



european network against racism

# ENAR Shadow Report 2008

## **ENAR SHADOW REPORT 2008**

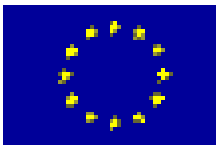
### **Racism in Romania**

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*Racism is a reality in the lives of many ethnic and religious minorities in the EU. However, the extent and manifestations of this reality are often unknown and undocumented, especially in official data sources, meaning that it can be difficult to analyse the situation and to establish solutions to it. Even where there is extensive official data, NGOs offer a vital alternative data source that comes directly from experiences of those individuals and communities experiencing racism on a daily basis.*

*The ENAR Shadow Reports are produced to fill the gaps in the official and academic data, to offer an alternative to that data and to offer an NGO perspective on the realities of racism with the EU and its Member States. NGO reports are, by their nature, based on many sources of data, official, unofficial, academic and experiential. This allows access to information which, while sometimes not backed up by the rigours of academic standards, provides the vital perspective of those that either are or work directly with those affected by the racism that is the subject of the research. It is this that gives NGO reports their added value, complementing academic and official reporting.*

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## I. Executive summary

The Roma remain the most visible and discriminated group in Romania when it comes to racism. Roma are caught in a vicious circle of poverty, reinforced by discrimination and social exclusion. The lack of interest in the issue from the Romanian state, at the level of general policy, can also be discerned from the way the latest policies on the Roma are being justified and drafted, an example being the National Action Plan for Social Protection and Social Inclusion on its Roma component.

Anti-Semitic incidents, such as desecration of cemeteries, have not been adequately addressed and punished, while the attitude of the Romanian President not rectifying a political blunder where he left out Israel from Syria's neighbours and mentioned Palestine instead, gave legitimate arguments for Jewish NGOs and public opinion leaders to voice accusations of Anti-Semitism. Furthermore, in 2008, anti-Semitic articles appeared in both Romanian and Hungarian language press as the equality body jurisprudence shows. The National Council for Combating Discrimination (NCCD) also found discrimination in a press article, this time against a Romanian citizen of Turkish ethnicity.

With regards to language rights, the NCCD sanctioned discrimination cases in access to public interest information in both Romanian and Hungarian language in the Hungarian part of the country.

Another particularly vulnerable group are asylum seekers who are tolerated but who are not granted a protected status, and asylum seekers who were not granted asylum and have thus become illegal but have not left the Romanian territory. These persons do not have any social right, and are consequently forced into destitution. Refugees in general are also vulnerable because of inadequate integration and financial support. The Romanian asylum granting system is also very weak, less than one in five asylum seekers are being granted a form of protection.

Foreign workers, who lived in severe poverty in their home-countries and especially if their cultural background is considerably different from the Romanian culture, are exposed to exploitation as they do not have access to vital information. The case of 300 Chinese women workers who were abused in a 2007 incident when their employer kept them in overcrowded dwellings, paying them much less than the wages agreed upon illustrates this perfectly.

For various reasons the Roma do not have access to the labour market under the same conditions as the non-Roma, while their quality of employment is lower. Roma women are even less engaged in the labour market due to their traditional role of main caretakers of the household. Furthermore, they also face multiple discrimination based on gender and ethnicity, although the ethnic component is much stronger when it comes to the labour market.

- A programme of micro-credits and business consultation should be granted to Roma, with a focus on Roma women, and to all those who lack financial means in order to start a business.

In the area of housing, the Roma inhabit the most precarious houses. Their access to proper housing is limited by poverty and in some cases, also by historical injustice.

- The Romanian housing legislation which indirectly discriminates against the Roma should be changed to stop arbitrariness and to take into account the specific situation of the Roma.

In the area of education, the problems Roma children face have to do with: lower attainment rate, higher drop-out rates and general lower qualifications, due to discrimination in the system, segregation and the inability of teachers to engage Roma students.

- As commendable as the initiatives of the Romanian Ministry of Education may be, more effort is needed in order to implement the de-segregation Minister Order from 2007 and to train all human resources in diversity management and integration.

The health status of the Roma is generally poorer than that of non-Roma, translating into a 10 year lower life expectancy. This situation is connected to the lack of access to health services because of poverty, lack of identification documentation, segregation and discrimination in the system. Children are particularly affected by the lack of access to health care. The most important NGO practice in the field is the Romani CRISS “health mediator” programme implemented since 1996 which has a considerable impact on the health status of Roma communities.

- Compulsory ethics and anti-discrimination courses should be introduced in the health educational system as well as additional training on the same topic for all the current medical staff.
- Medical staff should be trained on Roma “cultural taboos” and the ways to accommodate medical services with cultural restraints;

The police still use excessive force against the Roma and racist incidents and crime still happened in 2008, targeting the Jewish and Roma communities. The incidents were not adequately investigated or sanctioned.

- The Ministry of Internal Affairs should adopt and enforce a zero-tolerance policy towards any abuse of power, while the training of magistrates conducted by the NCCD should also include prosecutors and lawyers and should be extended nation wide.

Roma access to goods and services is considerably lower for the Roma than for the non-Roma because of poverty, but also because of discriminatory attitudes. An over-financing of the Romanian Orthodox church was found by the NGO assessment as well as lack of transparency.

- More effort and investment should be placed by the Romanian state on anti-discrimination campaigns, while the financing awarded by the state to religious denominations should become more transparent.

An anti-Roma media campaign was underway in the Romanian media connected with the anti-Roma and anti-immigrant Italian campaign.

- The Romanian media professional associations should adopt ethical regulations accompanied by sanctions and strictly enforce them.

The Romanian asylum system lacks guarantees for the respect of basic human rights while the proportion of persons granted protection is very low (< 1/5). The situation of tolerated persons and illegal immigrants who lack any kind of access to rights needs to be immediately addressed through a change in legislation.

- The Romanian asylum system needs more financing and intensive training of the civil servants who are at some point supposed to offer services to refugees and asylum seekers

The equality body, the National Council for Combating Discrimination is considered by NGOs in the field to have been an institution in continuous development and improvement of its activity since 2005. The NCCD has however been under attack for some of its decisions and, following Constitutional Court Decisions, its mandate was limited with regards to decisions on the discriminatory nature of legislation and to decisions regarding wage rights in the public system.

- It is imperative that the independence and competence guarantees of the equality body are maintained, including through the appointment of the new members of its Steering Committee based on competence grounds and not on political ones.

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### III. Introduction

The most topical discourse in the Romanian public space throughout 2008, starting in 2007 and continuing in 2009, was the way Romanians were being treated in Italy and the Romanian Roma in particular. This theme was the result of an anti-immigration campaign of the Berlusconi Government, and was also connected with the bad image Romanians thought they had in Italy because of Roma ethnics. Scapegoating and collective blaming were imported by the Romanian media from the Italian one, while the Romanian Government did not adequately fulfil its role of protecting its citizens in Italy, regardless of ethnicity and making use of all legal, diplomatic and political means provided for by the European Union.

The main findings of the report show that the Roma minority remained the most vulnerable community, and was exposed to extreme poverty in all areas of life, to social exclusion and to discrimination. In addition, refugees and asylum seekers, although not yet reaching large numbers in Romania, are frequently victims of the Romanian asylum system which does not seem to be prepared to prioritize the basic human rights of individuals.

Police abuse, forced evictions, and racist crime against the Roma still occurred in 2008 as documented by Romani CRISS NGO. Romanian Government policies for the Roma, with few exceptions, do not have the expected results and did not seem to make a noticeable difference in the lives of the Roma. Lack of political and financial commitment seems to be the main cause for this situation. The activity of the National Council for Combating Discrimination, the Romanian equality body has been steadily improving, the NCCD being the most important institutional actor in combating discrimination.

The report mainly refers to events from 2008, but, where relevant, it also covers 2007 and 2009. It is split in two main parts. The first part deals with manifestations of racism and religious discrimination in access to rights and services for vulnerable communities and the second with the Romanian political and legal context related to anti-discrimination. The report ends with conclusions and recommendations.

#### IV. Communities vulnerable to racism

The community most vulnerable to racism remains the Roma community, with Roma women still facing multiple discrimination and with many Roma children continuing to be affected by the precarious economic situation of their families as well as discrimination in the educational system. Forced evacuation of the Roma sometimes with the relocation of Roma communities in environmentally hazardous places has led to a practice of the state which Romani CRISS NGO calls environmental racism. This situation affects Roma children more seriously than the rest of the community (See section on Housing).

The number of Roma in Romania is, according to the last census, from 2002, 535,140 persons, that is, 2.5 per cent of the total population<sup>1</sup>. Roma studies however place the number of Roma in Romania somewhere at 2,000,000 people, meaning 8.76 per cent of the total population<sup>2</sup>.

The Roma in Romania have had a history of slavery which placed them in a situation of social exclusion for centuries and which was also inevitably translated into higher levels of poverty. The Roma Holocaust has also played a role in increasing the socio-economic gap. The Roma are nowadays caught in a vicious circle of poverty reinforced by segregation and by another vicious circle, that of discrimination with the self-fulfilling prophecies of prejudice. In this vicious circle, to give just an example, a person lacking proper education may lead to that person not having access to the labour market, and thus lacking financial means to afford a house and medical insurance which in turn makes attending school by the children of that person much more difficult than for the rest of the population. Roma women, because of their traditional role of main caretakers of the family are even less active on the labour market. From this perspective, the lack of access to goods and facilities in the household such as running water or a washing machine affects them much more seriously (See section on Access to goods and facilities). In addition, Roma women face multiple discrimination in the labour market with Roma men having higher chances of getting a job. Discrimination is also connected to the level of education where Roma women are again at a disadvantage compared to Roma men. However, the ethnic component is perceived as a much stronger cause of discrimination than the gender component<sup>3</sup>.

Another vulnerable group in Romania are asylum seekers and refugees in Romania. Although data on discrimination against refugees in the Romanian society is scarce, they are vulnerable because of the weakness of the Romanian asylum system. A particularly vulnerable group are persons holding toleration or

<sup>1</sup> National Institute of Statistics, 2002 Census, available at: <http://www.insse.ro/cms/files/RPL2002INS/index1.htm> (15.05.2009)

<sup>2</sup> See for example Open Society Institute, Education Support Program, *Monitoring Education for Roma*, (New York, Open Society Institute, 2006), p.6

<sup>3</sup> Surdu, Laura, and Surdu, Mihai, *Broadening the Agenda: the status of Romani women in Romania* (New York: Open Society Institute, 2006): 63



illegal immigrants who are still on the Romanian territory. These persons do not have access to any social rights and are driven into destitution (See section on Migration and integration).

