under the banner 'Stop Racism: Diversity is Reality'.

Evidence of racist violence and crime is perhaps the most direct indicator there is that vulnerable groups in society experience discrimination.

Racist crime can range from anything from incitement to racial hatred through to murder, and the threat of it serves to instil feelings of insecurity among vulnerable groups in European societies. If racist crime is allowed to go unchecked – that is, if criminal justice agencies do not appear to tackle the problem effectively (police, prosecution, courts) – then the message this promotes is that vulnerable communities are not protected by the State and that offenders go unpunished.

Bearing this in mind, this chapter sets out to provide information on the extent and nature of racist violence and crime, and criminal justice responses to it, in the EU's 27 Member States in 2006 (and in 2005 where more recent data is unavailable), and looks at this data in the context of trends in racist crime.

Although it is apparent from NFP reports that 'good practices' in combating racist violence and crime are either on-going or emerging in some Member States, it is also clear that significant improvements need to be made with respect to how criminal justice agencies respond to the problem. In particular, as previous EUMC Annual Reports have highlighted, and which will be the focus of this chapter, it remains the case that: (1) there is an absence of comprehensive criminal justice data collection on racist crime in most Member States that is able to inform policy responses to the problem; and (2) there are continuing disturbing reports of violence and malpractice against vulnerable minorities by agents of the State; namely – police, immigration and border control personnel.

6.1. Official criminal justice data on racist violence and crime

As a reflection of different laws, different criminal justice traditions and procedures, and the importance that is assigned to data collection as a tool for informing policy, each EU Member State collects data on crime differently. This includes data collection in the area of racist violence and crime. Although initial

efforts are underway to improve data collection and work towards harmonisation in the area of crime statistics across the EU,⁴¹² this goal is still some way off. As Table 6.1 illustrates only too clearly, direct comparison of official criminal justice data on racist violence and other crimes is currently impossible between Member States as what is counted, how it is counted, and how it is reported differs significantly between countries.

Table 6.1: Data on racist violence/crime, and related activities, reported by official criminal justice sources at national level in the EU-27 for the years 2005 and 2006⁴¹³

MEMBER STATE	Official National Data Source	Readily Available Data – 2005 and 2006
Bulgaria	Supreme Prosecution Office	2006 – 3 pre-trial proceedings instigated for incitement of racial or national hostility, hatred or racial discrimination DATA AVAILABLE ONLY ON REQUEST
Belgium	Belgian Federal Police	2005 – 1,264 offences under the 1981 Anti-Racism law and the 1995 Negationism Law DATA AVAILABLE ONLY ON REQUEST 2006 – no data update as of 02/2007
Czech Republic	Ministry of Interior	2005 – 253 crimes recorded with extremist background, and/or motivated by racial, national or other social hatred 2006 – 248 crimes recorded (as above)
Denmark	Police PET (Civil Security Service)	2005 – 85 criminal incidents with suspected racial/religious motive 2006 – no data update as of 02/2007
Germany	Federal Ministry of Interior	2005 – 15,914 crimes registered under general heading ‘politically motivated – right wing’ 2006 – 18,142 crimes registered under general heading ‘politically motivated – right wing’
Estonia	Police Board	2005 – 10 offences reported under legal articles relating to incitement of social hatred, violation of equality or violation of freedom of religion 2006 – 0 offences (as above)
	Security Police	2005 – 2 investigations re incitement of social hatred 2006 – 1 investigation (as above)
Greece		NO data available

⁴¹² Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on ‘Developing a comprehensive and coherent EU strategy to measure crime and criminal justice: An EU Action Plan 2006-2010’ – COM (2006) 437 final; also Commission decision of 7 August 2006 ‘setting up a group of experts on the policy needs for data on crime and criminal justice’ (2006/581/EC).

⁴¹³ Note – direct comparisons between Member States of absolute figures should not be undertaken because of different data collection procedures.

Spain		NO data available
France	Ministry of the Interior	2005 – 979 racist, xenophobic and anti-Semitic acts and threats reported 2006 – 885 racist, xenophobic and anti-Semitic acts and threats reported
Ireland	Police – Annual Report	2005 – 94 racially motivated crimes reported (84 in 2004; note, in comparison, the Police's 2006 Policing Plan records 67 racially motivated crimes reported in 2004). 2006 – no data update as of 02/2007
Italy		NO data available
Cyprus		NO data available
Latvia	State Security Police Ministry of Interior	2005 – 13 criminal cases initiated for incitement to ethnic and racial hatred 2006 – 14 criminal cases initiated for incitement to ethnic and racial hatred 2006 – 9 criminal cases initiated
Lithuania	Ministry of Interior, Centre for Crime Prevention and National Courts Administration	2005 – 2 crimes registered relating to incitement to national, racial, ethnic or religious hatred; 2 crimes disturbance religious ceremony; 1 crime keeping or disseminating 'hate' material 2006 – 17 crimes registered relating to incitement to national, racial, ethnic or religious hatred
Luxembourg	Ministry of Justice	2005 – 9 complaints to police re racial discrimination, broken down into offence categories 2006 – 14 complaints to police re racial discrimination
Hungary	Chief Prosecutor's Office	2005 – 11 cases identified re violence against a 'member of a national, ethnic, racial or religious group' or 'incitement against a community' 2006 – 13 cases identified (as above)
Malta	Police	2005 – NO data available 2006 – 3 offences recorded by police re incitement to racial hatred
Netherlands	National Discrimination Expertise Centre (LECD) – part of Public Prosecution Service	2005 – 241 cases of criminal discrimination registered, which might include some incidents of racist violence and crime 2006 – no data update as of 02/2007
Austria	Ministry of Interior	2005 – 406 complaints against individuals related to a range of prohibited racist/xenophobic acts 2005 – 209 incidents recorded with extremist right-wing, xenophobic or anti-Semitic motivation. (Note – incidents can contain several complaints/offences).
Poland	Police Headquarters Office, 'Temida' general police & public prosecutor statistical computer service	2005 – 172 'racist' crimes reported under different legal articles 2006 – no data update as of 02/2007

Portugal		NO data available
Romania	Police	2005 – 1,261 cases of ‘abuse in the exercise of authority against rights of the person’ (but includes gender as well as other grounds for discrimination)
	Superior Council of Magistrates	2005 – 1 person on trial re nationalist/xenophobic propaganda; 2 people on trial re prohibition of organisations and symbols having fascist, racist, or xenophobic nature; 49 people on trial re abuse in the exercise of authority against rights or interests of the person
Slovenia	Police	2005 – 8 cases investigated concerning alleged violation of prohibition of incitement to ethnic, racial or religious hate, discord or intolerance; 5 criminal charges filed 2006 – 13 cases investigated concerning alleged violation of prohibition of incitement to ethnic, racial or religious hate, discord or intolerance
Slovakia	Police	2005 – 121 racially motivated crimes registered 2006 – 188 criminal offences registered motivated by racial, ethnic or other intolerance
Finland	Police	2005 – 669 incidents of racist crime reported to police
Sweden	Swedish Security Police	2005 – 2,383 reported incidents with xenophobic or anti-Semitic motive
UK	England and Wales Police data	April 2004-March 2005 – 57,902 racist incidents recorded April 2004-March 2005 – 37,028 racially or religiously aggravated offences recorded
	England and Wales Crown Prosecution Service data	April 2004-March 2005 – 5,788 defendant cases received and 4,660 prosecuted for racist incidents; 43 defendants prosecuted for religiously aggravated offences April 2005-March 2006 – 7,430 defendant cases received and 6,123 prosecuted for racist incidents; 41 defendants prosecuted for religiously aggravated incidents
	Scotland	April 2004-March 2005 – 3,856 racially aggravated offences recorded April 2005-March 2006 – 4,294 racially aggravated offences recorded
	Northern Ireland, Police Service NI	April 2004-March 2005 – 813 racist incidents recorded; 634 racist crimes recorded April 2005-March 2006 – 936 racist incidents recorded; 746 racist crimes recorded; 70 faith/religion incidents recorded; 78 faith/religion crimes recorded; 1,701 sectarian incidents recorded; 1,470 sectarian crimes recorded

Table 6.1 does not paint an accurate picture of the actual extent of racist violence and crime across the EU-27. If this were the case we could wrongly assume that just under a fifth of Member States, which did not report national criminal justice data either in 2005 or 2006, have no problem with racist violence and crime. At the same time we might uncritically interpret the data to assume that those countries with the highest figures experience the greatest problems. While high figures do indicate that a problem exists with racist violence and crime, they also indicate that a State is responding seriously to the problem by recording its existence and making this information available in the public domain for use by state agencies and civil society.

As an illustration of the potential for official criminal justice sources to undercount the extent of racist violence and crime, the recently published European Crime and Safety Survey (2007),⁴¹⁴ which, in 2005, surveyed a representative sample of the majority population in the 'old' EU-15 and three new Member States, contains the results for one question on respondents' experiences of 'hate crime'.⁴¹⁵ Taking only those respondents who identified themselves, their parents or their household as having an immigrant background, and who indicated that they or a member of their immediate family were the victim of hate crime in the last year, the survey results can be used to calculate the proportion of immigrant respondents in each Member State who state they are victims of hate crime.

The survey results show that **Greece, Italy, Spain and Portugal**, which provided no official criminal justice data on racist violence and crime for 2005 or 2006 (Table 6.1), are experiencing some level of 'hate crime'. For example, of those respondents with an identifiable immigrant background, 14.5 per cent in Spain and 16.4 per cent in Greece experienced hate crime in a 12 month period. Looking just at the survey results for the 'old' EU-15, on average 9.9 per cent of respondents with an immigrant background indicated that they or a member of their immediate family were the victim of hate crime in a 12 month period. While these results must be interpreted cautiously, as they are based on low respondent rates and include 'sexual orientation' under 'hate crime', what they clearly hint at, when we look at the figures in Table 6.1, is the extent to which criminal justice sources might be dramatically undercounting the extent of racist violence and crime in the EU.

6.1.1. Quality of official criminal justice data collection

As stressed in previous EUMC Annual Reports – what we know about the extent and nature of racist violence and crime from official criminal justice sources is dependent on the quality of existing data collection mechanisms in

414 <http://www.gallup-europe.be/euics/Xz38/default.htm> (13.06.2007).

415 The 'hate crime' question asked of respondents in the EU ICS was: 'In the past five years, did you, or any member of your immediate family, fall victim of a crime because or partly because of your nationality, race or colour, religious belief or sexual orientation?'

Member States. The quality of each data collection mechanism is determined by a number of inter-related factors; namely:

- Are the public encouraged to report racist violence and crime to the police?
- Are the police trained and encouraged to systematically record all potentially 'racist' incidents reported to them, and do categories exist in police data entry files that allow for accurate recording of these incidents?
- Do the police systematically pass on information about potentially racist incidents to prosecutors, and is this information accurately recorded at each stage of the criminal justice process from prosecution through to sentencing?

The police can be described as 'gatekeepers' who filter information about potentially racist incidents to the prosecution service and examining magistrates in Member States. In other words, the prosecution is not in a position to identify and pursue cases as 'racist' if the police do not forward relevant case details. For example, in **Finland** the police have developed a five-fold system for classifying racist motivation that encourages accurate recording of criminal incidents, which is passed on to the prosecution service for assessment. In comparison, many Member States do not have an established system for the police to systematically identify and record crime as potentially 'racist'. Hence, few cases, with the exception of very serious ones and those that have received public and media attention, are brought to the attention of the prosecution and make it to court (see Table 6.1).

Based on the figures in Table 6.1, this Annual Report, like previous ones, is able to make the following statement as a stark illustration of the huge disparity in the volume and quality of data collection on racist violence and crime between Member States:

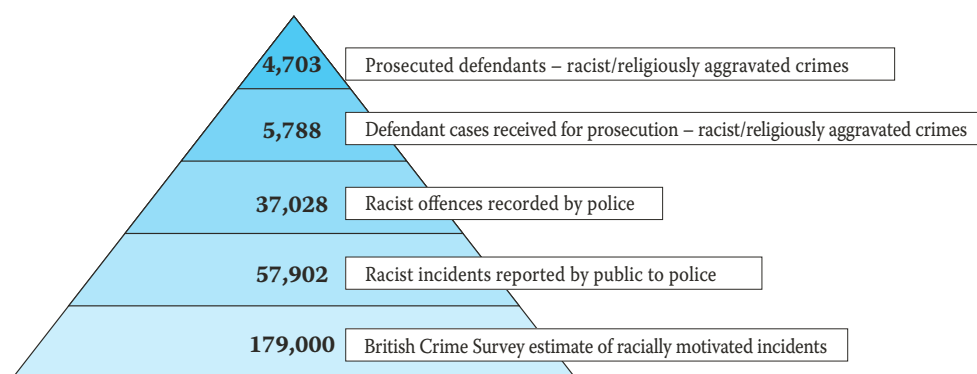
The **UK** has the most comprehensive mechanism in place for data collection on racist violence and crime in the EU. As a reflection of this, in a 12 month period the UK collects and processes more reports of racist crime than the other 26 EU Member States combined.