According to UNHCR statistics, there were 1080 asylum applications submitted to Romania in 2008 as opposed to 660 in 2007. The countries of origin were: Pakistan (252), Bangladesh (172), India (141), Iraq (133), Turkey (79), China (53), Georgia (43), Cameroon (25), Serbia (25) and Republic of Moldova (15)<sup>4</sup>. In the period August 2007-August 2008, 223 foreigners received a form of protection with the following first three countries of origin: Iraq (167), Somalia – (15) and Serbia (9)<sup>5</sup>.

According to a 2008 NCCD commissioned opinion poll, the Roma have a predominantly negative image. 71 per cent of Romanians consider that the Roma are breaking the laws, 28 per cent believe that the Roma should not be allowed to travel abroad, 23 per cent believe that there should be special schools for the Roma and 13 per cent believe that there should be pubs to which Roma should not be granted access. Only 20 per cent would agree for them or someone from their family to marry a Roma person, and 28 per cent would not agree to have a Roma work colleague. The main characteristics which non-Roma associate with Roma are: thieves, dirty and lazy.

With regards to various immigrant groups, the opinion poll shows different acceptance levels. When asked whether they believe that Chinese crime represents a danger for Romanian society, 13 per cent agreed and 35 did not. When asked whether they believed that the Chinese were occupying the jobs of Romanians, 15 per cent agreed, while 45 did not. When asked whether they believed that the presence of Arabs in Romania could represent a danger, 16 per cent agreed, while 38 per cent did not. 14 per cent believed Romanian women should not marry Arab men while 42 per cent did not agree with this idea. Africans had a bad image, with backwardness and dirtiness representing the characteristics mostly associated with them. 45 per cent believed that immigrants to Romania should keep their culture while 12 per cent did not agree. With regards to the religious practices associated with the Jehovah's Witnesses' cult, 28 per cent declared these practices were bothering them, while 25 per cent were not bothered. Members of Jehovah's Witnesses cult also had a moreover bad image the first characteristics associated with them being: religious, united, superstitious and hypocrites<sup>6</sup>.

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<sup>4</sup> UNHCR (2009), Asylum and trends in industrialized countries 2008. Statistical overview of Asylum Applications Lodged in Europe and selected Non-European Countries, available at: <http://www.unhcr.org/statistics/STATISTICS/49c796572.pdf> (07.05.2009)

<sup>5</sup> Romanian Office for Immigration, Annual Report regarding the situation of foreigners who have obtained a form of protection in Romania (2008), available at: <http://hdr.undp.org/en/statistics/> (07.05.2009)

<sup>6</sup> The Gallup Organization Romania (2008), Perceptions and attitudes of Romania's population towards the discrimination phenomenon, available at: [http://www.cncd.org.ro/files/file/Sondaj\\_discriminare\\_2008\\_CNCD.pdf](http://www.cncd.org.ro/files/file/Sondaj_discriminare_2008_CNCD.pdf) (07.05.2009)

## V. Manifestations of racism and religious discrimination

### V.i Employment

A 2008 qualitative and quantitative study drafted within an EU PHARE programme and under the aegis of the National Agency for the Roma<sup>7</sup> revealed several problems related to employment for the Roma.

When it comes to finding and keeping employment the Roma are the group most affected by discrimination and social exclusion with all its consequences. The statistics of this exclusion translate into 22.3 per cent of the Roma between 18 and 59 doing regular work as opposed to 51 per cent of the non-Roma<sup>8</sup> while 2 per cent of the active Roma work in fields like education, science, health, culture, as opposed to 10 per cent of the non-Roma<sup>9</sup>. One third of the Roma work in fields like agriculture and forestry, as opposed to only 13.4 per cent of the non-Roma<sup>10</sup>.

The study also reveals some specific problems which partly explain the differences in access to employment. Thus, for the Roma, a lower educational level makes access to employment more difficult. The traditional role of women confining them to household duties and to raising children influences their participation to the labour market, although many Roma women perform unqualified, informal jobs such as cleaning, gathering recyclable objects or selling small objects. Spatial segregation, or life in a small community, coupled with a general lack of financial means sometimes make it so that the social aid which is not enough for ensuring the basic needs of a larger family, becomes bigger than what is left after paying the costs of commuting to a place where they do daily work. Work mediators, or whoever might help improve job accessibility for the Roma are not part of a formal system (the qualification is not recognized as such). Those who do perform such work, have been trained in specific, time-limited projects, or work on a volunteer basis, which is not sustainable. Local authorities create a paradoxical relationship between informal occupations and social aid, by refusing to approve social aid for those families which have one member working informally (in order to supply the insufficient amount of the social aid). They seem to base this refusal on the preconceived idea that Roma families are prone to cheat the state and ask for undeserved social aid. Local authorities thus reinforce the dependency on the state of the Roma, who are generally the ethnicity in need of social aid and working informally. Furthermore, the kinds of jobs which local authorities do offer to the Roma are also those bearing the stigma, such as street cleaners or cleaners in general. The traditional crafts of the Roma, which are so much more part of their identity than for any

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<sup>7</sup> Fleck Gabor and Rughinis Cosima, (eds.) , Come closer. Inclusion and Exclusion of Roma in Present-Day Romanian Society, (Bucharest: National Agency for the Roma, 2008)

<sup>8</sup> Ibid., p. 125

<sup>9</sup> Ibid., p. 208

<sup>10</sup> Ibid., p. 127

other ethnicity, no longer fit with modern economy. Even in those cases where small businesses might be started, the fact that the Roma have lower access to crediting because, once again, of lack of trust, makes this option highly improbable<sup>11</sup>.

Under the UN Universal Periodic Review<sup>12</sup>, the International Trade Union Confederation submission on Human Trafficking for Labour Exploitation in Romania highlighted some of the problems faced by foreign workers in Romania, also quoting internal sources, and stating that: “the Romanian labour migration legislation is not effectively implemented and that many employers make use of informal recruitment practices and unregulated forms of employment, leaving migrant workers vulnerable to exploitation”<sup>13</sup>. Chinese workers seem to be particularly vulnerable. In a 2007 incident, an employer abused 300 Chinese workers, keeping them in overcrowded dwellings, paying them much less than promised (US\$300 instead of US\$700) and deducting on a monthly basis the fee for having been selected - US\$4000. The workers rioted, their situation got to the press and they thus entered legality. The National Trade-Union Block declared that “wages paid to Chinese women migrant workers in the textile industry are sometimes as low as around 70 per cent of the minimum wage established by law. The UPR submission explains that Chinese workers are particularly vulnerable to being deceived and exploited because they are not informed on their rights while upon arrival they are most of the times unable to integrate in a culture too different from their own, whose language they do not know, and are thus left dependent on their employer or recruitment agent”<sup>14</sup>.

In 2008, the National Council for Combating discrimination sanctioned the Harghita County Public Finances General Inspectorate with an administrative fine of 1000 RON (240 EURO)<sup>15</sup> for advertising a civil servant job position with the mandatory condition of knowledge of the Hungarian language<sup>16</sup>. Taking into account the fact that Romanians are a *de facto* minority in the county, and although recognizing the legitimate aim, the NCCD questioned the adequacy of methods selected to reach the aim, emphasizing the negative impact on the Romanian community of such a mandatory condition. The NCCD noted that “the difference in treatment amounts to discrimination not only when people in analogous positions are treated differently without objective and reasonable justifications, but also when the states fail to treat differently persons who are in

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<sup>11</sup> Ibid., p. 120-123

<sup>12</sup> UPR-info.org, available at: <http://www.upr-info.org/> (15.06.2009)

<sup>13</sup> Submission available at: [http://www.upr-info.org/IMG/pdf/ITUC\\_ROM\\_UPR\\_S2\\_2008\\_InternationalTradeUnionConfederation\\_uprsubmission.pdf](http://www.upr-info.org/IMG/pdf/ITUC_ROM_UPR_S2_2008_InternationalTradeUnionConfederation_uprsubmission.pdf) (07.05.2009)

<sup>14</sup> Ibid.

<sup>15</sup> National Council for Combating Discrimination, Decision NO. 43 of 09.01.2008.

<sup>16</sup> According to the Romanian Government Decision 1.206/27.11.2001 for the approval of norms for the implementation of regulations regarding the rights of national minorities to use their mother tongue, comprised in the Law of local public administration No. 215/2001 published in the Official Journal No. 781/07.12.2001, citizens belonging to a national minority with a percentage of over 20% of the total population of the respective administrative unit, have the right to use their mother tongue in interactions with the local administration. In Harghita County, Hungarians are actually the majority.

incomparable, different situations, also without objective and reasonable justifications<sup>17</sup>”.

## V.ii Housing

The group most affected by discrimination in the area of housing continue to be the Roma.

The main legal framework for housing in Romania is made of Law 114/1996, the Housing Law, and Law 50/1991 which regulates the authorization of constructions. Law 114/1996, defines adequate housing and contains provisions for the building of social housing. The Roma are not included among the target groups for social housing. In order to be able to build a house, a number of costly authorizations are needed for a final construction authorization under Law 50/1991. The same law regulates the possibilities for eviction and demolition.

The specific situation of the Roma population makes them particularly vulnerable to the observance of these laws, which, although apparently neutral, result in indirect discrimination. The Roma, much more than the majority population, for historical considerations (connected with the forced settlement during communism without proper legal documents or the fact that the Roma were historically excluded from land property<sup>18</sup>), as well as considerations connected to their economic situation, generally lack the proper documentation to be able to secure their tenure and their household, which makes them particularly vulnerable to the abuse of authorities as they are often the victims of forced evictions without alternative accommodation provision.

The exclusion mechanism as identified in a 2008 study leaves the Roma without complete or adequate housing documentation to the arbitrary decisions of the local administration which, according to the 2008 study<sup>19</sup>, do not even observe the legal procedure strictly upon eviction or demolition. Furthermore, local authorities, when they evacuate, instead of providing alternative accommodation or in any case a decent alternative, practice what has been called environmental racism, relocating the evacuated communities next to waste collection sites, purification stations or industrial sites at the outskirts of towns, with children being the most affected<sup>20</sup>. Sometimes, the reasons used by local authorities to relocate the Roma, many times to environmentally hazardous areas, are that the municipality wants to retrofit the building. Romani CRISS has been monitoring and legally assisting in eviction cases. Their reports were included in the US State Department Report on Human Rights which, for 2008 reported that the 250 Roma evacuated to the outskirts of Piatra Neamt in 2006 in a poultry farm turned into social housing had not been able to return to the houses where they had

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<sup>17</sup> Center for Legal Resources, EU Agency for Fundamental Rights –RAXEN Complementary Data Collection Report 2008, p. 45-46, on file with the author

<sup>18</sup> Achim, Viorel , Tiganii in istoria Romaniei, (Bucuresti: Editura Enciclopedica, 1998)

<sup>19</sup> Florea, Ioana; Mandache, Marian; Manea, Cătălin; Rughinis, Cosima; Vasile, Adrian; Vasile Daniel, Metodologie pentru solutionarea problemei lipsei actelor de stare civila, de identitate si locative-Methodologz for solving the problem of the lack of identity and housing documentation (București: Guvernul României, 2007) available at: [http://www.sgg.ro/docs/File/UIP/doc/Metodologie\\_lipsa\\_acte\\_\(RO\).pdf](http://www.sgg.ro/docs/File/UIP/doc/Metodologie_lipsa_acte_(RO).pdf) (07.05.2009)

<sup>20</sup> Ibid., p. 54

been evacuated from. Cases before the court of law since 2006 remained pending, because of the slowness of the legal procedures, while 140 Roma relocated for purposes of retrofitting, in 2004, to an environmentally hazardous area with contaminated water, through a mayor decision, continued to live there while the mayor's case in court also remained pending. The 2008 US DoS report states that cases of evictions continued throughout the year<sup>21</sup>.

With regards to housing conditions, the problems of the Roma remain the same: overcrowding (48.4 per cent of the Roma households have less than 5.9 square meters per person as opposed to 8.41 of the Romanian population in this situation<sup>22</sup>), lack of access to utilities (in the urban area, 73 per cent have no running water in the house as opposed to 10 per cent of the rest of the population<sup>23</sup>), poor quality of housing (in the urban area, 3 per cent of the Roma live in deserted houses and 5 per cent in improvised dwellings as opposed to 0 per cent of the majority population living in such conditions<sup>24</sup>), fewer goods owned (9 per cent of Roma households own a washing machine as opposed to 50 per cent of non-Roma households<sup>25</sup> – this situation disproportionately affects Roma women who are the main household carers).

Spatial segregation is another persistent problem affecting the Roma. A 2009 press report talks about a case in Tarlungeni, Brasov county, where a year and a half ago, a wall was built to separate the Roma community from the Romanian and Hungarian ones, following complaints from Romanians and Hungarians. The Roma have to walk more, around the wall, to get to school or to shops. There are 1100 Roma (locksmiths by trade but most living on social aid), 700 Hungarians and 1900 Romanians in the community. The Hungarians and the Romanians seem to be happy with the situation. The Roma feel they are being treated like plagued persons, while the mayor acts as if he owns the Roma, declaring: 'I give them social aid, I kill them'<sup>26</sup>. The case is pending with the National Council for Combating Discrimination.

The Romanian Ministry of Regional Development and Housing has passed legislation<sup>27</sup> to build a maximum of 300 houses for the Roma based on local proposals and with Government financing. The legislation however does not specify the obligation for the houses to be built in mixed areas, not in segregated ones, there is no dead-line for the building of the houses, while a maximum of 300 can mean anything from 1 to 300.

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<sup>21</sup> US Department of State, Bureau of Democracy, Human Rights and Labor, 2008 Human Rights Report: Romania, available at: <http://www.state.gov/g/drl/rls/hrrpt/> (20.03.2009)

<sup>22</sup> Data available at: <http://www.anr.gov.ro/docs/statistici/statistici/t26.pdf> (20.03.2009)

<sup>23</sup> Badescu, Gabriel; Grigoras, Vlad; Rughinis, Cosima; Voicu, Mălina; Voicu, Ovidiu, Roma Inclusion Barometer, (Bucharest: Open Society Foundation, 2007) p. 33

<sup>24</sup> Ibid.

<sup>25</sup> Ibid., p. 43

<sup>26</sup> Toma, Laura, 'In Brasov, anti-Roma wall like on the West Bank', in Romania Libera (23.01.2009) available at: <http://www.romanioliberal.ro/a144392/dezbaterile-r-l-la-brasov-zid-antiromi-ca-in-cisiordania.html> (07.05.2009)

<sup>27</sup> Decision 1.237/2008 for the approval of the pilot programme 'Social houses for the Roma'

With regards to the implementation of the Moldovan v. Romania 2005 ECHR decision no. 1 regarding the community of Hadareni<sup>28</sup>, where a pogrom against the Roma took place in 1993, the Romanian Government adopted in 2006 a community development programme for Hadareni to last for three years. According to a thus far unpublished monitoring report for Hadareni assumed by a coalition of anti-discrimination NGOs, very few parts of the programme were actually implemented, mainly because the Government, in all three years, delayed the financial transfers until the end of the year, while the unspent money had to be returned to the state budget at the end of the year, thus making the real implementation time approximately seven months. Furthermore, those components directly affecting the Roma, such as the rebuilding of their destroyed houses, did not happen<sup>29</sup>.

### **Examples of NGO Good Practice**

Habitat for Humanity is implementing a project for the Roma, called 'Habitat Rommanes'. Implementing the Habitat working techniques, Habitat for Humanity Beius in partnership with Social Community Administration from Oradea have started a project for improving the living conditions for 700 Roma living in the blocks of flats on the street Voltaire from Oradea. The area, as described by Habitat looks as if it was coming from a war period, with broken windows, some replaced with card boards, iron boards or cloth, damaged walls covered with graffiti, wholes all around, filled with garbage, piles of iron and card boards, a lot of poverty and dirt. There are over 150 families living in 96 apartments up to even 22 persons in a 40 square meters apartment sometimes with families not even related living together. The Roma families had been forcefully moved here at the end of the 1970s when their houses had been confiscated. The project includes the building of 20 houses on the land allocated by Oradea Mayor's Office next to the blocks of flats while the 96 block apartments will be retrofitted. The project started in 2008 and is going to last for three years involving the Roma all throughout the activities. The four aims of the project include: to offer a decent housing for the families living in inhumane conditions, to draw yet another signal on the poverty housing, to increase public acknowledgement of common effort in combating poverty housing, to attract new partners of all fields in the fight against living in inhumane conditions which do not only affect families living under such conditions, but also those surrounding them<sup>30</sup>.

Romani CRISS has implemented a nine month Information – Education and Communication Campaign in Bucharest, district six, with regard to identity and civil state papers, but also in the field of housing, education, health and combating discrimination.

<sup>28</sup> Romanian Government Decision 523/2006 with subsequent ammendments.

<sup>29</sup> Report on file with the author.

<sup>30</sup> Habitat for Humanity website, available at: [http://www.habitatbeius.ro/despre\\_hr.html](http://www.habitatbeius.ro/despre_hr.html) and <http://habitathome.habitat.ro/ro/media30.html> (07.05.2009)

The campaign included:

- Setting up a TELVERDE (free phone line);
- Establishing and running an Office for social assistance and counselling;
- Disseminating flyers with regard to the importance and the necessary steps in order to obtain identity papers, property documentation, medical insurance, filing complaints against discrimination, affirmative action procedure in education for Roma;
- Making and broadcasting a radio commercial in partnership with the national radio station. It has been on air since September 9.

The project assisted 300 beneficiaries, individuals counselled through the campaign, 100 Roma families supported to obtain housing property documents and 1000 persons who have used the services of the Office for social assistance and counselling<sup>31</sup>.

### V.iii Education

Social exclusion of the Roma translates into significant differences in statistics related to educational attainment, drop-out rate, literacy rate or segregation between the Roma and non-Roma. Furthermore, gender inequalities within the Roma community are also a problem for Roma girls. Approximately 7 per cent of the adult Roma have had to repeat the class at least once as opposed to 1 per cent of the non-Roma. 9 per cent of young adult Roma (between 18 and 30) have graduated high-school as opposed to 41 per cent of the non-Roma while 2 per cent of the Roma have gone to university as opposed to 27 per cent of the non-Roma. 22 per cent of Roma households members aged 14+ are illiterate as opposed to 2 per cent of the non-Roma, with school segregation significantly increasing the chances of illiteracy (15 per cent of Roma students from classes with a Roma majority are illiterate as opposed to 4 per cent of Roma students from mixed classes)<sup>32</sup>.

In order to combat segregation, a Minister order was issued<sup>33</sup> forbidding segregation in the school system specifically for Roma children, accompanied by a plan for de-segregation. The Order is targeted at the Roma children affected by segregation, and the approach is one for inclusion and creation of mixed classes both ethnically and socially. It included 21 indicators for the analysis of the existing situation and 56 for de-segregation. The plan of measures also included the drafting and implementation of codes of conduct with regards to discrimination, teacher training, inclusion of Roma teachers and Romani

<sup>31</sup> Information provided by Mr. Marian Mandache, Human Rights Department Coordinator, Romani CRISS

<sup>32</sup> Fleck Gabor and Rughinis Cosima, (eds.) , Come closer. Inclusion and Exclusion of Roma in Present-Day Romanian Society, (Bucharest: National Agency for the Roma, 2008), p. 167

<sup>33</sup> Ministry of Education, Research and Youth, Order No. 1.540/19.07.2007 on forbidding school segregation of Roma children and the approval of the Methodology for the prevention and elimination of school segregation for Roma children, published in the Official Journal No. 692/11.20.2007

curricula, the training of Roma school counsellors and mediators, as well as additional classes for children with learning problems as a result of having studied in segregated schools whose educational level is known to be precarious. However, under Art. 8, the order allows for exceptional situations where school inspectorates, claiming residential reasons (Roma communities segregated from the population as a whole) may not de-segregate in the 2007-2008 school year, but are however under the obligation to improve the quality of education in the institutions concerned. A monitoring report of the Romani CRISS NGO<sup>34</sup> measuring the level of compliance with the de-segregation order found that it is being ignored in approximately 50 per cent of the cases. The same study showed that 57 per cent of the teachers in the segregated schools commute, while every fifth teacher is unqualified to teach. 18 per cent of the segregated schools do not have access to running water, 57 per cent do not have central heating, 56 per cent do not have a lab for any specific subject, 87 per cent do. The graduation rate for the national examination at the end of the eighth grade in segregated schools is 14 per cent<sup>35</sup>.

Gender inequality in access to formal education and to professional training remains an issue as a 2006 OSI study shows<sup>36</sup>. Overall, 23 per cent of Roma women over 16 had not received formal education as opposed to 14 per cent of Roma men. With regards to professional education, the number of older generation of Roma women who graduated from professional schools is by a five point margin lower than that of Roma men. The number of middle aged Roma women who graduated from such schools is five times lower than that of men while for the younger generation, twice as many Roma men than women received this type of education. As compared to Romanian women, six times less Roma women have accessed formal education and eight times less university education than Romanian women. Qualitative research<sup>37</sup> also shows that cultural values contribute to the gender gap in access to education as a good marriage is considered more valuable than education. Roma women are supposed to have a lower social status than men and schooling to a higher age is associated with the risk of losing virginity and thus being exposed to stigma in the community<sup>38</sup>.