What is clear from the example of the **UK** (including England and Wales, Scotland and Northern Ireland) is that a basis exists for generously recording and passing on information about incidents of racist violence and crime at successive stages of the criminal justice system. Central to this is a working criminal justice definition of a 'racist incident',⁴¹⁶ which puts the victim's initial interpretation of an incident centre-stage. Hence, the system in England and Wales records publicly reported 'racist' incidents before they go on to become classified as racially or

⁴¹⁶ A racist incident is 'any incident which is perceived to be racist by the victim or any other person'. This definition was adopted in 1999 in the light of a public inquiry into a mismanaged police investigation into the murder of Afro-Caribbean teenager Stephen Lawrence, who was murdered in south London in 1993; see for definition: W. Macpherson (1999) *The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny* (Cm 4262), London: The Stationary Office, chapter 47, paragraph 1.

religiously aggravated offences by the police. As a result we are able to look at the '*attrition rate*' between the number of incidents thought to be racist by the public through to the number of cases finally prosecuted by the State. If we include estimates of racist crime from the British Crime Survey, then a picture emerges of how few cases make it to court and are successfully prosecuted – see Figure 6.1 below.

Figure 6.1:
England and Wales – The attrition rate for 'racist' crime:
from British Crime Survey estimates through to prosecuted defendants



Source: Home Office data (British Crime Survey, police, Crown Prosecution Service), England and Wales, April 2004-March 2005

In comparison with the UK, most other Member States' data collection systems are limited to statistics on crimes qualified under certain legal articles, at the point at which they are processed through the court system. These systems do not provide an insight into how effectively the State is responding to the problem of racist crime, apart from informing on how the courts dispose of specific cases (for example, **Poland** and **Romania** have good data collection on case disposals). However, we can assume that the same attrition pattern occurs in other Member States between the number of actual incidents and final prosecutions.

On the basis of up-dated information supplied by NFPs, Member States can be broadly categorised under one of the following four headings with respect to the quality of their criminal justice data collection mechanisms on racist violence and crime (in 2005-2006). This means that they are assessed on the extent and nature of the data they collect, and the degree to which it is readily accessible in the public domain (see FRA's online InfoBase for more information about data collection mechanisms' classification).⁴¹⁷

⁴¹⁷ <http://infobase.fra.europa.eu> (13.06.2007).

Table 6.2: Quality of official criminal justice data collection mechanisms on racist crime/violence in EU-27 – 2005/2006

No official data available	Limited	Good	Comprehensive
No official data publicly available at national level 2005/2006	Limited reporting on handful of investigations and court cases, and/or focus on general discrimination	A good system exists to register crimes, and/or system focuses on right-wing extremism and/or anti-Semitism	Extensive data collection, with detail about victim characteristics, place of victimisation etc.
Greece Spain Italy Cyprus Portugal	Bulgaria Estonia Latvia Lithuania Luxembourg Hungary Malta Netherlands Romania Slovenia	Belgium Czech Republic Denmark Germany France Ireland Austria Poland Slovakia Sweden	Finland UK

Looking at Table 6.2, it appears that patterns in data collection practices reported in earlier EUMC Annual Reports are generally replicated with respect to data collected in 2006 (or 2005 where 2006 data is not yet available). At the same time, some Member States have been reclassified from previous years in the light of updated information about their data collection and what it encompasses:

Five Member States – **Cyprus, Greece, Italy, Portugal and Spain** – have no publicly available official criminal justice data on racist violence and crime, and related offences, at the national level in 2005/2006. While, in 2004, Portugal's police did register four cases relating to racial or religious discrimination, it remains the case that this Member State's data collection on racist violence and crime, like the other Member States in this category, is generally under-developed and under-utilised.

Some Member States – such as the **Netherlands** and **Romania** – are categorised as having limited data collection because they collect information on racist discrimination, but do not distinguish clearly between acts of racist violence and crime and other discriminatory offences. For example, in Romania the police record cases of 'abuse in the exercise of authority against the rights of the person', which includes a number of grounds for discrimination.⁴¹⁸

Other Member States are also categorised as having limited data collection because they only report on a handful of court cases related to specific offence categories; namely: **Estonia, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Romania and Slovenia**.

⁴¹⁸ It can be noted that Italy's National Institute of Statistics (ISTAT), which at the time of writing has no data available for either 2005 or 2006, makes data publicly available on 'racial discrimination cases', but with no breakdown available on the nature of these crimes.

In comparison, a number of Member States are categorised as having good data collection mechanisms because they register a range of racist crimes. For example, within this category, Member States such as **Austria**, **Germany**, and **Sweden** have developed mechanisms for data collection that are specialised in recording extremist right-wing activities. **Austria**, **Germany** and **Sweden**, together with **France**, can also provide detailed information on the number of *anti-Semitic* incidents recorded in their countries.

Finally, just two Member States – **Finland** and the **UK** – are categorised as having comprehensive data collection mechanisms as a reflection of the depth and quality of information they provide. While Finland and the UK have vastly different population sizes, including numbers of ethnic minorities and immigrants, both offer an insight into racist offence patterns that is not offered by other Member States. As a reflection of this, a closer look at these countries' publicly accessible data reveals 'who' offenders and victims tend to be, and continues to show that vulnerable minorities are over-represented as victims relative to their size in the general population. However, only the UK collects comprehensive anonymous statistical data on victims' and offenders' *ethnicity* (see EUMC online InfoBase for detailed information with respect to the UK).

In sum, quality criminal justice data is essential because: Only those Member States with good or comprehensive data collection on racist violence and crime are well placed to develop knowledge-based crime prevention policies to combat the problem.

6.1.2. Trends in racist violence and crime

Given the difficulties of trying to compare data between countries, another way of interpreting data on racist violence and crime is to look at trends in recorded data within a country over a period of time – see Table 6.3.

Looking at trends in officially recorded crime can tell us something about patterns in crime within a Member State. At the same time, patterns in recorded crime can also reflect whether a Member State has changed its recording practices; with increases in recorded crime indicating improvements in data collection as well as increases in actual racist incidents. Therefore the figures presented in Table 6.3 should be interpreted with caution.

For those 11 Member States in Table 6.3 for which criminal justice data is available on racist violence and crime from a national source, a trend analysis of the period 2000 to 2006 can be made (based on the fullest available data for each Member State at the time of writing, which in some cases does not cover all years).

By calculating an average of the year-by-year percentage changes in recorded crime, the trend analysis in Table 6.3 presents a more accurate picture by removing some of the exaggerated peaks and troughs in reported trends that

can occur if we simply compare data from one year to the next. To this end, the column on percentage changes between two years (2004 to 2005, or 2005 to 2006) – inserted in each of the Tables 6.3, 6.4 and 6.5 – illustrates the very different results that can be observed if we limit data comparison to two years.

Table 6.3: Trends in officially reported/recorded racist violence and crime (and associated activities) for the period 2000 to 2005 or 2006 by Member State⁴¹⁹

	2000	2001	2002	2003	2004	2005	2006 DNA = data not available	% change 2004-05 or 2005-06	% change mean average 2000-05 or 2000-06
Czech Republic	364 crimes	452	473	335	364	253	248	- 2%	- 4.0% 2000-06
Denmark	28 incidents	116	68	52	36	85	DNA (02/07)	+ 136.1% 2004-05	+ 70.9% 2000-06
Germany	–	14,725 crimes	12,933	11,576	12,553	15,914	18,142	+ 14.0% 2005-06	+ 5.3% 2001-06
France	903 reports	424	1,317	833	1,574	979	885	- 9.6% 2005-06	+ 27.1% 2000-06
Ireland	72 reports	42	100	62	84	94	DNA (02/07)	+ 11.9% 2004-05	+ 21.2% 2000-05
Austria	450 com-plaints	528	465	436	322	406	DNA (02/07)	+ 26.1% 2004-05	- 0.2% 2000-05
Poland	215 crimes	103	94	111	113	172	DNA (02/07)	+ 52.2% 2004-05	+ 2.3% 2000-05
Slovakia	35 crimes	40	109	119	79	121	188	+ 55.4% 2005-06	+ 45.1% 2000-06
Finland⁴²⁰	495 incidents	448	364	522	558	669	DNA (02/07)	+ 19.9% 2004-05	+ 8.4% 2000-05
Sweden⁴²¹	2,703 crimes	2,785	2,391	2,436	2,414	2,383	DNA (02/07)	- 1.3% 2004-05	- 2.3% 2000-05
England & Wales⁴²²	47,829 incidents	53,060	54,858	49,340	54,286	57,902	DNA (02/07)	+ 6.7% 2004-05	+ 4.2% 2000-05
Scotland	offences		1,699	2,673	3,097	3,856	4,294	+ 11.3% 2005-06	+ 27.3% 2002-06

419 Note – direct comparisons between Member States of absolute figures should not be undertaken; instead, the table should be read with respect to the trend shown within each Member State!

420 Caution should be exercised when looking at trends as the data collection system on racist violence and crime was taken over by the Police College of Finland in 2003 from the Police Department of the Ministry of Interior.

421 Caution should be exercised when looking at trends in Sweden as the data collection system on racist violence and crime changed slightly after 2003.

422 Unlike most Member States, figures for England and Wales are not reported by calendar year. The figures presented in the table refer to the following periods: 2000 = April 1999-March 2000; 2001 = April 2000-March 2001; 2002 = April 2001-March 2002; 2003 = April 2002-March 2003; 2004 = March 2003-April 2004; 2005 = March 2004-April 2005 (clarification offered by Home Office; note: in the Home Office's publication on 'Statistics on Race and the Criminal Justice System – 2005' [published in 2006] tables refer simply to reporting periods as, for example, 2003/04 or 2004/05). The same periods apply for data collection in Scotland.

Looking at the last column in Table 6.3 the following can be noted:

- Eight of the 11 Member States experienced a general upward trend in racist crime during the period 2000-2005 or 2000-2006: **Denmark, Germany** (2001-2006), **France, Ireland, Poland, Slovakia, Finland** and **England and Wales** (as well as Scotland for which data is available for the period 2002-2006).
- Three of the 11 Member States experienced a general downward trend in racist crime during the period 2000-2005 or 2000-2006: **Czech Republic, Austria** and **Sweden**.

Caution should be exercised when looking at trend patterns for those Member States that report consistently low actual figures – such as **Denmark, Ireland** and **Slovakia** – as dramatic upward and downward trends can be reported on the basis of a few figures.

6.1.2.1. Trends in crime with an extremist right-wing motive

Some Member States also collect data on specific trends. For example, **Austria, Germany, France** and **Sweden** collect criminal justice data on racist crimes recorded with an extremist right-wing motive⁴²³ – see Table 6.4 below.

When looking at the information in Table 6.4 due consideration should be given to the fact that the categories ‘right-wing extremist’ or ‘White Power’ can include offences that are not specifically ‘racist’ in nature. However, what these figures do show is the extent of right-wing extremist activity that is captured by these Member States in their criminal justice data; with France and Germany experiencing notable upward recorded trends for the respective periods 2000-2006 and 2001-2006, compared with the downward trends recorded in Austria and Sweden for the period 2000-2005.

⁴²³ The Ministry of the Interior of the Czech Republic, Security Police Department, produces an annual report on ‘Information on the Issue of Extremism in the Czech Republic’. Although the report refers to extremism in its title, it appears that data referred to in the report also covers general acts of racism, which are not necessarily perpetrated by extremists or extremist in nature.

Table 6.4: Trends in officially recorded crime with an extremist right-wing motive by Member State⁴²⁴

	2000	2001	2002	2003	2004	2005	2006	% change 2004-05 or 2005-06	mean % change ⁴²⁵
Austria Right-wing extremist motive	291	301	261	264	189	188	Data not available (02/07)	- 0.5% 2004-05	- 7.5% 2000-05
Germany Right-wing extremist crimes		10,054	10,902	10,792	12,051	15,361	17,597	+ 14.6% 2005-06	+ 12.2% 2001-06
France Extreme right at- tribute	207	198	179	148	461	419	283	- 32.5% 2005-06	+ 23.1% 2000-06
Sweden ⁴²⁶		1,201	1,161	1,278	1,266	1,062	Data not available (02/07)	- 16.1% 2004-05	- 2.6% 2001-05
White- Power motive ⁴²⁷	566	392	324	448	306	292		- 4.6% 2004-05	- 9.2% 2000-05

The observation of this apparent upward trend in extremist activity in **Germany** is supported by reports of increased right-wing attacks noted by victim support organisations in eastern parts of the country: 563 cases in 2003, 570 in 2004, 694 in 2005, and 819 in 2006.⁴²⁸ At the same time, evidence collected in Berlin schools⁴²⁹ indicates that recorded incidents with an extremist background have been increasing successively each school year (from 39 in the school year 2003/2004, 62 in the school year 2004/2005, and 80 in the school year 2005/2006).⁴³⁰

⁴²⁴ Note – direct comparisons between Member States of absolute figures should not be undertaken; instead, the table should be read with respect to the trend shown within each Member State.

⁴²⁵ This percentage mean change is calculated on the basis of an average of the year-by-year percentage changes for the period in question for each country.

⁴²⁶ Sweden: Data published until 2004 by the Swedish Security Service and from 2005 by the Swedish Crime Prevention Council produces different interpretations of White Power crime. The higher figures include incidents that have been identified as having a White-Power motive with evidence of xenophobic, anti-Semitic or homophobic characteristics as well as incidents with a White-Power motive that do not contain information about their xenophobic, anti-Semitic or possible homophobic nature. The lower figures include only those crimes that have a White-Power motive and evidence that the crime was xenophobic or anti-Semitic in nature. It is possible that some of the cases that are classified with a general White-Power motive (without more detail about the characteristics of the incident) have included racist/xenophobic elements. Comparison of the two sets of figures shows that in over two-thirds of cases no specific motive is available apart from the incident being White-Power related.

⁴²⁷ Includes all data on numbers of reported crime with a White-Power motive, including those connected with White Power but not specified as xenophobic or anti-Semitic.

⁴²⁸ Association Opferperspektive Germany.

⁴²⁹ Source: Berlin/Senatsverwaltung für Bildung, Wissenschaft und Forschung, Presse und Öffentlichkeitsarbeit (2006) *Gewaltsignale an Berliner Schulen 2005/2006. Handout zur Pressekonferenz am 13.12.2006*, available at: http://www.berlin.de/imperia/md/content/sen-bildung/hilfe_und_praevention/gewaltpraevention/handout_gewalt.pdf (04.01.2007).

⁴³⁰ In France, Netherlands and the UK, data is also collected in schools on a broad range of racist incidents (see [education chapter](#) in this report).

Yet, as with any noticeable increases in recorded crime, these figures could reflect improved data collection as much as any actual increase in incidents.

6.1.2.2. Trends in anti-Semitic crime

In turn, **France**, **Germany** and **Sweden** collect sufficient official criminal justice data, and the UK sufficient unofficial data, allowing for a trend analysis of recorded anti-Semitic crimes – see Table 6.5 below. To this end we are able to note that, according to official sources, recorded anti-Semitic crime has increased significantly over a period of years in France (2001-2006), but only very slightly in Germany (2001-2005) and insignificantly in Sweden (2001-2006). In the UK, data from the NGO the ‘Community Security Trust’ recorded an overall upward trend in reported incidents in the period 2001-2006.

Table 6.5: Trends in recorded anti-Semitic crime by Member State⁴³¹

	2001	2002	2003	2004	2005	2006	% change 2004-05 or 2005-06	mean % change ⁴³²
France Official data	219	936	601	974	508	541	+ 6.5% 2005-06	+ 62.4% 2001-06
Germany Official data	1,629	1,594	1,226	1,346	1,682	1,662	- 1.2% 2005-06	+ 1.7% 2001-06
Sweden Official data	115	131	128	151	111	Data not available (02/07)	- 26.4% 2004-05	+ 0.7% 2001-05
UK <u>Unofficial</u> Community Security Trust	310	350	375	532	455	594	+ 30.5% 2005-06	+ 15.5% 2001-06

As reported in previous EUMC Annual Reports, it appears that dramatic increases in recorded anti-Semitic crime in **France**, for example in 2002 and 2004, directly reflect periods of heightened conflict in the Middle East between Israel and Palestine, which then manifests itself as anti-Semitism in mainland France.

⁴³¹ Note – direct comparisons between Member States of absolute figures should not be undertaken; instead, the table should be read with respect to the trend shown within each Member State.

⁴³² This percentage mean change is calculated on the basis of an average of the year-by-year percentage changes for the period in question for each country.

6.1.3. The Danish cartoon controversy

As a counterpart to Middle Eastern conflicts being played out on the streets of Europe, one notable incident in 2006, the **Danish** cartoon controversy, resulted in demonstrations throughout the Muslim world. This originated when a Danish newspaper depicted the Prophet in an insulting manner to Muslims, and resulted in an increase in complaints to the Danish police in relation to section 266b of the Danish Penal Code – hate speech. With the controversy culminating at the beginning of 2006, the Danish police recorded 66 complaints relating to hate speech by the end of 2006; whereas the total for the whole of 2005 was 54.⁴³³ The repercussions from the cartoon crisis, which originated in one EU Member State, were felt in many Member States, and particularly those where the cartoons were reproduced in national newspapers. The core of the debate surrounding the controversy was the issues of freedom of expression, with some people advocating its limitation in the light of religious sensitivities, and others opposing any such restriction.

6.1.4. Use of the internet

Finally, both criminal justice and NGO reports refer to emergent trends in manifestations of racist violence and crime, which are usually based on interpretations of observed phenomena rather than ‘hard’ data. One such trend is the increasing use to which the internet is being put by right-wing extremist groups to promote racism and to facilitate communication. For example, in **Austria**, the government office concerning reports related to the revitalisation of National Socialism notes a steady increase in right-wing activities related to the internet.⁴³⁴ In **Slovenia** the Human Rights Ombudsman, which collects cases in the sub-field ‘Ethics and Public Speech’, noted a number of cases in 2005 and 2006 related to the internet and commercial media, with a considerable number of incidents targeted at ethnic and religious minorities.

6.2. Unofficial data sources

Where official criminal justice data sources fail to record or under-record racist violence and crime, unofficial data sources are sometimes there to fill the gap in data collection. For those Member States where official data collection on racist violence and crime is absent or lacking, NGOs play a vital role in monitoring and attracting attention to the problem; for example:

⁴³³ <http://www.politi.dk/> (13.06.2007).

⁴³⁴ Reporting Office concerning Revitalisation of National-Socialism (Meldestelle für NS-Wiederbetätigung); <http://www.bmi.gv.at/meldestellen/> (10.10.2006).

Austria: Whereas the Austrian authorities document very few cases of anti-Semitism in any one year, the NGO Forum against Antisemitism recorded 125 anti-Semitic reports in 2006, 105 in 2005, and 194 in 2004. In addition, the Austrian NGO ZARA documents generic racist incidents, with 1,105 racist incidents recorded in 2005. ZARA also notes the nature of reported incidents – for example, whether they occurred in a public place.

Denmark: The Jewish community collects reports of Anti-Semitism through the NGO *Det Mosaiske Trossamfund*. In both 2004 and 2005 the NGO recorded 37 incidents.⁴³⁵

NGO reports are also important because they present detailed accounts of racist incidents that show ‘who’ victims and offenders are, the context in which racism occurs, and its damaging impact on victimised individuals and vulnerable communities. However, NGOs, which often operate on limited resources, cannot be expected to fill the gap in data collection which is not covered by the State. In this regard, NGOs can only provide a partial picture of racist violence and crime.

In turn, the media also plays an important role in documenting incidents that might otherwise not come to the attention of either NGOs or the authorities; for example:

Belgium: Various newspapers have documented racist chanting and incidents at football matches.⁴³⁶

Italy: The EUMC/FRA’s NFP for Italy – Cooperation for the Development of Emerging Countries (COSPE) – collects media reports on manifestations of racist violence and crime in Italy. In 2006 COSPE noted 203 media reports, of which 94 related to physical violence.

6.2.1. Policing racist violence and crime

6.2.1.1. Problematic police practices

As agents of the State, the police, as well as immigration and border control personnel, have a duty to respond effectively to reports of racist violence and crime. However, there is ample evidence that vulnerable minorities – in particular visible minorities and immigrants, refugees and asylum seekers – are often victims of racist violence and discriminatory treatment at the hands of the police, immigration and border control personnel; for example:

⁴³⁵ <http://www.mosaiske.dk> (13.06.2007).

⁴³⁶ *Le Jour Liege* (12.10.2006); *De Standaard* (13.11.2006; 27.11.2006).

Austria: Of all racist incidents recorded by the NGO ZARA in 2005, 7 per cent (or 77 incidents) refer to complaints about police conduct, including allegations of police ill-treatment.⁴³⁷

In April 2006 the aborted deportation of a Gambian resulted in his mistreatment by four police officers. The case was brought to trial, whereupon all four police officers pleaded guilty to the charge of torturing a detainee. Three of the police officers were sentenced to suspended sentences of eight months, and the fourth police officer received a suspended sentence of six months.⁴³⁸

Belgium: In 2005 the Brussels-based NGO MRAX recorded 124 complaints related to racial discrimination. Twenty-two complaints, or 17.7 per cent of all complaints – representing the single largest category of complaints – related to police services.⁴³⁹

Bulgaria, Spain and Hungary: The Open Society Justice Initiative funded research in three Member States on police use of ethnic profiling practices (this refers to actions initiated by the police that treat people differently solely on the basis of their real or assumed 'race', ethnicity, religion or national origin, rather than responding to the behaviour of an individual, a suspect description or other intelligence information). The research was able to show the existence of discriminatory police practices when dealing with ethnic and national minorities in these Member States – in particular the negative impact on the Roma.

Cyprus: The Annual Report of the Cyprus Ombudswoman for 2005 notes several cases of ill-treatment of asylum seekers by the authorities, particularly the police. The follow-up Report of the Human Rights Commissioner of the Council of Europe on Cyprus states that the Commissioner was informed that reports of police brutality against immigrants and asylum seekers persist in Cyprus.⁴⁴⁰

Greece: The follow-up Report of the Human Rights Commissioner of the Council of Europe on Greece (published in 2006) referred to statistics supplied by the Ministry of Public Order that show, for the period 2001-2005, 248 complaints concerning mistreatment and abuses by police officers; with 2005 seeing an increase in complaints in comparison with previous years.

437 ZARA Racism Report, <http://www.zara.or.at/materialien/rassismus-report/racism-report-2005.pdf> (02.10.2006).

438 For details of the case see ZARA Racism Report 2006, pp. 25, available at: <http://www.zara.or.at/materialien/rassismus-report/racism-report-2006.pdf> (26.06.2007).

439 MRAX Rapport d'activités 2005, pp.38-39, available at: http://www.mrax.be/IMG/RAPPORT_2005-2.pdf (10.10.2006).

440 Office of the Commissioners for Human Rights, Council of Europe (2006) *Follow-up Report on Cyprus (2003-2005): assessment of the progress made in implementing the recommendations of the CoE Commissioner for Human Rights*.

Hungary: Offensive anti-Roma text was found on a forum of the police intranet. The case was reported by a Roma and a retired non-Roma policeman, in November 2006. The intranet forum was put out of action, and an investigation identified 32 police employees, most of whom were office workers rather than police officers.⁴⁴¹

Romania: In March 2006 the NGO Roma CRISS presented a video documentary to the European Parliament showing allegedly abusive police raids on a Roma settlement in Cluj County, which included women and children being assaulted by police officers.⁴⁴²

6.3. Good practices

6.3.1. Good practices by the police⁴⁴³

Against a litany of negative policing practices, in some Member States there are encouraging reports that the police are endeavouring to improve how they police racist violence and crime, including how they record incidents and respond to victims; for example:

Cyprus: A law establishing an independent authority to investigate allegations of police misconduct entered into force on 17 February 2006.⁴⁴⁴ The authority will review complaints relating to discriminatory and racist policing practices, and, where appropriate, will gather evidence for the Attorney General to launch criminal investigations.

Czech Republic: Within the framework of the national Strategy on Policing Minorities, which was launched in 2003, the Ministry of the Interior have launched a campaign to recruit more police officers of Roma, Vietnamese and Ukrainian origin.⁴⁴⁵ The campaign slogan is 'The police of the Czech Republic is also your police'.⁴⁴⁶

Germany: At its Federal Congress in November 2006, the German Police Trade Union agreed in a resolution to enhance the struggle against right-wing extremism. The resolution stressed that police initiatives should be in partnership with civil society, and stressed that the police have to act as role models concerning their behaviour towards 'social and ethnic minorities'.⁴⁴⁷

441 <http://www.origo.hu/itthon/20061211ciganyozasert.html> (13.06.2007).

442 http://www.divers.ro/cgi-bin/buletin_ro.py?id=251#3743 (13.06.2007).

443 Further good practices by the police are discussed in sections 3.10.4 and 3.10.9.

444 Cyprus/Law 9(1)/2006.

445 However, Czech citizenship is a requirement for all applicants, and people from Vietnam and Ukraine normally do not have Czech citizenship.

446 http://www.romea.cz/index.php?id=servis/z2006_0523 (13.06.2007).

447 http://www.gelbehand.de/data/resolution_gdp.pdf (13.06.2007).

Latvia: In 2006, several cases which were reported to the police as racially motivated violent crime were classified by the police under legislation relating to instigation of racial hatred, and not as 'hooliganism' as was often the case in the past.

6.3.2. Other good practices

As indicated throughout this chapter, good data collection is essential as a tool for effectively responding to and combating the problem of racist violence and crime. To this end there are some positive initiatives in this area; for example:

Enhanced data collection

Belgium: A circular of the College of Procurators General (21.03.2006) urges that there should be improvements in how police officers register racially motivated crimes, with the uptake of a newly developed context field for recording racism and xenophobia in crime reports.⁴⁴⁸ However, there is no evidence yet of the extent to which officers are actually improving their registration.

In addition, various Belgian government ministries, including the Federal Ministry of Social Integration, together with the College of Procurators General and the Service Providers Association of Belgium, have come together in response to the increasing problem of internet based racism and hate. In March 2006 a cyber-hate hotline for registering cases was launched by the government-mandated Centre for Equal Opportunities and Opposition to Racism (CEOOR) – www.cyberhate.be.