Despite the fact that education for the Roma is the field where the Romanian Ministry of Education has done a lot of work starting in the 1990s and using Phare financing in the several stages of the "Access to education for disadvantaged groups" programme<sup>39</sup>, the exclusion of Roma children remains a reality. The qualitative and quantitative research mentioned above shows that the

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<sup>34</sup> Dumitrascu, Mihaela, 'Romani CRISS: Inca exista segregare scolara/Romani CRISS: School segregation is still present' in Divers (10.12.2008) available at: [http://www.divers.ro/focus\\_ro?func=viewSubmission&sid=9527&wid=37452](http://www.divers.ro/focus_ro?func=viewSubmission&sid=9527&wid=37452) (20.03.2009) and information provided by Romani CRISS.

<sup>35</sup> Ibid..

<sup>36</sup> Surdu, Laura and Surdu, Mihai, Broadening the Agenda: the status of Romani women in Romania (New York: Open Society Institute, 2006): 44-46

<sup>37</sup> For example: Ibid.

<sup>38</sup> Ibid. p. 44-46

<sup>39</sup> Website of the programme available at: <http://www.acces-la-educatie.edu.ro/index.php> (10.05.2009)



problems faced by Roma children are not only connected with the poverty cycle and low expectations from life and from education in which most of their families are trapped, but also with the inability of the system and presumably of teachers to engage and include Roma children in the educational process and in the class group, ignoring their failures (or considering them normal) and allocating little attention to Roma children: "Even when they are physically present in school, their involvement in the actual learning process, as well as in the school atmosphere in general is significantly lower than in the case of other children / especially in the schools where the majority is of Roma children, where their educational experience is often reduced to learning how to read and write"<sup>40</sup>.

The problem of segregating Roma children in schools for children with special learning needs remains a particular issue. On average 2.5 per cent of Roma children go to such schools as opposed to 1.7 of non-Roma children. However, the same comparison made for municipalities (where special schools actually exist) shows that the percentage of Roma children attending such schools out of all Roma children is five times higher than for non-Roma children (10.4 per cent as opposed to 1.9 per cent of non-Roma children)<sup>41</sup>.

In terms of the educational curricula, the minister of Education issued Order no. 3774/22.04.2008 which approved the curriculum of the optional disciplines "Intercultural education" for secondary school and "Human Rights" for high-school. The approach of revealing the true history of the Holocaust in Romania was reflected in 2008 in history manuals at several levels: Holocaust as a dimension of World War II in the compulsory seventh grade history course and a chapter in the ninth grade, a specific theme in the eleventh grade. A chapter on national minorities was added in the twelfth grade history curriculum. The optional course on "History of the Jews and Holocaust" for the twelfth grade was attended by 330 student groups in the 2007/2008 school year<sup>42</sup>.

### **Examples of NGO Good Practice**

At the end of 2008, the Project of Ethnic Relations Euro-regional Centre released a teacher's book for the History of National Minorities. The book is meant to help history teachers in general and those who will be teaching the optional course which is hopefully going to be introduced in the curricula, on the history of national minorities. The material was drafted by a series of experts from the Ministry of Education and also from organizations of national minorities. It includes the history of the 19 national minorities recognised in Romania. Information available at: <http://per.org.ro/?m=200812> (07.05.2009)

The Resource Center for Roma Communities is implementing a three year programme called: "Roma professors – a success factor for the education of

<sup>40</sup> Fleck Gabor and Rughinis Cosima, (eds.) , Come closer. Inclusion and Exclusion of Roma in Present-Day Romanian Society, (Bucharest: National Agency for the Roma, 2008, p. 167-168

<sup>41</sup> Ibid. p. 164-168

<sup>42</sup> Center for Legal Resources, Fundamental Rights Agency –RAXEN Complementary Data Collection Report 2008, p. 23-24, on file with the author

Roma children". This project builds upon a previous project where 50 Roma professors acquired knowledge and teaching abilities using active learning methods and development of critical thinking, while 11 of them are in the process of becoming themselves trainers of professors. The objectives of the project are: to continue to support and to professionally develop 11 Roma trainers by engaging them in the training of 40 professors teaching the Romani language, to improve the school performance of at least 100 Roma children who need help to improve their reading and writing skills, to contribute to the improvement of Romani literature for children.

<http://www.romacenter.ro/noutati/index.php?page=14> (07.05.2009)

Over 12.000 Roma children have benefited from the Romani CRISS project „Need for Quality and Equality in Education”, ended in 2008 (2 year program) in 65 ethnically-diverse communities. The project has created 19 information and counselling offices. 10126 children and parents have been informed/ counselled through 2 TV, radio and outdoor campaigns. 500 children participated to summer kindergartens, 6 kindergartens received intercultural teaching materials, 210 Roma and Non-Roma teen participated in intercultural camps, 17 Roma and Non-Roma participated and played in a theatre play called „On education”, adapted and directed by a Roma actor<sup>43</sup>.

## V.iv Health

The vicious circle of poverty and exclusion in which the Roma are caught has direct consequences on their health status. The specific problems combine access issues with poverty related illnesses with a direct result in a recognized full ten year lower life expectancy<sup>44</sup>. The qualitative research done in 36 Roma communities mentioned above revealed several problems. Higher unemployment rates without social aid, means the lack of the universal medical insurance to which most Romanian citizens have access. Even when the Roma have this insurance, their access to services is influenced by residential segregation and thus a longer distance to the medical units, by corruption in the medical system, where bribery (which the Roma as all poor people usually cannot afford) is very common practice, by discrimination from the medical staff, by the lack of proper information because there is usually no one to provide this information and explain it, and by the reluctance of the Roma to return to the medical units where they have been treated badly. Stereotyping and prejudice, lack of understanding of the actual situation or of cultural norms connected for example to contraception, to the value attached to children or to the value of virginity, which may lead to certain realities which physicians perceive through their own cultural norms, also makes the doctors discriminate against the Roma. All these problems lead to the Roma accessing the medical system only in the emergency

<sup>43</sup> Information provided by Mr. Marian Mandache, Human Rights Department Coordinator, Romani CRISS

<sup>44</sup> European Parliament, Motion for a European parliament Resolution on the social situation of the Roma and improving their access to the labour market in the EU, 28.01.2009 available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A6-2009-0038+0+DOC+XML+V0//EN#title2> (07.05.2009)

service, which is free for everyone, and which is generally accessed by the Roma when their health is seriously damaged<sup>45</sup>.

The presence of the health mediator who mediates the communication between authorities and Roma families and provides the Roma with the information they need, many times going further than the health sector, has been shown to have improved the health situation of many communities. The programme, created by Romani CRISS and implemented since 1996 has been steadily growing. Romani CRISS has trained hundreds of mediators, mostly women, which has contributed to a change of role and empowerment of the Roma women concerned. The health mediator has become a certified profession. The programme included an evaluation process<sup>46</sup> whose results and recommendation from 2006 were integrated into the programme<sup>47</sup>. According to the qualitative research mentioned there is also data from certain communities according to which the presence of health mediators although very helpful for the community, has apparently not improved the communication between the Roma and health workers from the system. More specifically, in the long run, the authors of the study generally consider that the Roma communities where the mediator exists may become dependent on the mediator, while the medical staff will rely on the mediator to perform even some of their own responsibilities. They also mention that the existence of Roma physicians in the system would be of great help in breaking down the communication barriers<sup>48</sup>.

Poverty and living conditions make the presence of characteristic illnesses high. The qualitative research revealed that in one community, most children suffered from breathing problems and anaemia, 90 per cent had parasites, 60 per cent tuberculosis (some died because of it), while in another community, the most common illnesses were connected to intoxications, malnutrition, stomach and dentition problems, rachitism, skin and heart diseases, alcoholism, wounds (linked with overcrowding) and frostbite. Lack of access to an adequate, uncontaminated water source is another problem affecting the health of many Roma communities<sup>49</sup>.

Romani CRISS NGO has a comprehensive Roma health programme, initiating and supporting the Roma health mediator programme which later on became an official professional occupation. Also, CRISS works on researching the health status of Roma communities in Romania and elaborating the toolkit for

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<sup>45</sup> Fleck Gabor and Rughinis Cosima, (eds.) , Come closer. Inclusion and Exclusion of Roma in Present-Day Romanian Society, (Bucharest: National Agency for the Roma, 2008), p. 88-94

<sup>46</sup> Romani CRISS, Health Services and the Roma. The evaluation of the health mediation system (Bucharest: Romani CRISS, 2006), available at: <http://www.gitanos.org/publichealth/HealthGuide/Rumano.pdf> (07.05.2009)

<sup>47</sup> Information provided by Romani CRISS.

<sup>48</sup> Fleck Gabor and Rughinis Cosima, (eds.) , Come closer. Inclusion and Exclusion of Roma in Present-Day Romanian Society, (Bucharest: National Agency for the Roma, 2008), 95-96

<sup>49</sup> Fleck Gabor and Rughinis Cosima, (eds.) , Come closer. Inclusion and Exclusion of Roma in Present-Day Romanian Society, (Bucharest: National Agency for the Roma, 2008), 88-101

documenting and monitoring human rights abuses in the health area<sup>50</sup>. Some of the discrimination cases they identified include: segregation in maternity wards, refusal by the doctors to treat, abuses of doctors when practicing, abuse of local authorities on Roma health mediators<sup>51</sup>.

Roma women are particularly vulnerable as they face multiple discrimination. They also access the health system more often, because they give birth to children and afterwards continue to be the main caretakers. A 2008 open letter presented at the Women's World Conference 2008 – Women's Worlds 2008, signed by various NGOs asking EU member states to tackle discrimination against Roma women signalled the kinds of problems Roma women face in the health system, condemning discrimination against them. The letter also highlighted that Roma women generally do not bring forward cases of discrimination when accessing the health system because they are afraid they will be refused access when needed, even in emergency situations. A Romani woman describing the treatment she got in the hospital in a statement she gave to Asociația Sanse Egale pentru Femei și Copiii (Association Equal Chances for Women and Children) read as follows: "I have a family doctor, but he never gives us free treatment (which is provided for by law under certain limits and for certain groups, children included). When I was in the hospital with the child, we (the Roma) were confined to a 'Gypsy only' ward and to our children they (medical staff) gave the medicine using a single spoon for everybody; it was very dirty in the ward and they did not change the mattress and the sheets. It's best that we buy the medicine and take it home rather than there, where you can become even sicker<sup>52</sup>". Furthermore, Roma women generally use the contraceptive injection, which is free of charge, as a means of protection against unwanted pregnancies. According to the qualitative study the injection is in some cases administered without taking into account the medical situation of the woman and without explaining the secondary effects on the woman's health<sup>53</sup>. The injection also does not offer protection against sexually transmitted diseases - STIs.