Denmark: From January 2007 the Director of Public Prosecution is enhancing data collection concerning cases with a possible racist motive. A reporting system for the police and prosecutors has been initiated in an effort to improve identification of racist cases for prosecution.

Poland: In 2006 the first report on data collected by the National Initiative for Children Hotline Polska was published, which, alongside other reports on illegal internet activities, collects information on racist internet sites. In the period 1 January to 30 September 2005 the Hotline collected 885 reports, 10 per cent of which related to racist and xenophobic internet content.⁴⁴⁹

Sweden: In 2006, the National Council for Crime Prevention took over responsibility for production of hate crimes from the Swedish Security Police.

⁴⁴⁸ Omzendbrief: Racisme en Xenofobie, Circulaire: Racisme et Xenophobie, COL 6/2006.

⁴⁴⁹ <http://www.dyzurnet.pl/files/raport.pdf> (13.06.2007).

According to the 2006 government communication ‘A National Action Plan for Human Rights’, which addresses the need for more effective responses to hate crime, the Council’s new role is encouraging as, in its capacity as a centralised body for data collection and research on crime prevention, it will be able to follow the progress of hate crimes from report through to trial.

Victim-centred initiatives

Victim-centred initiatives that address the needs of those who have been victimised by racist violence and crime are relatively rare throughout the EU, when compared with other initiatives aimed at combating and responding to discrimination in general. Although specialised bodies have been established in Member States to register and respond to discrimination complaints (see chapter on legal issues in this report), there is a need for dedicated services for victims of racist violence and crime. Government and even non-governmental responses to racist violence and crime remain focused on potential and actual offenders, and on the role of the police in combating the phenomenon.

Of those victim-centred initiatives that do exist, the following are worth noting:

Germany: In Guben (Brandenburg), a new local contact point for victims of extreme right-wing violence was established in 2006. The new contact point is responsible for counselling and offering support services for victims (such as information on financial compensation, and how to report the incident to the police), as well as assistance in finding a lawyer.⁴⁵⁰

Sweden: The Crime Victim Compensation and Support Authority has arranged several seminars and theme days in 2006 addressing the subject of hate crime with respect to the situation of victims, including reports on the lack of information that exists with respect to victims’ situation and experiences as a result of hate crime.⁴⁵¹

EU policy initiatives

Finally, mention can be made of EU-level policy initiatives in 2006 that have either directly or indirectly addressed how criminal justice agencies respond to racist violence and crime.

In this regard, in June 2006, the EUMC organised a workshop on data collection on racist violence and crime in the context of a seminar on the Proposal for a Council Framework Decision on Combating Racism and Xenophobia,⁴⁵² which

450 Opferperspektive (2006) *Schattenbericht*, p.4. (contact details available at: http://www.opferperspektive.de/Home/Adressverzeichnis/Hilfe_und_Beratung/333.html (26.05.2007).

451 <http://www.brottoffermyndigheten.se> (09.11.2006).

452 14904/01 DROIPEN 105 (COM(2001) 664 final.

was held under the Austrian Presidency of the EU in cooperation with Directorate General for Justice, Freedom and Security at the European Commission. Although the mainstay of the seminar was on inter-governmental agreement towards adoption of the Framework Decision, the data collection workshop provided an opportunity for government representatives to address the importance of good data for informing policy developments aimed at combating racist crime.⁴⁵³

Other notable initiatives that directly address the issue of racist violence and crime include the AGIS-funded project 'Reducing Hate Crime in Europe Project',⁴⁵⁴ which ran from 2004 to 2006 under the leadership of London Probation, and addressed the need for multi-agency responses from the criminal justice system and civil society for reducing hate crime. At the end of 2006, AGIS also funded an Open Society Justice Initiative project entitled 'STEPSS' – Strategies for Effective Police Stop and Search – to look into police ethnic profiling practices in four Member States; namely: **Bulgaria, Hungary, Spain** and the **UK**, with the aim of 'improving police-minority relations through increasing the effectiveness and accountability of police powers to conduct identity checks and searches'.⁴⁵⁵

453 *Seminar on Racism and Xenophobia, Palace of Justice, Vienna, 20-22 June 2006*, Schriftenreihe des Bundesministeriums für Justiz – Band 128.

454 http://www.niacro.co.uk/filestore/documents/publications/NIACRO_Newsletter_14.pdf (13.06.2007).

455 http://www.justiceinitiative.org/db/resource2?res_id=103751 (13.06.2007).

7. Combating racism and xenophobia in the European Union – developments in policy and legislation

The European Union is committed to the absolute condemnation of all forms of racism and xenophobia by making full use of its powers and safeguarding fundamental rights, non-discrimination and equal opportunities for all. The Vice-President of the Commission and Commissioner for Freedom, Security and Justice, Franco Frattini, expressed a strong commitment to fighting racism during his visit to the EUMC and also at the occasion of the International Day for the Elimination of Racial Discrimination highlighting that ‘the EU must be at the forefront of the fight against all forms of racism.’⁴⁵⁶ While European anti-discrimination legislation and anti-racist policy makes up one of the most comprehensive and sophisticated structures of its kind in the world, there remains a great deal of work to be done. Combating racism and xenophobia, mainstreaming anti-discrimination measures throughout policies and legislation and formulating separate policies to combat discrimination based on accurate data, are crucial for further building of just, cohesive and prosperous European societies.

In order to boost action at national level, raise awareness about the European anti-discrimination legal framework and demonstrate the benefits of diversity to businesses and society at large, the Council and the European Parliament has designated the year 2007 and 2008 as the European Year of Equal Opportunities for All, and European Year of Intercultural Dialogue, respectively.⁴⁵⁷ The EU has taken several measures to mainstream the priority of combating racism and xenophobia and to increase opportunities and access to mainline services, thus enforcing the current legislation in place to overcome discrimination and to develop targeted approaches. To this end, the EU has reviewed the Hague Programme and Lisbon Process, made efforts towards the reinforcement of the area of Freedom, Security and Justice, reopened discussions about the Framework Decision on racism and xenophobia and found an agreement on the general approach to the text of the Regulation establishing the European Union Agency for Fundamental Rights.

The following information provides an overview of selected activities undertaken by the EU institutions and consultative bodies.

⁴⁵⁶ http://ec.europa.eu/justice_home/news/intro/news_0606_en.htm (13.06.2007).

⁴⁵⁷ Decision No 1983/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the European Year of Intercultural Dialogue (2008), available at: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_412/l_41220061230en00440050.pdf (13.06.2007); Decision No 771/2006/EC of the European Parliament and of the Council of 17 May 2006 establishing the European Year of Equal Opportunities for All (2007) – towards a just society, available at: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_146/l_14620060531en00010007.pdf (13.06.2007).

7.1. Solidarity

7.1.1. Equality, non-discrimination and social inclusion

In 2005, the Commission recognised that the implementation and enforcement of anti-discrimination legislation on an individual level is not enough to tackle the multifaceted and deep-rooted patterns of inequality experienced by some groups and to promote equality.⁴⁵⁸ The year 2006, therefore, saw the setting out of proposals and implementation of actions in order to provide: (1) targeted training and capacity building actions for specialised equality bodies, judges, lawyers, NGOs and the social partners; (2) networking and exchange of experiences between relevant stakeholders; (3) and awareness-raising and dissemination of information concerning the provisions of European and national anti-discrimination law. The evaluation of the Community Action Programme to Combat Discrimination (2001-2006), underlined the key role of financial and programmatic tools to support the transposition and application of European directives which help to raise the level of protection of victims of discrimination.⁴⁵⁹ In this context, the EU Commission's pan-European campaign 'For Diversity. Against Discrimination' on combating discrimination on the grounds of racial or ethnic origin, religion or belief, age, disability and sexual orientation, implemented in the period of 2003-2007, has aimed to inform people about their rights under EU anti-discrimination legislation, as well as to promote the positive benefits of diversity in the workplace.⁴⁶⁰ The campaign implements different awareness-raising events, seminars and media activities on all levels across the EU and it brings together various stakeholders. The EUMC participates in this campaign by providing expert advice in the campaign's Advisory Board.

⁴⁵⁸ *Communication Non-Discrimination and Equal Opportunities For All – a Framework Strategy* COM(2005) 224 final of 1 June 2005.

⁴⁵⁹ Commission Européenne Direction Générale Emploi et Affaires sociales (2006) *Évaluation du programme d'action communautaire de lutte contre la discrimination (2001-2006)*, available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/eval/bilan06_fr.pdf (13.06.2007).

⁴⁶⁰ Activities in 2006 included: website (<http://www.stop-discrimination.info>) providing information for 25 Member States in 20 languages. Among regularly updated news and information it comprises a photo database, a project database, and an anti-discrimination glossary; Poster competition 'Breaking Stereotypes', the 35 winning posters form a travelling exhibition. An exhibition catalogue was published. Posters can be ordered free of charge (<http://postercompetition.stop-discrimination.info/4.0.html> [13.06.2007]); MTV photo contest: Mobile phone photo contest on the subject of 'discrimination' in partnership with the TV station MTV, targeting youth; EU Information Truck Tour 2006: 22 stops of the big yellow 'Diversity Truck' in 13 countries; Run for diversity: participation in 22 runs in 15 countries; Conference: Diversity in SMEs in Cyprus; 150 participants from the EU-25; Journalist Award 2006: 180 entries; In addition national events were organised in 2006, such as a Diversity Football Tournament in the Netherlands or a Tolerance Day Latvia. Info material was produced, such as: General brochure, 'Breaking stereotypes' exhibition catalogue, Leporello handout targeting youth; Brochure for SMEs; MTV diversity spot.

Programme PROGRESS for employment and social cohesion (2007-2013)

In October, the European Parliament and the Council adopted a decision establishing a Community Programme for Employment and Social Solidarity (PROGRESS) for the period 2007-2013 with a budget of 743.25 million euros.⁴⁶¹ The Programme heralds a certain continuity within the objectives and action undertaken during the period 2001-2006 and will aim to ensure an enhanced cohesion between the financial tools and instruments in the Directorate General for Employment, Social Affairs and Equal Opportunities. The Programme will be divided into five sections corresponding to the five main fields of activities: employment, social protection and inclusion, working conditions, anti-discrimination and diversity and gender equality, and aims to increase knowledge through analytical activities and studies, to support the application of directives through monitoring actions and to increase awareness and information dissemination among key players.

Racial Equality Directive and beyond?

The Commission assessed of the transposition of the Directive 2000/43/EC implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin and pointed out, in a Communication of 30 October 2006, that this directive (2000/43/EC) has proved 'a major step forward in the fight against racial discrimination across the EU.' One of the major consequences of the directive was the further development of national equality bodies, which together with NGOs have become first point of contact for victims making a complaint about discrimination.⁴⁶²

In June 2006, the European Parliament adopted a non-legislative resolution in response to the Commission Communication, 'A Framework Strategy for Non-Discrimination and Equal Opportunities', which stated that the fight against discrimination must be based on legislative tools, education, the promotion of best practices and information campaigns.⁴⁶³ Regretting that the Commission was not planning to draw up further legislation to combat discrimination, the Parliament suggested that the Commission adheres to the provisions of the Article 17 of Directive 2000/43/EC, which states that the European Commission's report on the application of the directive 'shall include, if necessary, proposals to revise and update this directive' and submits a proposal for a comprehensive legislative

⁴⁶¹ Decision No 1672/2006/EC of the European Parliament and of the Council of 24 October 2006 establishing a Community Programme for Employment and Social Solidarity – Progress, available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/news/decprogress_en.pdf (13.06.2007).

⁴⁶² Brussels, 30.10.2006 COM(2006) 643 final Communication from the Commission to the Council and the European Parliament – The application of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

⁴⁶³ In June 2006, the European Parliament adopted a non-legislative resolution in response to the Commission Communication 'A Framework Strategy for Non-Discrimination and Equal Opportunities (COM(2005)0224), <http://www.europarl.europa.eu/oeil/file.jsp?id=5282042>.

tool incorporating all grounds of discrimination set out in Article 13 of the EC Treaty, and having the same scope as Directive 2000/43/EC, before mid-2007. However, the Commission does not currently see a need to come forward with such proposals. It has reached this conclusion on the basis of the lack of experience with implementation of the directive since its entry into force as well as the lack of case law from the European Court of Justice.⁴⁶⁴

Need for data!

While the challenge for the coming years remains the full and effective transposition, implementation and enforcement of the Racial Equality Directive, establishment of mechanisms and methods for observing and reporting on the impact of national implementing measures will be essential for developing the statistical basis and other indicators. Yet the scarcity of data based on ethnicity in most Member States may in fact hinder the proper monitoring of the application of Community legislation. The European Parliament, the Commission and the FRA are all sending a strong message to Member states, calling for data collection on the position of minorities and disadvantaged groups to inform policy making and to develop their statistical tools. Thus, it is for the Member States to decide whether or not ethnic data should be collected and to produce statistics for combating discrimination, provided that the safeguards set out in the Data Protection Directive are respected. In order to increase trends of informed policy making, the Commission issued calls for tender on 9 May 2006 for a study on collecting data to measure progress on anti-discrimination policies and the studying of multiple discrimination in the EU. Both studies are to be delivered by the end of 2007.

High-level group on social integration of ethnic minorities

On 20 January 2006, the Commission established a High-Level Advisory Group on the social integration of ethnic minorities and their full participation in the labour market in so as to develop a coherent and effective approach to the social integration of disadvantaged ethnic minorities.⁴⁶⁵ Chaired by a former President of the German Parliament, the Group's function is to analyse how to ensure better social integration of ethnic minorities and, by the end of 2007, to draw up a study, containing recommendations, on access to employment for ethnic minorities.

⁴⁶⁴ Brussels, 30.10.2006 COM(2006) 643 final *Communication from the Commission to the Council and the European Parliament – The application of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*, p. 8.

⁴⁶⁵ Commission Decision 2006/33/EC – Official Journal L 21 (25.01.2006).

Training Manual of non-governmental organisations (NGOs)

On 13 October 2006, the Commission issued a training manual ‘Combating discrimination’, for non-governmental organisations (NGOs), in order to cover key concepts in the equality directives and also thematic subjects, such as awareness raising and providing support to individual victims.⁴⁶⁶ The capacity-building project is to be complimented by a follow-up project in all Member States as it is seen as an important step to ensure that victims of discrimination are aware of their rights and receive the support to defend these rights if necessary.

Raising awareness about rights and celebrating diversity during European Years: Equal Opportunities for All (2007) and Intercultural Dialogue (2008)

The European Parliament and the Council of the European Union approved the Commission’s proposal for a European Year of Equal Opportunities for All (2007) and a European Year of Intercultural Dialogue (2008).⁴⁶⁷ The objective of the European Year 2007 was to raise awareness about the existing legislative framework, to promote equal rights, celebrate diversity and to make people more aware of their right to enjoy equal treatment and a life free of discrimination – irrespective of sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation. In the promotion of equal opportunities for all, a major debate was launched surrounding the benefits of diversity, both for European societies and individuals.

Operating with a budget of 15 million euros, the year long activities are divided between national and European level. The European year 2008 builds on the European Year of Equal Opportunities for All (2007) and promotes intercultural dialogue as a process in which all those living in the EU can improve their ability to deal with a more open yet also more complex, cultural environment: a diverse and dynamic society, in which everyone can benefit from and contribute to. The emphasis on the contribution of different cultures and expressions of cultural diversity will be complemented by raising the awareness of all those living in the EU, in particular young people.

⁴⁶⁶ http://ec.europa.eu/employment_social/fundamental_rights/pdf/civil/train_en.pdf (13.06.2007).

⁴⁶⁷ Decision No 771/2006/EC of the European Parliament and of the Council of 17 May 2006 establishing the European Year of Equal Opportunities for All (2007) – towards a just society, available at: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_146/l_14620060531en00010007.pdf (13.06.2007); Decision No 1983/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the European Year of Intercultural Dialogue (2008), available at: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_412/l_41220061230en00440050.pdf (13.06.2007).

European Pact for Gender Equality

The European Council approved the European Pact for Gender Equality and agreed that the availability of quality childcare should be increased in line with Member States' own national targets. This responds to the same order of concerns already expressed by the Commission in its Communication adopted on 1 March 'A roadmap for equality between women and men 2006-2010'.⁴⁶⁸ In this context, combating multiple discrimination, in particular against immigrant and ethnic minority women requires the promotion of gender equality in migration and integration policies in order to ensure women's rights and civic participation, to fully use their employment potential and to improve their access to education and lifelong learning. A number of actions identified will be measured by indicators for monitoring progress on the roadmap, among which, employment rates of non-EU nationals (women, men) and pay gaps according to gender and nationality (EU or non-EU nationals) will help to document success in combating multiple discrimination, in particular against immigrant women and ethnic minority women.

Roma and Travellers

The Commission singled out two groups of particular concern – the immigrant communities and the Roma. These groups were drawn to the attention of the High Level Group composed of ten eminent personalities from business, local politics, civil society, the academic world and the media. Two experts in the group are of Roma origin. The group is in charge of identifying practical ways of using EU policies and programmes to promote the integration of disadvantaged ethnic minorities, including the Roma, into the labour market.⁴⁶⁹ Financial instruments of totalling 275 million euros for the 2000-2006 programming period were either directly or indirectly dedicated to Roma related projects.⁴⁷⁰ Moreover, the pre-accession instruments of Romania and Bulgaria, dedicated 60 million euros to Roma between 2004 and 2006. Regular reporting on the outcomes of the Inter-Service Group on Roma to the Group of Commissioners on Fundamental Rights contributed to highlighting Roma issues at EU level. While concrete proposals for policy developments addressing the situation of Roma are to be seen, the Commission highlighted in its review of the implementation of the Racial Equality Directive that the directive has been particularly successful in challenging discrimination against Roma.⁴⁷¹

468 http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0092en01.pdf (13.06.2007).

469 http://ec.europa.eu/employment_social/emplweb/news/news_en.cfm?id=126 (13.06.2007); see also <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/06/149&format=HTML&aged=1&language=EN&guiLanguage=en> (13.06.2007).

470 EUMC communication with the European Commission.

471 Brussels, 30.10.2006 COM(2006) 643 final communication from the Commission to the Council and the European Parliament – *The application of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*, available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legisl/racerep_en.pdf (13.06.2007), p. 4.

In the context of facilitating training, the European Commission has continued to host Roma trainees in a scheme funded by the Open Society Institute. A total of eight Roma trainees benefited from the OSI funded scheme in 2006 and new trainees were selected to start in March 2007. Cooperation with civil society has further materialised, especially towards the end of 2006. The Commission contracted the European Roma and Travellers Forum as the European level non-governmental organisation representing and defending the rights of Roma people. The Commission continued to participate in events organised by civil society organisations, Council of Europe, OSCE, EUMC, the World Bank, OSI and Roma Education Fund and funded Council of Europe awareness raising campaign *Dosta!* as a part of wider Council of Europe/ European Commission joint programme, entitled 'Equal Rights and Treatment of Roma in South-East Europe'.⁴⁷² The Commission set up a new web page dedicated to Roma in order to provide information on the EU's activities in support of the Roma and Travellers.⁴⁷³ Roma are being actively included in a context of national activities under the funding available for the 2007 European Year of Equal Opportunities for All. The European Commission has encouraged the new Member States with substantial Roma communities to include Roma in their National Strategic Reference Framework (NSRF). These strategies set the most important development policy objectives and priorities to be supported under the main European funding opportunity: the Structural Funds.

The European Parliament, in a non-legislative resolution of April 2006, drew attention to the situation of Roma women in the EU, concluding that European policy and law-makers have not yet succeeded in securing full equality for Roma women.⁴⁷⁴ The Resolution urged authorities to promptly investigate allegations of human rights abuses against Roma women, to swiftly punish perpetrators, and to provide compensation to victims. It urged Member States to prevent exclusion of Roma women from health care, as documented by a EUMC report. It also called on Member States to ensure that programmes are developed to help Roma victims of domestic violence and to tackle the unemployment of Roma women. The resolution urged the EUMC to study the media's role in fostering anti-gypsyism and negative stereotyping of Roma women.

Youth

The Commission's youth policy unit presented activities against discrimination in the youth field at a meeting of the National Focal Points of the EUMC in June in Vienna in 2006. The priority of anti-discrimination continued in 2006 under the YOUTH Programme, which supports youth projects. The Commission analysed and monitored the activities developed in 2005 as a result of the Declaration of the Council of Ministers for Youth. The cooperation with the

⁴⁷² <http://www.dosta.org> (13.06.2007).

⁴⁷³ http://ec.europa.eu/employment_social/fundamental_rights/roma/index_en.htm (13.06.2007).

⁴⁷⁴ <http://www.europarl.europa.eu/sides/getDoc.do?objRefId=115178&language=EN> (13.06.2007).

Directorate General for Employment, Social Affairs and Equal Opportunities in the awareness-raising campaign 'For Diversity-Against Discrimination', of which youth was one of the two main subjects in 2006, continued. In the framework of the Youth Partnership Agreement between the Commission and the Council of Europe, a research seminar on diversity, participation and human rights was co-organised between the Commission's youth policy unit in cooperation with the Council of Europe in Strasbourg in April. The Council of Europe's campaign 'All Different-All Equal' that focuses on youth in relation to participation, diversity and human rights is also supported by the Commission within the Partnership Agreement. In the context of preparing the European Year for Intercultural Dialogue 2008, Directorate General for Education and Culture held a conference 'Intercultural Dialogue – Best practices at Community level', where young people presented their best practice projects.

Education

A decision establishing the programme 'Europe for Citizens' to promote active European citizenship for the period 2007 to 2013 was adopted by the European Parliament and the Council on 12 December 2006. This Programme is aimed at 'enhancing tolerance and mutual understanding between European citizens respecting and promoting cultural and linguistic diversity, while contributing to intercultural dialogue'. Its implementation started on 1 January 2007.⁴⁷⁵ Within the framework of the Education and Training 2010 programme, the cluster of national experts in the field of teacher and trainer education has identified as a priority the need to exchange good practice on policies designed to educate teachers and trainers so that they are adequately equipped to teach heterogeneous classes, and in particular, classes of students from different cultural or ethnic backgrounds. The Council and the European Parliament adopted measures for lifelong learning so that every European citizen has the chance to prosper in a knowledge-based society.⁴⁷⁶ The European Framework of Key Competences identifies and defines eight key competences and has a strong emphasis on equality, fundamental rights, democracy, tolerance and respect. It is intended to guide national curriculum and teaching practice reforms. Key competence six, entitled 'Interpersonal, intercultural and social competences, civic competence', is based on knowledge of the concepts of democracy, citizenship, and civil rights, including how they are expressed in the Charter of Fundamental Rights of the European Union and in international declarations and how they are applied by various institutions at the local, regional, national, European and international levels. Full respect for human rights including equality as a basis for democracy, appreciation and understanding of differences between value systems of different religious or ethnic groups lay the foundations for a positive attitude.

⁴⁷⁵ OJ L 378/32 (27.12.2006).

⁴⁷⁶ http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2005&nu_doc=548 (13.06.2007).

Racism in football

In March 2006, the European Parliament (EP) adopted a declaration on tackling racism in football. Recognising the serious racist incidents that have occurred in football matches across Europe, the EP strongly condemned all forms of racism at football matches, both on and off the field and called on all those with a high profile in football to speak out regularly against racism. In addition, the EP also called on national football associations, leagues, clubs, players' unions and supporters' groups to apply the UEFA's guidelines on best practice, such as the UEFA Ten-Point Plan of Action.⁴⁷⁷ The Finnish Presidency hosted an EU Sport Directors' meeting in Naantali, in Finland on 4-6 October 2006. The Presidency Conclusions, which discussed EU's opportunities to promote citizens' working and functional capacity through sport, welcomed, in particular, the plans of the upcoming German Presidency in 2007 concerning sport and economics, social aspects of sport, integration through sport, the fight against doping in sport and cooperation of the national anti-doping agencies at European level.⁴⁷⁸

Renewed Lisbon Agenda: small steps to delivery

In its January 2006 first Annual Progress Report on the Lisbon strategy, the Commission has defined four priority areas where more action is needed: (a) investment in education and research; (b) support for small and medium enterprises; (c) higher employment rates, (d) the need to define a common EU energy policy. By the end of 2006, the Commission had received all national action plans⁴⁷⁹ and published an Annual Progress Report assessing these plans.⁴⁸⁰

477 P6_TA(2006)0080 *Tackling racism in football. Declaration of the European Parliament on tackling racism in football*, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P6-TA-2006-0080+0+DOC+WORD+V0//EN> (13.06.2007).

478 EU Sports Directors Meeting Naantali, Finland 4-6 October 2006: Presidency Conclusions, available at: http://www.eu2006.fi/news_and_documents/press_releases/vko40/en_GB/170495/ (13.06.2007).

479 http://www.europa.eu.int/growthandjobs/pdf/nrp_2005_en.pdf (13.06.2007).

480 http://ec.europa.eu/growthandjobs/annual-report-1206_en.htm (13.06.2007).

Re-launching the Lisbon agenda allowed the process to become more comprehensive and focused on economic governance. The effort to bring different policy domains placed an obligation on Member States to develop single National Reform Programmes that cut across policy boundaries, in order to achieve greater coherence in the policy making process and the engagement of economic actors. The second most important development concerning Lisbon II was strengthening of partnership of Member States at the community level and greater role for the European Parliament and the European Commission.