### Examples of NGO Good Practice

**Structural reform of the Roma health mediators system.** A shift of approach has been successfully lobbied by Romani CRISS and eight regional centres on supporting the work of Roma health mediators. Building on a 15 year experience in the field, a substantial reform of the Ministerial Order 619/2002 (regulating the work of the Roma health mediators) has been promoted. Amongst the proposals one can find: modifying the selection process according to the professional

<sup>50</sup> Information provided by Mr. Marian Mandache, Human Rights Department Coordinator, Romani CRISS.

<sup>51</sup> Romani CRISS Annual Report 2007, available at: [http://www.romanicriss.org/index.php?option=com\\_content&view=article&id=28%3Araport-anual-2007&catid=2%3Anew&Itemid=7](http://www.romanicriss.org/index.php?option=com_content&view=article&id=28%3Araport-anual-2007&catid=2%3Anew&Itemid=7) (07.05.2009)

<sup>52</sup> Indymedia Romania website, Roma women and discrimination in the health system (17.07.2008), available at: <http://romania.indymedia.org/ro/2008/07/2698.shtml> (07.05.2009).

<sup>53</sup> G. Fleck and C Rughinis, eds. (2008), Come closer. Inclusion and exclusion of Roma in Present-Day Romanian Society, Bucharest: National Agency for the Roma, 97

standards, changing the reporting methodology, harmonising the provisions of the Order with the Occupational standard, changing the contracts of the mediators from determined to undetermined time. The Ministerial Commission has agreed to all but the last proposal and they are now in public consultation<sup>54</sup>.

## V.v Policing and racial profiling

Excessive use of force or abuse from the police continued throughout 2008, as APADOR-CH NGO case law shows. Many of the incidents included police abuse against the Roma, as recorded by the US Department of State Human Rights Report: Romania<sup>55</sup>. The police officers took Roma persons to the police station and beat them. In one case, the beatings continued upon the person's refusal to sign a dictated statement, while in another, a minor girl was abused. Many cases of police abuse against the Roma from previous years remain pending. Only three police agents were under investigation during 2008 for committing bodily harm. In the case Stoica vs. Romania<sup>56</sup>, the ECHR found Romania responsible for racially motivated inhumane and degrading treatment against a Roma boy of 14 years of age in 2001 when he was beaten up by the police. The decision also showed that the case was not adequately investigated by Romanian authorities<sup>57</sup>.

In another case, according to the statements of the victims, the police officers descending upon the house of a Roma man in Clejani, Giurgiu county, hit the man in the face with the gun and shot a rubber bullet at his 15 year old son and fired tear gas into the house which made two children aged two and four to lose consciousness<sup>58</sup>.

There is no information regarding racial profiling for counter terrorism reasons. Counter-terrorism measures as such do not generally make the object of public debates, especially not when it comes to racial profiling as part of counter-terrorist measures. If racial profiling does happen for such purposes, there is no record of it.

## V.vi Racist violence and crime

Cases of racist violence in 2008 targeted the Roma and Jewish communities. In October, 131 graves were desecrated in a Jewish cemetery in Bucharest. The police found four school children between 13 and 15 to have been responsible. According to the NGO Centre for Monitoring Anti-Semitism in Romania quoted by the US Department of State Human Rights Report 2008, "authorities tended to

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<sup>54</sup> Information provided by Mr. Marian Mandache, Human Rights Department Coordinator, Romani CRISS

<sup>55</sup> US Department of State Human Rights Report, available at: <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119100.htm> (07.05.2009)

<sup>56</sup> European Court for Human Rights, Stoica v. Romania, Application No. 42722/02

<sup>57</sup> Ibid. 45

<sup>58</sup> Amnesty International Report 2009, Romania, available at: <http://thereport.amnesty.org/en/regions/europe-central-asia/romania> (07.05.2009)

play down such incidents, usually attributing the acts to children, drunkards, or persons with mental disorders". A history professor publicly denying the Holocaust was not prosecuted by the Prosecutor's Office of District 3 in Bucharest, and the Federation of Jewish Communities and a Jewish NGO filed a criminal complaint against him<sup>59</sup>. Also, extreme right-wing organizations continued to be present on the book market, and also organized high-profile public events with anti-Semitic themes and sponsored marches followed by religious services commemorating Corneliu Zelea Codreanu, the founder of the Legionnaire Movement (the anti-Semitic correspondent in Romania of the Nazi ideology in the inter-war period). Romani CRISS NGO had filed a criminal complaint in 2007 against such an organization, called Noua Dreapta (New Right) for incitement to discrimination and breaches of provisions of Government Ordinance 31/2002 on forbidding of organizations and symbols with a fascist character and of the apology of persons guilty of crimes against peace and humanity, with subsequent amendments. In particular, Romani CRISS was accusing the organization for articles on its website which read the following: "You stayed away and witnessed the Gypsy aggressions. You witnessed the violence, effrontery and delinquency of this ethnic group that prejudices dignity and endangers the majority population. How much longer will you put up with this humiliation". Another article gave a purely racist explanation for their anti-gypsyism: "The Gypsy community represents an explosive criminal potential. Burdened with their condition, impulsive, united in evil, the Gypsies represent a foreign and impossible to integrate community. That is why it is the duty of those who have the power to act." The criminal complaint was rejected by the prosecutor who decided not to send the file before the court of law. Romani CRISS exhausted all internal remedies and filed a petition before the ECHR<sup>60</sup>. Noua Dreapta continues to be very active in the Romanian public sphere, although in parallel proceedings, Romani CRISS filed petitions with the national equality body, the National Council for Combating Discrimination, which found discrimination and sanctioned Noua Dreapta<sup>61</sup>.

The High Court Of Cassation and Justice overturned in May a 2006 ruling which partially exonerated Marshall Antonescu (war criminal from the Second World War responsible for the mass killings of Jewish and Roma communities from Romania)<sup>62</sup>.

In August 2008, a four year old Roma boy, Lucian Rostas was reported in the press to have died after having been forcefully fed by his maternal assistant. The child had been systematically abused, burnt with the cigarette, his ear was cut and his genitals also had several cuts on them. The director of the Criminal Department of the Prosecutor's Office investigating the case, declared that the

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<sup>59</sup> Denying the Holocaust in public is a crime under Emergency Government Ordinance 31/2002, Art 6 with subsequent amendments.

<sup>60</sup> Iordache, Romanița, Ionescu, Iustina, Kovacs, Maria, Dan, Adrian, Pascu, Georgiana RAXEN Data Collection Report 2007, Romania, p. 95 (on file with the author)

<sup>61</sup> Divers, It's decided: Noua Dreapta committed acts of discrimination, available at: [http://www.divers.ro/actualitate\\_ro?wid=37455&func=viewSubmission&sid=1738](http://www.divers.ro/actualitate_ro?wid=37455&func=viewSubmission&sid=1738) (07.05.2009)

<sup>62</sup> Available at: <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119100.htm> (07.05.2009)

maternal assistant allegedly recognized that she abused the child because he was of Roma origin, and she did not approve of her daughter dating a Roma young man thus taking revenge on the child. The case also showed neglect towards this child throughout the child protection system where several people, such as the person responsible for his case, or the general practitioner who saw the child at some point and who should have recognized and signalled the abuse earlier<sup>63</sup>.

### **V.vii Access to goods and services in the public and private sector**

Access to income for the Roma is very different from non-Roma. The most important income sources for the Roma seem to be: maternity leave payment, child care allocation, family allocation and other social aid (26.1 per cent of the Roma as opposed to 11.6 of the non-Roma), followed by minimum income guaranteed (14.4 per cent of the Roma as opposed to 2 per cent of the non-Roma) and by paid work for neighbours, friends (12.2 per cent as opposed to 2.4 per cent for the non-Roma). For the non-Roma the most frequent source of income mentioned was pension, invalidity pensions, state aid for persons with disabilities (38.6 per cent as opposed to 13 per cent for the Roma), followed by regular income from a private company or organization (19 per cent as opposed to 11.8 per cent for the Roma) and by regular income from a state or municipal institution or company (17.4 per cent as opposed to 6.2 per cent for the Roma)<sup>64</sup>. The high percentage of Roma who work for their neighbours seems to show a social hierarchy. When both Roma and non-Roma work in construction (the second most important field for the Roma income), the Roma are paid less. The wages seem to be at the same levels for transport and commerce and higher for some Roma when they work in education, science, health and culture.

In terms of the goods which the Roma own, the economic gap is again very visible. Thus, in both urban and rural area, 6 per cent of the Roma declare owning a car, 28 per cent a mobile phone, 8 per cent a land line, 37 per cent a fridge, 9 per cent a washing machine, 4 per cent a computer and 64 per cent a colour TV. As compared to the Roma, of the members of other ethnicities, 36 per cent declare owning a car, 57 per cent a mobile phone, 47 per cent a land line, 88 per cent a fridge, 50 per cent a washing machine 29 per cent a computer and 91 percent a colour TV<sup>65</sup>.

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<sup>63</sup> Antena3, Four Year old boy killed by the woman taking care of him after sectioning his genitals with the scissors (22.08.2008) available at: [http://www.antena3.ro/stiri/romania/copil-de-4-ani-ucis-de-femeia-care-il-ingrijea-dupa-ce-i-a-sectionat-organele-genitale-cu-foarfeca\\_53124.html](http://www.antena3.ro/stiri/romania/copil-de-4-ani-ucis-de-femeia-care-il-ingrijea-dupa-ce-i-a-sectionat-organele-genitale-cu-foarfeca_53124.html) (07.05.2009), Ionela Gavrilu, "Those guilty of Lucian's murder" in Jurnalul National (26.08.2008) available at: <http://www.jurnalul.ro/stire-special/vinovati-de-moartea-lui-lucian-132235.html> (07.05.2009)

<sup>64</sup> Fleck Gabor and Rughinis Cosima, (eds.) , Come closer. Inclusion and Exclusion of Roma in Present-Day Romanian Society, (Bucharest: National Agency for the Roma, 2008), p. 13

<sup>65</sup> Badescu, Gabriel; Grigoras, Vlad; Rughinis, Cosima; Voicu, Mălina; Voicu, Ovidiu, Roma Inclusion Barometer, (Bucharest: Open Society Foundation, 2007), p. 43

Aside from discrimination, access to services in all fields is influenced by lack of identity papers<sup>66</sup>, or housing tenure documentation and by spatial segregation which makes access to services of any kind more difficult.