While the new strategy is now considered to be complete, the implementation of National Reform Programmes is yet to be seen. For example, real challenges identified by the process of peer review and consultation, such as lack of identification of targets, lack of active inclusion of vulnerable groups, such as Roma, immigrants and others, lack of attention to issues of multiple discrimination, in particular poverty of ethnic women, children and youth, deficiency in analysis of situation of vulnerable groups have still to be identified on policy agendas at Member State level. Furthermore, inter-linkage of several policy areas, such as integration of immigrants, addressing racism and discrimination in labour market, increasing employability of vulnerable groups, such as Roma, and developing policy responses to multiple disadvantages remains to be acknowledged in some Member States' National Reform Programmes. While engaging economic actors in promoting equality and diversity could be of benefit in a process of combating racism and xenophobia, there is a risk of marginalising equal rights when set against the 'economic benefit' argument in attempting to address situation of vulnerable groups *in addition to* combating racism and xenophobia. Deficiencies in mainstreaming social inclusion strategies (which would mean combining goals of inclusion and integration to help avoid unconstructive separation between post-reconstructive poverty policy and anti-exclusion schemes) were identified at the Finnish Presidency event of the Fifth European Round Table entitled 'Towards a more coherent society', which took place in Tampere on 16th and 17th October 2006.⁴⁸¹ In addition, the Roundtable drew attention to the need for both top-down and bottom-up principles and methods when realising social integration policies. Social policies should not focus excessively on various target groups. Instead, these groups should be visible within all policies, thus taking a balanced approach: targeting particular groups with specific policies, as well as mainstreaming their interests into other policy fields. Such groups, clearly identified during the European Roundtable, were Roma and Travellers and immigrants.

An increased role for Community institutions under the re-launched Lisbon strategy might lead to European legislation and community programmes having a greater impact with reinforced efforts to promote equal opportunities for all, in order to tackle the structural barriers faced by migrants, ethnic minorities and other vulnerable groups. What is needed is a complementary means of motivating policy-makers that provides incentives for taking appropriate policy

⁴⁸¹ For a summary of the European Roundtable, see: <http://www.stm.fi/Resource.phx/eng/subjt/inter/eu2006/round/round1.htm> (13.06.2007).

actions, and avoiding diminishing credibility for making the hard choices that will sometimes be essential to accelerate reform. The Commission should also tighten its policy areas in order to increase the mainstreaming of anti-racism and non-discrimination in community policies, for example, devising guidelines for application of structural funds and encouraging integrated policy development at national and local level. Some steps in this direction have been undertaken in 2006, whereby all key actors in the political process, and notably, the European Parliament, are urged to intensify their efforts to raise the quality of public debate on reforms and to mobilise key stakeholders.

7.1.2. Protecting fundamental rights

EU Fundamental Rights Agency

In November 2006, the European Parliament adopted the legislative resolutions on the establishment of an independent and efficient EU Fundamental Rights Agency.⁴⁸² Agreement in the Justice and Home Affairs Council on a common approach to extending the mandate of the EUMC followed in December 2006. Combating racism and xenophobia will remain at the core of the EU Fundamental Rights Agency's tasks.⁴⁸³

In its Resolution on the framework strategy for non-discrimination and equal opportunities for all, the European Parliament deplored the fact that the Charter of Fundamental Rights had not yet been made legally binding.⁴⁸⁴ It asked the Commission to carry out a discrimination impact assessment on each legislative proposal and called for the future Fundamental Rights Agency to be closely involved in these assessments.

Programme 'Fundamental rights and citizenship' (2007-2013)

In December 2006, the European Parliament approved an amended Commission proposal for a Council Decision establishing the specific programme 'Fundamental rights and citizenship' for the period 2007-2013.⁴⁸⁵ According to the proposed Council Decision, the programme will (a) promote the development of a European society based on respect for Fundamental Rights, (b) strengthen civil

482 <http://www.europarl.europa.eu/oeil/file.jsp?id=5261032> (13.06.2007).

483 On 15 February 2007, the Council adopted the Regulation creating the Fundamental Rights Agency, which came into existence on 1 March 2007.

484 <http://www.europarl.europa.eu/oeil/file.jsp?id=5282042> (13.06.2007).

485 <http://www.europarl.europa.eu/oeil/file.jsp?id=5242942> (13.06.2007).

society, (c) fight against racism, xenophobia and anti-Semitism, and (d) improve the exchange of information and networking between legal, judicial and administrative authorities. The European Parliament emphasised that ‘the objectives of the programme should be complementary to those of the European Union Agency for Fundamental Rights and should focus on those areas where European added-value can be engendered.’

Freedom of expression and respect for religious beliefs

The controversy arising from the publication of cartoons of the Prophet Mohammed in some European newspapers led the European Parliament to adopt a non-legislative resolution on the right to freedom of expression and respect for religious beliefs.⁴⁸⁶ The European Parliament defended freedom of expression as a fundamental value of the EU. At the same time, the Resolution underlined that freedom of expression must be exercised within the limits of law and should coexist with personal responsibility and respect for human rights, religious feelings and beliefs, regardless of the religion they are connected with. At the European Parliament on 15 February 2006, the President of the European Commission underlined the non-negotiable nature of freedom of expression and religious freedom, and that European societies are based on respect for the individual person’s life and freedom, equality of rights between men and women, and a clear distinction between politics and religion.⁴⁸⁷

7.2. Freedom, security and justice

Establishing the area of freedom, security and justice is placed high among the Union’s priorities as one of the Union’s fundamental objectives. The dismantling of the current pillar structure is a prerequisite for comprehensive, legitimate, efficient, transparent and democratic responses to the dilemmas posed by the Europeanisation processes and the creation of a common area of freedom, security and justice. The Commission Communication to the European Council on ‘A Citizens’ Agenda for Europe’ of 10 May 2006 strongly reaffirmed this as a priority, suggesting that the Commission is ready to take initiatives under the bridging clauses of the treaties (Article 42 TEU and 67(2), second indent TCE).⁴⁸⁸

486 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0064+0+DOC+XML+V0//EN> (13.06.2007).

487 <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/06/86&format=HTML&aged=0&language=EN&guiLanguage=en> (13.06.2007).

488 Brussels, 10.5.2006 COM(2006) 211 final *Communication from the Commission to the European Council. A Citizens’ Agenda Delivering Results for Europe*, available at: http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0211en01.pdf p. 6. (13.06.2007).

7.2.1. Review of Hague Programme (2005-2009)

In June, the Commission presented a package of four Communications as a comprehensive basis of the review of the Hague Programme: (1) a Communication 'First implementation report of the Hague Programme and Action plan' (2) Communication on Evaluation of justice, freedom and security policies (3) a Communication Implementing The Hague Programme: the way forward', which is the follow-up in the justice, freedom and security area to the Commission Communication on 'A Citizen's Agenda: Delivering Results for Europe' and (4) a communication on the adaptation of the provisions of Title IV relating to the powers of the Court of Justice.⁴⁸⁹ While significant effort is made to take stock of all actions achieved in 2005 and implementation at national level, the main objective is to establish a mechanism providing for effective evaluation of the implementation and results of policies in this area and to explore the possibilities of improving decision-making and action in the area of freedom, security and justice on the basis of existing treaties, while providing more effective judicial protection.

Integration of third-country nationals

In July 2006, Parliament adopted a non-legislative resolution in response to the Commission's Communication 'A Common Agenda for Integration – Framework for the Integration of Third-Country Nationals in the European Union' (COM(2005)0389).⁴⁹⁰ The Resolution 'encourages Member States to strengthen anti-discrimination and anti-racism laws, enforce existing ones and consider appropriate affirmative action legislation for migrants in all appropriate fields.' Parliament asked the Commission to create a permanent contact group of immigrant representatives, experts, NGOs and others to advise it on all policies related to integration. It urged Member States to encourage the political participation of immigrants. In order to prevent the potential maltreatment of immigrant women in particular, Member States were asked to provide them with easily accessible information as regards the legislation on gender equality and the rights and protection that derive from that legislation.

In its non-legislative Resolution (October 2006) specifically on the problems facing immigrant women, the European Parliament condemned the fact that many female immigrants currently live on the margins of society and

489 <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/06/252&format=HTML&language=EN&guiLanguage=en> (13.06.2007); <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/06/253&format=HTML&language=EN&guiLanguage=en> (13.06.2007); <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/06/254&format=HTML&language=EN&guiLanguage=en> (13.06.2007); <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/06/255&format=HTML&language=FR&guiLanguage=en> (13.06.2007).

490 <http://www.europarl.europa.eu/oeil/file.jsp?id=5319352> (13.06.2007).

have limited access to public, political and economic life.⁴⁹¹ Parliament stressed the importance of unconditional and even priority access for immigrant women to education, language and vocational training. It called on the Member States to promote immigrant women's inclusion into the labour market and adopt positive measures to fight double discrimination on grounds of gender and ethnic origin.

The Commission issued a call for proposals for projects under the INTI programme for integrating third-country nationals. Four million euros have been allocated for the preparatory measures designed to promote the integration of third-country nationals following three specific objectives: (1) to support the setting up of trans-national co-operation networks or pilot projects designed to identify, exchange and evaluate good practices and new approaches in the field of integration; (2) to increase knowledge base for the development of integration policies EU-wide; (3) to support trans-national dialogue and awareness on integration issues.⁴⁹² The Commission presented the Second Annual Report on Migration and Integration (COM(2004) 508 final and SEC(2006) 892).⁴⁹³ It analyses changes and describe actions taken on admission and integration of third-country nationals at national and EU level, providing an overview of policy developments, helping to evaluate and strengthen integration measures and to promote policy initiatives for more effective management of immigration in Europe.

European Fund for the Integration of Third-country nationals (2007-2013)

The European Parliament approved an amended Commission proposal to establish the 'European Fund for the Integration of Third-country Nationals for the period 2007-2013' (COM(2005)0123).⁴⁹⁴ The key objective of the programme is to support the principle of solidarity in managing people flows by ensuring a fair share of responsibilities between Member States. The policy objectives of the fund include: facilitation of the organisation of admission procedures for migrants; contribution to the organisation of introduction programmes for third-country nationals; increase of civic, cultural and political participation of third-country nationals in the host society; strengthening of the capacity of service providers to interact with third-country nationals; and strengthening of the ability of the host society to adjust to increasing diversity. The fund has been allocated 825 million euros for the period 2007-2013.

491 <http://www.europarl.europa.eu/oeil/file.jsp?id=5303812> (13.06.2007).

492 http://ec.europa.eu/justice_home/funding/inti/funding_inti_en.htm (13.06.2007).

493 <http://register.consilium.europa.eu/pdf/en/06/st11/st11526.en06.pdf>

494 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0583+0+DOC+XML+V0//EN> (13.06.2007).

7.2.2. Police and judicial co-operation

Council Framework Decision on combating racism and xenophobia

In a joint resolution of June 2006, Members of the European Parliament reaffirmed Parliament's call on the Council to adopt the Framework Decision on combating racism and xenophobia.⁴⁹⁵ The Resolution urged the Council to reach an agreement on the Commission's proposal. In April 2007 Member States finally reached political agreement on the Framework Decision on combating racism and xenophobia. The draft Framework Decision defines a common EU criminal approach and provides that the same intentional racist and xenophobic conduct would be punishable in all Member States. It criminalises intentional conduct such as incitement to violence or hate towards a group of people, or a person belonging to a group, defined on the basis of race, colour, descent, religion or belief, national or ethnic origin, as well as the public condoning, denial or gross trivialisation of crimes against humanity and war crimes. Incitement to violence or hatred will also be punishable if committed by public dissemination or distribution of tracts, pictures or other material.

Five year action plan to improve EU statistics on crime and criminal justice

The Commission has introduced a Communication on 'Developing a Comprehensive and Coherent EU Strategy to Measure Crime and Criminal Justice'.⁴⁹⁶ This contains an EU action plan for the development of EU statistics on crime and criminal justice over the period 2006-2010. The action plan outlines the systematic approach, in coordination with Member States and other concerned entities, with the objective of accessible high quality and quantitative information to be used for prioritising action to fight crime, benchmarking performance and evaluating implemented measures. The Commission has also decided to set up a group of experts to support the implementation of the action plan, specifically within the field of Justice, Freedom and Security, outlining the policy needs for data on crime and criminal justice. The EUMC accepted offer for membership in this expert group.

495 <http://www.europarl.europa.eu/oeil/file.jsp?id=5353432> (13.06.2007).

496 http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0437en01.pdf (13.06.2007).

8. Conclusions

This report on racism and xenophobia is the first which has provided data and information collected from 27 Member States of the EU. Despite the manifold differences that exist between these 27 countries, there are some themes arising from this report which relate to all of them.

The Racial Equality Directive

The Racial Equality Directive forms an important background context to a great deal of this report. The focus of the first part of this report has been the application of the legislation which followed the transposition of the directive in Member States. It has looked at how the specialised bodies operate, and how cases have been dealt with by courts and tribunals. Several cases are noted as groundbreaking or landmark judgements which clearly represent the influence of the Racial Equality Directive.

The report describes how there are still many Member States who have dragged their feet regarding the implementation of the directive, with some not having any kind of specialised body in place at all to assist victims by the end of 2006. In some other countries, even though the laws and procedures were in place, there was no evidence that a single sanction had been applied in cases of racial/ethnic discrimination over the course of the year. In other countries which have applied sanctions, they have been relatively mild and infrequent. In a minority of Member States their sanctions have been strong, dissuasive and relatively regular, with the strongest award (in the UK) amounting to over 900,000 pounds sterling (about 1,340,000 euros).

In Member States where sanctions are virtually absent, there is a tendency to resolve problems of racial or ethnic discrimination mainly through 'moral pressure', mediation and settlement. However, sanctions play an important role in strengthening the bargaining position of victims. Where there is no serious and credible threat of sanctions and no legal tradition in this respect, settlements and mediations are unlikely to produce sustainable favourable outcomes for the victims, and are also unlikely to function as an effective deterrent for discrimination. Of course, individual sanctions depend on the particularities of the respective case. However, serious sanctions are important, because they function both as a deterrent and as an instrument to raise awareness, because they could trigger media attention. Serious sanctions also serve to attract the interest of legal professionals to be involved in relevant litigation.

The role of research

This report has described a range of research studies stemming from the majority of Member States which in different ways identify discrimination and the ways in which it operates. Research plays a crucial role in complementing complaints data and other official data on inequality, often highlighting what cannot be seen otherwise. Indeed, in the education chapter it was shown that in large parts of the EU, the only source of information on the unequal distribution and circumstances of minority ethnic groups in education are research studies.

The housing chapter presents evidence from research which suggests widespread discrimination in housing against migrant and minority accommodation seekers. Yet this contrasts strongly with the virtual or total absence of any formal complaints about housing discrimination in many Member States. This gap between registered complaints and the outcomes of surveys on discrimination suggests that a large proportion of discrimination cases must go unreported. Something similar was noted in the Racist Violence chapter. This describes evidence from the recently published European Crime and Safety Survey on respondent's experiences of 'hate crimes'. It points out an illuminating contrast – in countries where, for example, 14 or 16 per cent of immigrants report that they have been victims of hate crimes, there was for the same period in the same countries a complete absence of official data on cases of racist violence and crimes.

As with EUMC Annual Reports of previous years, this report describes examples of discrimination testing in the areas of employment and housing, a research method which effectively draws attention to concealed discrimination. In the field of employment, tests were carried out in 2006 by universities, NGOs, research centres, and specialised bodies themselves. The most significant were carried out by the International Labour Office (ILO), as part of its continuing programme, in Sweden and France. In Sweden much greater equality of treatment of candidates was noted for the all-important first stage of application than in the case of the other countries previously tested by the ILO. One suggested explanation for this is the fact that at the time of testing Sweden was the only country which already had a considerable history of legislation and institutions to combat discrimination. In the housing area, the lack of official data on discrimination makes research such as discrimination testing all the more important. Yet in 2006 only one example came to notice, when the French HALDE used the testing method on 126 housing advertisements and 100 estate agencies, showing that North African and Black 'applicants' were regularly denied opportunities for housing compared to the white reference applicant.

Testing is generally seen to be the classic tool for awareness-raising. However, increasingly NGOs and specialised bodies are seen to be submitting the evidence from testing experiments to courts, in those countries which allow such evidence, such as in Hungary and France. Also noticeable in 2006 were cases of what might be called 'personal discrimination testing', where a private individual who suspects that he or she has been wrongly told a vacancy is no longer available

simply because they are an immigrant or a Roma, asks a friend to apply to test that the vacancy is still there, and then reports the case to the authorities.

EUMC reports regularly emphasise the value of research both in providing data where previously there was none, and as a way of attracting public and media interest in order to encourage policy developments. However, as the education chapter shows, it is quite possible that, despite the consistency of research findings on a particular topic, policy developments can go in completely the opposite direction. An example here is the issue of education in mother tongue. Pedagogical research consistently shows the value of at least some teaching in the mother tongue of migrant and minority children, yet national and regional mother tongue programmes are increasingly experiencing cuts in resources and funding and the withdrawal of political support in many Member States.

The continuing need for data

Although research is important, it can only partly compensate for the lack of official information collected by Member States. In some Member States there is a complete absence of any statistical data on the victims of discrimination, often because of legal barriers to the collection of appropriate data. In 2006, in various reports on these countries, several different international bodies have made similar recommendations, namely that in order to combat discrimination authorities need to collect relevant data broken down by ethnic and national origin.

There is a certain contradiction regarding data collection, raised in this report. In the current situation, where there exists a huge variation in the degree to which Member States collect data and the ways that they do it, there is always the danger that those with the best data collection systems become portrayed as those with the greatest problems. This can be seen in the education chapter. For example, France is the only EU country with a comprehensive data collection system of racist and anti-Semitic incidents in school, including a new software tool for recording incidents of violence. Yet this appears to have generated the possibility that schools which have collected data most efficiently can be labelled by the media as the 'most violent' schools. Something similar was noted in the Racist Violence chapter which highlights extreme differences between Member States in the recording of racist crimes. This brings the danger of the superficial judgement that those countries with the best systems have the worst problem. Instead, as the chapter emphasises, whilst high figures do indicate that a serious problem exists with racist violence and crime, they also indicate that the Member State is taking the problem seriously.

In this report, as in other years, there is evidence that authorities in some countries are looking more positively at collecting such data than they were previously, possibly influenced by the Racial Equality Directive. One initiative to assist this development has been the publication at the end of 2006 of the European

Commission's 'European Handbook on Equality Data'.⁴⁹⁷ This analyses what kinds of information can and should be gathered, provides advice on the best ways of doing this, provides concrete suggestions on how national data collection measures can be developed, and addresses the legal and ethical aspects of data collection. Inadequate data collection can serve to hide discrimination against vulnerable groups.

The obligation to collect data under international human rights law

There are also other arguments for collecting better data. Every EU Member State has ratified the International Convention on the Elimination of All Forms of Racial Discrimination. The Convention is interpreted by the Committee on the Elimination of Racial Discrimination, which also makes recommendations based on state reports outlining action taken against racial discrimination. While these recommendations, in common with much of international human rights law, are not legally enforceable, they do provide an authoritative statement of state obligations under the Convention.

The Committee has asserted that, for it to fulfil its function, it is essential that Member States provide information on the presence within their territory of persons belonging to different races, national or ethnic groups than the majority population, or to indigenous peoples.⁴⁹⁸ As past EUMC reports have shown, some states do not collect data on the ethnic or national origin of their citizens or persons living on their territory. However, the Committee has stated its belief that there is an international standard, present in the Convention, requiring equal treatment of all ethnic or national minority groups.⁴⁹⁹ States which fail to collect data based on self-identification as a member of an ethnic minority, for example through census questionnaires, are therefore in breach of this standard.⁵⁰⁰

The Committee has affirmed that the responsibilities of states parties to the Convention mean that they should include in their periodic reports 'socio-economic data on the non-citizen population within their jurisdiction, *including data disaggregated by gender and national or ethnic origin*' (emphasis added).⁵⁰¹ Merely *collecting* data based on indicators of ethnicity is not, however, sufficient. To fulfil their human rights obligations, states must also analyse this data in all areas in which discrimination may occur. The Committee's position that data

⁴⁹⁷ European Commission (2006) *European Handbook on Equality Data: Why and how to build a national knowledge base on equality and discrimination on the grounds of racial and ethnic origin, religion and belief, disability, age and sexual orientation*, available at: http://ec.europa.eu/employment_social/publications/2007/ke7606381_en.pdf (15.06.2007).

⁴⁹⁸ CERD (1999) *General Recommendation No.24: Reporting of persons belonging to different races, national/ethnic groups, or indigenous peoples*, Art. 1, para 1.

⁴⁹⁹ CERD (1999) *General Recommendation No.24: Reporting of persons belonging to different races, national/ethnic groups, or indigenous peoples*, Art. 1, para 3.

⁵⁰⁰ See also: CERD (1990) *General Recommendation No.8: Identification with a particular racial or ethnic group*, Art.1, para.1,4.

⁵⁰¹ CERD (2004) *General Recommendation No.30: Discrimination Against Non Citizens*, para 5.

collection is an obligation under current human rights law is not contrary to the requirements of data protection legislation in the EU, a point also made by the European Handbook on Equality Data.

Legal restrictions and insecurity

Finally, last years EUMC Annual Report drew attention to Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents. According to this directive, third-country nationals who have acquired long-term residence status as set out by this act will have a right of access to the labour market on the same conditions as nationals (with an exception regarding those activities involving exercising of public authority). The directive provides that long-term residents will have the right to the same conditions of work and employment as nationals, and also allows a limited right to mobility between Member States for those third-country nationals who are long-term residents. Yet many long-term residents can still find themselves legally excluded from millions of public sector jobs within one Member State, whereas those in a neighbouring Member States face no such exclusion.

For many of those migrant workers who do not have the status of a long-term resident, in 2006 there continued to be a great deal of evidence legal inequality was contributing to extreme abuses and exploitation at work. Workers who are considered short-term, under a strict work permit system, are often dependent on their employer for their right to remain in the country. The close link between a worker and a specific employer means that migrant workers sometimes put up with serious abuse and exploitation so as to avoid deportation. There was also evidence in 2006 from several different Member States that legally insecure migrant workers were incurring higher rates of injury at work than majority workers. Again, this was seen to be a reflection of their powerlessness, and the work pressure put on them in dangerous working environments. Worst of all are the conditions of near slavery of third-country national farm workers, often asylum seekers, that have been reported in the south of Italy, often housed in unhealthy accommodation with no water, electricity or sanitation, and working in conditions where they suffer appalling exploitation for long hours and little money.

9. Opinions

The Racial Equality Directive

The Racial Equality Directive has provided an influential context for the material collected in this report. The evidence leads to a number of conclusions regarding measures and actions to be taken to improve the effectiveness of Member States' laws and institutions created in response to the directive.

The very low number of recorded complaints received by specialised bodies in some Member States, despite NGO reports and independent research surveys pointing towards the existence of ethnic discrimination in these countries, suggests a lack of awareness of the existence and functioning of these specialised bodies. This is a major weakness, given the fact that the protection system envisaged by the Racial Equality Directive depends on the awareness and initiative of victims.

- Member States should intensify their efforts to raise awareness and disseminate information regarding anti-discrimination legislation and the possibilities for redress, targeting particularly potential victims of discrimination.

The complaints data collected in this report confirm the important and central role of specialised bodies. For example, Member States in which no specialised bodies exist or where their functioning is impaired by a lack of resources, in general, also do not have effective sanctions. Specialised bodies are central to the effectiveness of the protection system envisaged by the Racial Equality Directive.

- Member States should ensure that the Specialised Bodies, e.g. Equality Bodies, are properly resourced so as to be able to perform their important function effectively.

The report also shows that in Member States where sanctions are virtually absent, there is a strong tendency to resolve problems of racial or ethnic discrimination mainly through 'moral pressure', recommendations, mediation and settlement. Whilst recommendations, mediation and reconciliation might have their legitimate role to play in cases of inadvertent and/or indirect discrimination, sanctions are more appropriate in cases of intentional and targeted discrimination. Dissuasive sanctions are crucial for the effective application of the protection system envisaged by the Racial Equality Directive. They improve the bargaining position of victims in mediation and settlements and serve as deterrent to prevent future discrimination.

- Member States should ensure that dissuasive sanctions are effectively available, and that the structures exist for victims to have access to tribunal or court proceedings at low cost.

Some Member States do not collect sufficient information to enable a monitoring of the effectiveness of legislation in addressing ethnic discrimination (complaints data and outcomes of specialised bodies, other bodies and tribunals, courts). In countries where specialised bodies and/or tribunals deal with *all* discrimination grounds, it is important for complaints data to indicate on which ground of discrimination the case was brought.

- Member States should ensure that complaints data, disaggregated according to grounds of discrimination, as well as age and gender, are systematically collected and published, to allow them to monitor the impact of relevant legislation. Complaints data should be made readily available in the public domain, e.g. on websites and in print publications.

Legal status

As in previous years there is evidence that workers with insecure legal status are forced to tolerate working conditions that majority workers would not endure. Evidence for 2006 also shows that they work in less safe environments, which leads to above average accidents rates. At the extreme, there are migrants, refugees and asylum seekers working in a labour market segregated from the majority population, suffering gross exploitation, long hours of work for meagre pay, and accommodated in appalling housing conditions, without water, electricity or sanitation. The status of seasonal migrant workers and migrants with insecure legal standing makes it difficult for them to find accommodation via 'normal' channels.

- Member States should ensure that adequate resources for the policing and inspection of illegal work environments are available, and should also ensure that legislation regarding minimum social rights, working conditions and minimum wages is rigorously enforced in order to ensure that migrant workers are not exploited, and that unscrupulous employers are penalised.
- Member States should ensure that alternative housing solutions are envisaged to cope with the vulnerability of seasonal migrants and migrants with an insecure legal status.

Rights of long-term residents

As with last year's EUMC Annual Report, this report draws attention to Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents. According to this directive, third-country nationals who have acquired long-term residence status as set out by this act should have a right of access to the labour market on the same conditions as nationals. The

directive allows exceptions regarding those activities which involve the exercise of public authority. However, Member States vary tremendously in the jobs which they designate to be available only to those who hold formal citizenship. Thus many long-term residents within one Member State find themselves legally excluded from whole sections of employment, whilst those in a neighbouring Member State face no such barriers.

- Member States should re-examine legal or administrative provisions which exclude third country nationals from those types of public sector employment that do not involve the exercise of public authority.