In 2008, the NCCD sanctioned an internet café from Cluj-Napoca with 600 LEI (aprx. 150 EURO) for an announcement placed on their door in 2007, which read as follows: “Starting with 22/08/2007 we will no longer allow access to this internet café for Roma ethnics because we have had a lot of problems with them, every night they fight and make a scandal. We apologise to those who cannot enter without a specific reason, but we have no other way of selection”. The NCCD found a breach to the right to human dignity<sup>67</sup>.

With regards to discrimination based on religious grounds, according to a 2008 report on the relationship between state and church, there are specific problems such as: long and bureaucratic procedures for becoming a religious association, insufficiently transparent procedures for public financing of religious cults, a tendency to discriminate to the favour of the Orthodox church when it comes to financing, access to cemeteries or the teaching of religion in schools<sup>68</sup>.

The US Department of State International Religious Freedom Report on Romania<sup>69</sup> mentions other problems such as: anti-Semitic incidents, abuses of Orthodox priests and believers on Jehovah’s Witnesses church members and generally a lack of acceptance of other denominations from the part of Orthodox Church officials, who sometimes call them “sects”, refusal to grant access to cemeteries for non-Orthodox believers, lack of access to land for a cemetery for non-Orthodox believers, delays in property restitution for the Greek-Orthodox Church<sup>70</sup>, refusal to return property to the Greek-Orthodox even when a court order exists in this sense, refusal to grant access to Greek-Orthodox believers and priests to cemeteries. Religion continues to be taught in a discriminatory manner while children from some denominations do not have access to teaching of their religion at all and are forced to attend Orthodox religion classes. The report also mentions the practice of Romanian politicians in electoral campaign to allocate additional financing which usually goes to the Orthodox church generally for the building of churches<sup>71</sup>.

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<sup>66</sup> On average 1.5 per cent of the Roma do not have access to a birth certificate and 1.9 to an identity card, according to Fleck Gabor and Rughinis Cosima, *Vino mai aproape, Inclusiunea si excluziunea romilor in societatea romaneasca de azi/Come closer, Inclusion and Exclusion of Roma in the Romanian Society of Today*, (Bucharest: National Agency for the Roma, 2008), p. 194-195

<sup>67</sup> NCCD 2008 Activity Report, p. 46, available at: <http://www.cncd.org.ro/presa/CNCD-a-prezentat-raportul-de-activitate-al-institutiei-pe-anul-2008-26/> (07.05.2009)

<sup>68</sup> APADOR-CH, *Stat si religii in Romania, o relatie transparenta?/State and religion in Romania, a transparent relationship?*, (Bucharest: APADOR-CH, 2008)

<sup>69</sup> Romania is a country where, according to the last census, 86.8 per cent of the citizens are of Christian Orthodox faith.

<sup>70</sup> Church which emerged in the XVIIIth century Transylvania (region of Romania) whose properties were confiscated by the Romanian communist state.

<sup>71</sup> US Department of State, *International Religious Freedom Report 2008, Romania* available at: <http://www.state.gov/g/drl/rls/irf/2008/108467.htm> (07.05.2009)



## V.viii Media, including the internet

Following the November 2007 murder of an Italian woman, presumably by a Roma man, called Nicolae Romulus Mailat, an anti-Roma and anti-immigration campaign was triggered in Italy, mainly affecting Romanians. The campaign was driven by Italian politicians in an electoral campaign and by the Italian media. The situation in Italy and the anti-Roma coupled with anti-Romanian sentiments had their own effects in the Romanian media.

A content analysis following a media monitoring exercise conducted by the Media Monitoring Agency of the Mailat case showed how the Italian crisis gave the Romanian press the “opportunity” to associate ethnicity with criminality (both in Romania and in Italy) and to trespass the presumption of innocence until proven guilty<sup>72</sup>. Another monitoring exercise conducted by Romani CRISS NGO in the period October 2006 – August 2007 showed that 662 of the articles mentioning the Roma were negative, 216 positive and 720 neutral<sup>73</sup>. Romani CRISS in a press release explained how “the fact that anti-Gypsyism is often shamelessly promoted by television stations without being sanctioned by the National Council for the Audio-Visual is also reflected in the attitude of the large public and in the racist messages coming from the highest levels of the Romanian and Italian political class. Blaming a whole community for the acts of some individuals is a practice which created the premises for the Holocaust and other numerous genocides. (...) It is unacceptable that the Romanian state be party to the collective blaming of Romanian citizens or have a submissive approach disguised as diplomacy towards the xenophobic comments of Italian politicians”<sup>74</sup>. The lack of a proper reaction from the Romanian state to the racist policies of the Italian authorities which were fingerprinting, harassing and committing acts of violence against the Roma, continued throughout 2008<sup>75</sup>. In February 2009, seven NGOs were asking the Romanian Minister of Foreign Affairs to place the security of Romanian citizens in Italy, regardless of their ethnicity, on the table of the EU General Affairs and External Relations Council, in the context where Italy was in breach of community legislation<sup>76</sup>. The request was not met.

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<sup>72</sup> Codreanu, Ionuț and Fotiade Nicoleta, The Mailat case in the press, Content analysis, (Bucharest: Media Monitoring Agency, 2007) available at: <http://www.mma.ro/BAZA%20DE%20DATE/Politic/mailat.pdf> (07.05.2009)

<sup>73</sup> Report available at: [http://www.romanicriss.org/documente/Noutati/raport%20analiza%20presa%20oct06-aug07\\_final.pdf](http://www.romanicriss.org/documente/Noutati/raport%20analiza%20presa%20oct06-aug07_final.pdf) (07.05.2009)

<sup>74</sup> Popan, Cosmin “Romani CRISS accuses: a press campaign ‘on the pattern of the holocaust’” in Cotidianul (02.11.2007) available at: [http://www.cotidianul.ro/romani\\_criss\\_acuza\\_o\\_campanie\\_de\\_presa\\_pe\\_tiparul\\_holocaustului-35073.html](http://www.cotidianul.ro/romani_criss_acuza_o_campanie_de_presa_pe_tiparul_holocaustului-35073.html) (07.05.2009)

<sup>75</sup> ERRC, Romani CRISS, RCR, COHRE, OSI, Security a la Italiana. Fingerprinting, Extreme Violence and Harassment of Roma in Italy Report available at: [http://www.soros.org/initiatives/roma/articles\\_publications/publications/fingerprinting\\_20080715](http://www.soros.org/initiatives/roma/articles_publications/publications/fingerprinting_20080715) (07.05.2009)

<sup>76</sup> The organizations were: the Center for Legal Resources, Accept Association, Romani CRISS, the Euroregional Center for Public Initiatives, Center Partnership for Equality, “Impreuna” Community Development Agency, the Institute for Social Policies. Press release available at: <http://www.crj.ro/Uploads/CRJAdmin/Comunicat20%20Febr%6009%20priv%20situatia%20din%20italia.pdf> (07.05.2009)

The anti-Roma media climate in Romania in the Romanian context, where Romanians already blame the Roma for the bad image they have in other European countries could only have reinforced the stereotype. The National Council for Combating Discrimination commissioned annual opinion poll regarding perceptions of discrimination showed that, when asked which groups of persons are prejudicial to Romania's image, 44 per cent of respondents indicated the Roma as the first mention and 10 per cent had them as the second option. In comparison, the second group, made of politicians, businessmen and people in government had a 22 per cent first mention and 9 per cent second mention. The same poll showed that 28 per cent of respondents believe that the Roma should not be allowed to travel abroad<sup>77</sup>.

At the beginning of 2009, a Romanian handball player, Marian Cozma, was killed in Hungary, presumably by a group of Roma ethnics. The Romanian press and media, upon reporting on the event once again breached the ethical norms of the profession. In an appeal addressed for the responsibility of journalists, several Romanian human rights NGOs enumerated the ethical norms breached. The presumption of innocence until proven guilty did not apply; the ethnicity of the perpetrators was mentioned without justification and some journalists incited to violence. During the same period a football player from Botosani said he had been beaten up by a group of Roma. The local and national media immediately reported the news as such without appealing to any additional sources, but the declaration of the player. Two days later, the football player recognized he had been lying to avoid sanctions from his club<sup>78</sup>.

Connected with the Italian anti-immigrant campaign from Italy which went on throughout 2008, at the beginning of March 2009 a national debate was initiated by a widely read Romanian central newspaper, Jurnalul National, proposing a legislative initiative to change the official name of Roma from 'Roma' to 'Gypsy' so as to no longer be confused with 'Romanian' especially in other countries<sup>79</sup>. The initiative, based on a racist motivation<sup>80</sup>, determined more than 1000 anti-Roma posts on the newspaper website, many including hate-speech. A Romanian deputy from the Democrat-Liberal Party, also the party in power, was quoted by Jurnalul National to have adopted the initiative and to intend to initiate

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<sup>77</sup> The Gallup Organization Romania Perceptions and attitudes of Romania's population towards the discrimination phenomenon, (2008), available at: [http://www.cncd.org.ro/files/file/Sondaj\\_discriminare\\_2008\\_CNCD.pdf](http://www.cncd.org.ro/files/file/Sondaj_discriminare_2008_CNCD.pdf) (07.05.2009)

<sup>78</sup> Mediafax News Agency, AMP, APEL and CJI make an appeal to journalists' responsibility, (19.02.2009) available at: <http://www.mediafax.ro/cultura-media/amp-apel-si-cji-fac-apel-la-responsabilitatea-jurnalistilor.html?1706;3958968> (07.05.2009)

<sup>79</sup> Antoniu, Gabriela, 'Propunere Jurnalul National: "Tigan" in loc de "Rom" Jurnalul National proposal: "Gypsy" instead of "Roma" in Jurnalul National (02.03.2009) available at: <http://www.jurnalul.ro/stire-tigan-in-loc-de-rom/propunere-jurnalul-national-tigan-in-loc-de-rom-145427.html> (20.03.2009)

<sup>80</sup> 'Our initiative is all the more justified since the crimes committed by Gypsy ethnics in Italy or in other western countries have led to the unfortunate confusion Roma/Romanian and have cast a stigma over all the Romanian people'

a legislative project where to define all national minorities<sup>81</sup>. The deputy has thus far not denied this fact. The NCCD issued a press release on the issue making an appeal to all those who influence public opinion to inform correctly and to avoid discrimination, also showing why such an initiative would be illegal<sup>82</sup>. Also, in its Annual Report the NCCD made a few considerations with regards to the situation of the Roma community. The report thus states that collective blaming of the Roma community for acts committed by persons belonging to this ethnicity is widespread while discriminatory language, although decreasing, is still at high levels<sup>83</sup>.

In 2008, the National Council for the Audio-Visual applied various types of sanctions for racism and xenophobia in the audio-visual: two public summons, a fine, five warning letters. In 2007, the NCA sent two recommendations to TV and radio stations asking them to avoid any form of discrimination on the grounds covered by law, while in 2009 it organised together with the Project on Ethnic Relations NGO a debate on the theme: "Freedom of expression and the danger of intolerance in mass-media" It also publicly debated the way the Cozma case was presented in the press<sup>84</sup>. Nevertheless, taking into account the number of breaches of the audio-visual legislation in the field of discrimination<sup>85</sup>, in our assessment, the NCA sanctions are not enough to fulfil a deterrent and educational role through its sanctions.

In 2008, the NCCD also sanctioned another viciously anti-Roma article which appeared in a local newspaper<sup>86</sup>.

### Examples of NGO Good Practice

In particular, the "Rom European" weekly TV show, presented on the national TV station has been a good information and communication vehicle, constantly bringing Roma issues in the public agenda. Discrimination has been one of main subjects throughout the series. It is an initiative of the Media Monitoring Agency, in place for approximately four years with various partners over the time. The Roma are involved in the elaboration and presentation of the show. Despite this positive experience, Roma-related issues remain underrepresented in the media, particularly in the public sector.

Information available at: [www.mma.ro](http://www.mma.ro)

<sup>81</sup> Piciu, Dana, 'Silviu Prigoana preia initiative Jurnalului National [Silviu Prigoana undertakes the initiative of Jurnalul National]' in Jurnalul National (18.03.2009) <http://www.jurnalul.ro/stire-tigan-in-loc-de-rom/silviu-prigoana-preia-initiativa-jurnalului-national-146429.html> (20.03.2009)

<sup>82</sup> Press release from 03.03.2009 available at: <http://www.cncd.org.ro/presa/Dezbaterile-publice-privind-utilizarea-sintagmei-rom-tigan-24/> (20.03.2009)

<sup>83</sup> NCCD 2008 Activity Report, p. 37, available at: <http://www.cncd.org.ro/presa/CNCD-a-prezentat-raportul-de-activitate-al-institutiei-pe-anul-2008-26/> (07.05.2009)

<sup>84</sup> NCCD, (2009) The situation of Roma in Europe and relevant activities of the Council of Europe, support document, Targu Mures

<sup>85</sup> Romanian Parliament Law 504/2002, the audio-visual law, art 42, para. 1, 2, 4 and 5, art. 46, para 2.

<sup>86</sup> Decision No. 91/18.02.2008. Parts of the article in question quoted in the decision read as follows: "These, the gypsies breed without limit, like rabbits (may rabbits pardon me), just so that they may get their filthy clutches on the allowance of some poor children and, honestly, my heart shrieks when I see a snotty urchin attached to a dirty, smelly, flowery skirt ..."

## VI. Political and legal context

At the end of 2008, Romania had Parliamentary elections and a new coalition formed of the Social Democrat Party allied with the Conservative Party and the Democrat-Liberal Party emerged, forming an overwhelming majority in Parliament with 67.8 per cent in the Senate and 65.5 per cent in the Chamber of Deputies<sup>87</sup>.

### VI.i Anti discrimination

Romania became party to the UN International Convention on the Elimination of all Forms of Racial Discrimination (UNICERD) in 1970 and recognized the competence of the Committee on the Elimination of Racial Discrimination in 2002<sup>88</sup>. An enumeration of measures taken to implement the Durban Declaration and Plan of Action was sent to the Office of the High Commissioner for Human Rights (OHCHR) Anti-discrimination Unit by the Permanent Mission of Romania to the United Nations Office in Geneva in 2008, in view of the Durban Review Conference<sup>89</sup>. As a general assessment, although the legal framework to combat discrimination is in place, its implementation, especially when it comes to policies, and Roma policies in particular, is precarious (see other sections on Roma issues).

In November 2008, the Romanian President, Mr. Traian Basescu, made a visit to Syria. Upon returning, in a press conference in the airport, in a context where he was mentioning Syria's neighbours, he enumerated the following: Iraq, Lebanon and Palestine. Aside from the fact that Palestine is not an internationally recognized state, he left Israel out. No apologies followed. The following week, in a Haaretz article, Cellu Rozenberg, a Jewish historian of Romanian origin whose parents died during the Second World War at the hands of the Romanian state, wrote an article reminding of Romania's shameful and also not assumed past with regards to the treatment of its own Jewish community and citizens (not only during the Holocaust). The article reminds of the recent desecration of graves mentioning that "this is not the first time such things have happened in Romania, but everyone keeps quiet, as if this were merely a bit of mischief". The author also draws the attention of the Romanian Ministry of Foreign affairs that a reaction would be expected: "It is well known that Romania's President is not particularly well-educated, but as a former sea captain one would have expected him to at least know a little geography and history. Has it escaped him that there is as yet no country called Palestine, but that another country, admittedly small,

<sup>87</sup> CIA World Factbook, available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/ro.html> (07.05.2009)

<sup>88</sup> See Permanent Mission of Romania to the United Nations Office in Geneva, Answer to the OHCHR Anti-discrimination Unit No. 490 on policies and measures taken by the Romanian Government to implement the Durban Declaration and the Plan of Action, available at: <http://www.un.org/temp/drc2009/pdf/replies/Romania.pdf> (15.05.2009)

<sup>89</sup> Ibid.

nevertheless exists on Syria's border - one called Israel? It is a pity that the Foreign Ministry did not see fit to respond sharply to these remarks. It is still not too late<sup>90</sup>". No reaction followed.

In its 2008 Activity Report, the NCCD considered that especially in the case of newspaper articles the language used was anti-Semitic and discriminatory. The report also includes examples of NCCD decisions where anti-Semitism was found in both Romanian language and Hungarian language press. The NCCD also noted that at the level of public opinion, of public dignitaries, of persons influencing public opinion (with few exceptions) there was no firm reaction of publicly condemning anti-Semitic acts and the destruction of Jewish cemeteries<sup>91</sup>. In 2008, the NCCD also had decisions on discrimination in access to information in both Romanian language and Hungarian language in a town from the Hungarian part of the country where the population is about half Romanian, and half Hungarian<sup>92</sup>. Also, through another decision the NCCD sanctioned a local newspaper for discrimination based on ethnicity affecting a public official, Romanian citizen of Turkish ethnicity; including such statements as "can he not be replaced with a hard-working Romanian capable of solving the problems of the community....<sup>93</sup>".

In April 2008, the equality body, the National Council for Combating Discrimination adopted a long awaited Internal Procedure for Dealing with Petitions and Notifications. The principles on which the procedure is based are: transparency of the procedure, celerity, contradictoriness, ensuring the right to defence, the protection of personal data and availability<sup>94</sup>.

As a result of decisions of the Romanian Constitutional Court in 2008 regarding the National Council for Combating Discrimination, the mandate of the equality body was limited. The NCCD no longer has a mandate on discrimination generated by legislative norms. This mandate was considered unconstitutional, and the NCCD can no longer decide on cases related to salary rights and benefits of civil servants<sup>95</sup>.

Furthermore, an exception of unconstitutionality of the NCCD was formulated by ALRO Slatina company previously sanctioned by the NCCD. In its attempt to annul the sanction in the court of law, the company asked the Constitutional Court to establish the "extraordinary jurisdiction" which the NCCD was accused of having and which is in contradiction with the Romanian Constitution. Over

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<sup>90</sup> Rozenberg, Cellu "Anti-semitism is alive and kicking in Romania" in Haaretz (01.11.2008) available at: <http://www.haaretz.com/hasen/spages/1033348.html> (07.05.2009)

<sup>91</sup> NCCD 2008 Activity Report, p. 41, available at: <http://www.cncd.org.ro/presa/CNCD-a-prezentat-raportul-de-activitate-al-institutiei-pe-anul-2008-26/> (07.05.2009)

<sup>92</sup> See NCCD decisions No. 507 from 03.09.2008 and No. 736 from 16.12.2008.

<sup>93</sup> See NCCD decision No. 613/13.11.2008

<sup>94</sup> National Council for Combating Discrimination Order No. 144/11.04.2008 published in the Official Journal No. 348/06.05.2008, Art. 3

<sup>95</sup> Romanian Constitutional Court Decision 997/07.10.2008 and Romanian Government Emergency Ordinance 75/11/07.2008 published in the Official Journal 462/20.07.2008 which mentions that legislation establishing salary-related policies in the public sector do not fall under the NCCD competence. See Ionescu, Iustina and Iordache Romanița, Thematic Legal Study on Impact of the Race Equality Directive, Romania, (2008) p. 9 on file with the author.

twenty anti-discrimination NGOs sent an amicus curiae in support of the equality body. The Constitutional Court decided that the NCCD is a perfectly constitutional body, reaffirming and reinforcing its legitimacy also connected with the transposition of EU legislation<sup>96</sup>.

In 2008, the Romanian Parliament adopted Law no. 4/2008 on the prevention and combating of violence on the occasion of competitions and sports games. It incorporates provisions of two previous legal acts transposing provisions of the European Convention on Spectator Violence and Misbehaviour at Sports Events and in Particular at Football Matches of 1985. The law is a very detailed and comprehensive document placing the responsibility on the organizer of the game. In September, the High Court of Cassation and Justice ruled on the case of President Basescu calling a journalist “filthy gypsy” in May 2007. The NCCD had sanctioned the President for discrimination following a Romani CRISS complaint, but the president contested the decision claiming that he had made the remark in a private conversation<sup>97</sup>. The Court decided that the remark was discriminatory but did not apply any sanctions admitting the President’s argument that the remark should not have been sanctioned because it had been made in a private conversation<sup>98</sup>. The President did not apologise for the remark, albeit made in a private conversation. Romani CRISS has contested the NCCD decision to the Court asking for the sanctioning of the sex discrimination deed and imposing the obligation to apologize on the President. The complaint has been denied and the case shall be presented to the ECHR.