Positive action

The Racial Equality Directive allows for positive action measures to be carried out as part of a range of activities to combat ethnic inequality. Positive action measures aim to overcome the effects of past disadvantages linked to racial/ethnic origin, and are targeted at members of the excluded or under-represented minorities themselves. Examples might be providing extra information or training for ethnic minorities to encourage them to apply for job areas where they are under-represented. Last year's EUMC Annual Report called on Member States to make positive action measures a part of their racial equality policies. The current report describes a number of innovative positive action measures in recruitment, adopted by public sector authorities in several different Member States in 2006, but these are still relatively rare.

- Member States should consider introducing such positive action measures in their public sectors, and encouraging such action in the private sector. These activities will need to be accompanied by information and awareness campaigns to communicate the reasons for positive action.

Data collection

It is also clear that for positive action to be carried out effectively there must be accurate equality data, i.e. relevant data on the groups who are potentially the victims of racial or ethnic discrimination. This is needed to identify the problem in the first place, and to implement the positive action. It also allows an evaluation of how well the programme is working, and finally enables a decision to be made as to when the problem is corrected, so that the positive action measure can be stopped.

There have been contrasting approaches to equality statistics between different Member States, as described in previous EUMC Annual Reports. In 2006 two European Commission publications were completed which have been

designed to provide information, advice and assistance to those who wish to look practically into the gathering of such data. Reference has already been made in this report to the publication at the end of 2006 of the European Commission's '*European Handbook on Equality Data*'.⁵⁰² This provides information on what kinds of data can and should be gathered, provides advice on the best ways of doing this, makes concrete suggestions on how national data collection measures can be developed, and addresses the legal and ethical aspects of data collection. The second publication, '*Measuring Discrimination: Data Collection and EU Equality Law*'⁵⁰³ provides further guidance on how international and European law, particularly data protection law, relates to this kind of equality data.

- The European Commission should consider measures to disseminate wider and in all EU languages the two publications on data collection – the '*European Handbook on Equality Data*' and '*Measuring Discrimination: Data Collection and EU Equality Law*'. The European Commission should also encourage more debate on this issue in all Member States.
- Member States should encourage more debate at national level on the issue of data collection to measure and monitor discrimination and also consider applying the recommendations of the European Handbook on Equality Data'.

The need for improved data collection in specific areas is strongly urged in the education chapter, in order that Member States gain the necessary analytical tools to identify and counter practices and structures that lead to inequality in education.

- Member States are strongly urged to consider installing systems for recording racist and discriminatory incidents in public education facilities, and, equally importantly to consider collecting data on the educational attainment of migrants and minority ethnic groups.

Similarly, the chapter on racist violence and crime points out the need for better data in specific areas. There is a need for comprehensive data collection on racist crime at each stage of the criminal justice system – from publicly reported incidents through to case disposals – to identify knowledge gaps that prohibit the development of evidence-based policies.

- The European Commission should consider promoting more actively a common approach to the development of national criminal justice data collection mechanisms on racist violence and crime to improve data comparability.

502 European Commission (2006) *European Handbook on Equality Data: Why and how to build a national knowledge base on equality and discrimination on the grounds of racial and ethnic origin, religion and belief, disability, age and sexual orientation*, available at: http://ec.europa.eu/employment_social/publications/2007/ke7606381_en.pdf (15.06.2007).

503 European Commission (2007) *Measuring Discrimination: Data Collection and EU Equality Law*, available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/07measdis_en.pdf (15.07.2007).

- Member States are strongly urged to promote and enhance their criminal justice data collection mechanisms on racist violence and crime with a view to developing evidence-based policies, including trends analyses, which can be used in identifying and combating the problem.

Public procurement

One way of working to achieve positive action goals in employment is to use contract compliance or public procurement policies, where an authority uses its powers as a purchaser of goods or services to encourage contractors and suppliers to ensure their policies are compatible with anti-discrimination and equal opportunity good practice. This year's report shows that a few Member States are starting to look at this policy with interest.

- The European Commission should provide guidance regarding the conditions under which EU and national public procurement policies to improve equality are compatible with Community law.

Research and testing

Whilst Member States have been called on to improve their data collection systems, at the same time, the collation of data by official sources should be complemented by more systematic research. Once again in 2006, in the areas of housing and employment, research identifies discrimination in many forms, yet this contrasts with the low number (or complete absence) of formal complaints, leading to the conclusion that a large proportion of discrimination cases in employment and housing must go unreported. As with previous years, in 2006 the particular research method of discrimination testing in employment and housing has been particularly effective in bringing the problem of ethnic discrimination to public attention.

- The European Commission should encourage further research on reliable, objective and cost effective methodologies for discrimination testing at EU level to improve comparability.
- Member States are called upon to consider implementing more widespread and systematic discrimination testing (or 'situation testing') in order to facilitate a clearer assessment of the magnitude and mechanisms of employment and housing discrimination, and provide evidence with which to supplement official data.

In 2006 there have been cases where the results of such discrimination testing, either carried out by private individuals or by NGOs, have been successfully used in court cases to prove discrimination.

- Member States should ensure that evidence from *bona fide* discrimination testing methods should be accepted in court in cases of discrimination, modifying laws if necessary. Support should be given to NGOs to enable them to apply these techniques in support of victims of discrimination.

Roma and housing

The Roma community are the most affected by sub-standard housing, and are also regularly subjected to forced evictions and relocations. Evidence that has been collected over the course of 2006 shows that forced evictions have not diminished and in some cases international organisations have identified outright violations of human rights.

- The European Commission should consider supporting the wide dissemination of 'good practice' initiatives in combating housing discrimination for Roma (for example, see section 4.4.1) developed by some Member States.
- Member States are strongly urged to use measures relocating citizens with a Roma background only when there is no possibility of legalisation and re-housing *in situ*.
- Member States are urged to make their local authorities more aware of their particular responsibility to raise the awareness of the local population regarding citizenship rights, related particularly to housing, that apply to Roma.

Full access to education, and integrated schooling

Open access to education includes both the right and the obligation to be educated and it includes the provision of the necessary means in order to enable all pupils, including asylum seekers and persons without a legal residence status, to make use of their right (and fulfil their obligation). In the education chapter a range of barriers to education are described.

- Member States should ensure that any practical barriers to education for migrants and ethnic minorities are eliminated and that they are endowed with the necessary means to participate equally in education. Particularly children of asylum seekers who are in detention camps should be provided with education either within the camps or in close distance to them. Furthermore, Member States should ensure that school authorities are not obliged to report information regarding the legal status of migrant pupils to the authorities.

Any indirect form of segregation widens the education gap between minority and majority population groups, particularly regarding Roma and Travellers.

- Member States should ensure that preparatory classes segregating de facto pupils according to language ability are short term and aim at the integration of migrant and minority pupils as soon as possible into regular classes.

Research evidence suggests that more integrative school systems could have a beneficial effect on equal opportunities of migrant and minority children, who are at risk of being placed into lower educational tracks.

- Some Member States could consider the example of more integrative school systems that exist in some other Member States providing for more equal opportunities for migrant and minority children.
- Member States with less flexible and highly differentiated educational systems should in particular consider developing strategies that avoid assigning migrant and minority children to lower educational tracks, from which they cannot easily move, as this could place them at a disadvantage from an early age.

Intercultural education and language support

There was evidence in 2006 that in several Member States, issues of cultural diversity are being increasingly promoted in education, with some Member States working towards more intercultural educational systems, including those with anti-racist components.

- Member States should ensure that national educational curricula and textbooks address issues of racism and xenophobia.
- Member States should ensure that school authorities offer migrant children the possibility to learn their mother tongue at school.⁵⁰⁴
- Member States should ensure that more free language courses and support is made available to migrants, and particularly youth, to facilitate their integration into the host society and improve their employment opportunities.
- Member States could consider the possibility of introducing initiatives to increase the number of teachers with migrant or minority background.

⁵⁰⁴ With regard to children of migrant workers who are EU nationals, Council Directive 77/486/EEC of 25 July 1977 on the education of the children of migrant workers stipulates that Member States shall ensure free tuition of the official language of the host state and promote teaching of the mother tongue (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31977L0486:EN:NOT> [26.06.2007]).

Racist violence and crime

Legal and political developments at European Union level to address racist crime are indicative of increasing recognition of the problem of racism. Yet most Member States still lack comprehensive official criminal justice data collection mechanisms.

- The European Commission should consider promoting actively the sharing of information regarding 'good practice' developments in combating racist violence and crime between Member States with the aim of learning from the progressive and innovative practices of others, particularly those practices that recognise the impact of crime on victims and vulnerable communities.
- Member States are urged to develop mechanisms for effectively recording and addressing reports of violence and malpractice against vulnerable minorities by agents of the state, namely: immigration, border control, customs and law enforcement personnel.
- Member States should consider developing criminal justice responses to the problem of racist violence and crime with a view to addressing the particular needs and rights of victims of racism. In this regard their work can be enhanced through multi-agency responses that involve close cooperation with civil society organisations.
- Member States are urged to pay close attention to the work of NGOs that are able to identify evidence of racist violence and crime, alongside emergent trends in manifestations of racism, which might not come to the notice of the state.

Annex

The methodology of the report

The information provided in this report is the product of an on-going data collection exercise involving the FRA's 27 RAXEN National Focal Points (NFPs). Each Member State has one NFP, which is responsible for collecting data under common headings in each of the five thematic areas. NFPs consist of consortia which are typically constituted by bodies such as anti-racist NGOs, university research centres, institutes for human rights, or government-affiliated organisations. The NFPs are requested to collect information in accordance with specific and common guidelines. Each NFP produces a 'National Data Collection Report',⁵⁰⁵ and from the information in these National Data Collection Reports the thematic chapters of the report are produced by the FRA.

The 27 National Focal Points which provided the information for this report are as follows:

Austria	Ludwig Boltzmann Institute of Human Rights – Research Association (BIM-FV) in cooperation with the Department of Linguistics (University of Vienna) and the Institute of Conflict Research (IKF), Vienna http://www.univie.ac.at/bim/php/focalpoint
Belgium	Centre for Equal Opportunities and Opposition to Racism (CEOOR), Brussels http://www.diversiteit.be
Bulgaria	Project 1 EOOD, Sofia http://www.csd.bg
Cyprus	Cyprus Labour Institute (INEK-PEO), Nicosia http://www.inek.org.cy
Czech Republic	People in Need (PIN), Prague http://clovekvitisni.cz
Denmark	Documentation- and Advisory Center on Racial Discrimination (DACoRD), Copenhagen http://www.drcenter.dk
Estonia	Legal Information Centre for Human Rights (LICHHR), Tallinn http://www.lichr.ee
Finland	Finnish League for Human Rights (FLHR), Helsinki http://www.ihmisoikeusliitto.fi
France	Centre d'Etudes des Discriminations, du Racisme et de l'Antisémitisme (CEDRA), Paris

⁵⁰⁵ The accuracy of the information in the National Data Collection Reports is checked by government liaison contacts from each Member State.

	http://www.commission-droits-homme.fr/binInfoGeneFr/affichageDepeche.cfm?ildDepeche=145
Germany	European forum for migration studies (efms), Bamberg http://www.efms.de
Greece	Antigone – Information and Documentation Centre, Athens http://www.antigone.gr
Hungary	Centre of Migration and Refugee Studies, Institute of Ethnic and National Minority Studies of the Hungarian Academy of Sciences (CMRS), Budapest in cooperation with the Ministry of Social Affairs and Labour and the Hungarian Helsinki Committee http://www.mtaki.hu
Ireland	Equality Authority (EA) and the National Consultative Committee on Racism and Interculturalism (NCCRI), Dublin http://www.equality.ie/
Italy	Cooperation for the Development of Emerging Countries (COSPE), Florence http://www.cospe.it
Latvia	Latvian Centre for Human Rights (LCHR), Riga http://www.humanrights.org.lv
Lithuania	Centre of Ethnic Studies – Institute for Social Research (ISR), Vilnius http://www.ces.lt
Luxembourg	Centre d'Etudes de Populations, de Pauvreté et de Politiques Socio-Economiques/ International Networks for Studies in Technology, Environment, Alternatives, Development (INSTEAD), Differdange http://www.ceps.lu
Malta	Jesuit Centre for Faith and Justice (JCFJ), Valletta http://www.jesuit.org.mt
Netherlands	DUMC – Dutch Monitoring Centre on Racism and Xenophobia, Amsterdam http://www.art1.nl
Poland	Helsinki Foundation for Human Rights (HFHR), Warsaw http://www.hfhrpol.waw.pl
Portugal	Numena – Research Centre on Human and Social Sciences, Lisbon http://www.numena.org.pt
Romania	Center for Legal Resources, Bucharest http://www.crj.ro
Slovakia	People against Racism (PAR), Bratislava http://www.rasizmus.sk
Slovenia	Peace Institute, Institute for Contemporary Social and Political Studies; Ljubljana http://www.mirovni-institut.si
Spain	Movement for Peace, Disarmament and Liberty (MPDL), Madrid http://www.mpdl.org
Sweden	Expo Foundation, Stockholm http://www.expo.se/
United Kingdom	Centre for Rights, Equality and Diversity, University of Warwick http://www2.warwick.ac.uk/fac/soc/sociology/research/raxen/

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