The transposition of directives 2000/43/ EC and 2000/78/EC was done in the Romanian context through a single piece of legislation, the Romanian Government Ordinance No. 137/2000 on the prevention and sanctioning of all forms of discrimination with subsequent amendments. The ordinance defines discrimination as “any distinction, exclusion, restriction or preference, based on race, sexual orientation, age, disability, chronic non-contagious illness, HIV infection, belonging to a disfavoured category, as well as any other criterion which has as its aim or effect the restriction, removal of recognition, usage or exercise, under conditions of equality, of human rights and fundamental freedoms or of the rights recognised by law, in the political, economic, social and cultural fields or in any other field of public life<sup>99</sup>”. The body which was established to implement this legislation and deal with discrimination is the National Council for Combating Discrimination<sup>100</sup>. The NCCD only awards

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<sup>96</sup> Information available at: <http://antidiscriminare.blogspot.com/2008/10/excepia-de-neconstituionalitate.html> (07.05.2009)

<sup>97</sup> The President had snatched the telephone of a journalist filming him at the supermarket with his wife on the day of the referendum for his confirmation as president (he had been suspended by Parliament). The comments “how aggressive that filthy gypsy” were caught on the telephone of the journalist still recording, when the president was in his car leaving with his wife. The telephone was returned to the journalist and the recording retrieved and made public.

<sup>98</sup> Amnesty International Report 2009, Romania available at: <http://thereport.amnesty.org/en/regions/europe-central-asia/romania> (28.05.2009)

<sup>99</sup> Government Ordinance No. 137/2000, Art. 2

<sup>100</sup> Established through the Romanian Government Decision 1194/27.11.2001

administrative fines whereas for civil remedies and the return to the *status quo antes* the plaintiff needs to go before the court of law invoking the Ordinance 137/2000<sup>101</sup>.

If discrimination concerns a person, the fine can be between 400 LEI and 4000 LEI (aprox. 100-1000 EURO) while if the victim is a group of persons or a community, the fine is between 600 and 8000 lei (150 – 2000 EURO)<sup>102</sup>. Also, non-governmental organizations which have as their aim the protection of human rights or which have a legitimate aim in combating discrimination have an active legal standing with regards to discrimination against a group of persons or a community, and upon request of the victim when discrimination affects a person<sup>103</sup>.

The powers of the equality body go beyond the minimum requirements of the Race Equality Directive, since the NCCD can: propose affirmative or special measures, propose legislative drafts to the Government, provide opinions on relevant legislative drafts, cooperate with public authorities in order to harmonize domestic legislation with international standards in the field of anti-discrimination, coordinate with public authorities, legal persons and individuals in order to ensure preventing, sanctioning and eliminating discrimination, receive petitions and take relevant measures, find and sanction discrimination<sup>104</sup>.

The activity of the NCCD in applying sanctions has been evaluated as becoming increasingly proactive, after the NCCD adopted sanctions against the Romanian President and started a campaign against racism in football. Furthermore, the NCCD has been steadily improving and extending its activity in fulfilling its mandate. Its annual reports have become more and more professional and extended. In 2008, the NCCD included not only assessments of its own activity, but also comprehensive assessments of the situation of discrimination in Romania and added recommendations to state institutions. The prevention activities in 2008, contributing to the implementation of the *NCCD National Strategy for the implementing measures for preventing and combating discrimination (2007-2013)*, included publications, debates, nationwide campaigns and training activities with the following target groups: kindergarten children, students at all levels, teachers and professors, civil servants, police officers, community police officers, gendarmes, judges, lawyers, members of NGOs, doctors and medical staff, representatives of national minorities, etc...In 2008, the NCCD also assumed the implementation of educational programmes following two ECHR decisions in the cases of *Kalanyos v Romania* and *Gergely v Romania* (ethnic conflicts that took place in the 1990s in *Plaiesii de Sus* and *Casinul Nou*). In the past five years, under the mandate of the current President (whose mandate is ending in September 2009), the NCCD has also become an increasingly transparent institution. In 2008, after six years of functioning, the

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<sup>101</sup> Government Ordinance No. 137/2000, Art. 27

<sup>102</sup> Government Ordinance No. 137/2000, Art. 26

<sup>103</sup> Government Ordinance No. 137/2000, Art. 28

<sup>104</sup> Ionescu, Iustina and Iordache, Romanița, Thematic Legal Study on Impact of the Race Equality Directive, Romania, (2008) p.18, on file with the author

NCCD initiated a series of debates with its civil society partners on the functioning of the institution in order to evaluate and improve its performance<sup>105</sup>. However, the NCCD does not have the necessary budgetary allocations to fulfil its mandate, while in context of economic crisis, instead of safeguarding achievements in the area of anti-discrimination, the Romanian Government drastically decreased its already small budget (considering the dimensions of its mandate) for 2009<sup>106</sup>.

In 2008, the NCCD received 837 petitions, out of which for the grounds covered in the present report, 54 concerned nationality, 62 ethnicity, 11 language and 15 religion. Only 71 were admitted and in 191 the NCCD declined its competence. In 71 cases the NCCD found discrimination on the basis of GO 137/2000, which transposes EU anti-discrimination directives. Of these cases, two concerned conditions for access to employment coupled with language, one access to a profession coupled with nationality, one access to a profession coupled with ethnicity, one access to public services and facilities coupled with language, two refusal of access to public services coupled with ethnicity, two access to education and segregation coupled with ethnicity, one access to services and facilities coupled with ethnicity, 14 regarding the breach of the right to dignity by discriminatory statements in relation to ethnicity and nationality. The NCCD formulated points of view in 2490 causes before the courts of law. However, the cases before the courts of law mainly concerned salary rights and work conflicts, and not actual cases of discrimination<sup>107</sup>. Therefore, it can be concluded that the small number of cases which have come before the NCCD, and which concern real cases of discrimination related to vulnerable groups, is indicative of the fact that the Romanian population is very little inclined to denounce discrimination or aware that this is possible.

Assessments of the functioning of the NCCD showed that, despite the fact that the equality body adopted its internal procedures, and taking into account that the NCCD can try to solve a case through mediation, the procedures did not include the steps of the mediation mechanism. Furthermore, the NCCD lacks a mechanism for monitoring the enforcements of its decisions which infringes on their dissuasive role.

The limiting of the mandate of the NCCD by the Constitutional Court with regards to the power of sanctioning discrimination generated by legislative norms was considered to have created a legislative gap. Discriminatory legislation can thus far only be changed if it is brought before a court of law during proceedings or if the Ombudsman brings it up<sup>108</sup>. Therefore, anti-discrimination experts consider

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<sup>105</sup> NCCD 2008 Activity Report, p. 28, available at: <http://www.cncd.org.ro/presa/CNCD-a-prezentat-raportul-de-activitate-al-institutiei-pe-anul-2008-26/> (07.05.2009)

<sup>106</sup> See minute of the hearing of the NCCD in the Romanian Parliament Commission for the Equality of Chances on the topic of the institution's budget available at: [http://209.85.129.132/search?q=cache:IMuRe7CHoJkJ:www.cdep.ro/comisii/egalitate\\_sanse/pdf/2009/pv021012.pdf+buget+CNCD&cd=1&hl=en&ct=clnk&client=firefox-a](http://209.85.129.132/search?q=cache:IMuRe7CHoJkJ:www.cdep.ro/comisii/egalitate_sanse/pdf/2009/pv021012.pdf+buget+CNCD&cd=1&hl=en&ct=clnk&client=firefox-a) (08.05.2009)

<sup>107</sup> NCCD 2008 Activity Report, p. 28, available at: <http://www.cncd.org.ro/presa/CNCD-a-prezentat-raportul-de-activitate-al-institutiei-pe-anul-2008-26/> (07.05.2009)

<sup>108</sup> The institution of the Romanian Ombudsman is considered to be highly ineffective by the FRA Thematic Legal Study on National Human Rights Institutions and Human Rights Organizations Romania, (2008) on file with the author



that the NCCD should also have the possibility of seizing the Constitutional Court with regards to the constitutionality of discriminatory legislation, the Court being the only authority with a mandate to find that a legislative provision is unconstitutional and subsequently ask the Parliament to amend it<sup>109</sup>.

In order to address the problems of the Roma community, in 2001, the Romanian Government adopted the 10 year Strategy for the Improvement of the Situation of the Roma<sup>110</sup>. The Strategy was adopted at EU pressures and amended in 2006<sup>111</sup> to become more vague. The last evaluation comes from 2005, when several problems were identified: lack of Roma targeted policies in the practice of most ministries and local authorities, lack of proper funding and local initiatives, political interference from the Roma Party which monopolized positions and was allowed to do so, lack of adequate data based on the misinterpretation of authorities which could gather segregated data, which says that it goes against data protection legislation to collect data based on ethnicity<sup>112</sup>.

Also, according to NGOs assessment, the Strategy lacks the adequate administrative strength. The National Agency for the Roma, the central body responsible for Strategy implementation and Roma issues mainstreaming, was many times restructured under different names, and in 2006, lost its implementation component, being left with monitoring and evaluation. Since 2006, its activity considerably slowed down, and its website, and therefore transparency, stopped working, while requests for public information do not receive answers. This structure does not have the institutional capacity to hold Ministries to account, being a third rank institution, directly subordinated to the General Secretariat of the Government, while the NAR President cannot participate to Government meetings. Furthermore, at least part of the NAR staff lacks expertise, and commitment to the cause, to use an euphemistic expression. Romania is also part of the Decade of Roma Inclusion 2005-2015 initiative assuming the first presidency of the Decade<sup>113</sup>. Under the Decade, Romania should have elaborated national action plans for each priority of the Decade. These plans, drafted in the form of charts with objectives and actions to be taken, not all with an estimated budget, clear indicators or time frame, have not yet

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<sup>109</sup> Ionescu, Iustina, Iordache, Romanița, Thematic Legal Study on Impact of the Race Equality Directive, Romania, (2008), p. 18-19, 23 and 37, on file with the author.

<sup>110</sup> Romanian Government/ Decision 430/2001 (25.04.2001)

<sup>111</sup> Romanian Government/Decision 522/2006 (19.04.2006)

<sup>112</sup> Focus Consultancy, Assessment of the Roma Strategy Implementation Mechanism, Evaluation Report (2005), p. 37-47, available at: [http://www.anr.gov.ro/docs/rapoarte/Focus\\_Final\\_Evaluation\\_Report\\_181.pdf](http://www.anr.gov.ro/docs/rapoarte/Focus_Final_Evaluation_Report_181.pdf) (07.05.2009)

<sup>113</sup> Decade website available at: <http://www.romadecade.org/index.php?content=1> (07.05.2009)

been adopted<sup>114</sup>. Budgetary allocation<sup>115</sup> from the state budget for the Decade, in absence of adopted Action Plans does not seem to exist either<sup>116</sup>.

The Strategy was meant to have a real impact on the lives of the Roma including many positive action measures. Some of the measures adopted in the field of education had a positive impact for the Roma elite. The Ministry has established special places in educational institutions set aside for Roma students. For the 2008/2009 academic year, the number of places in universities was 493 in 49 public universities in Romania. In 2008, the Ministry of Education also issued Notification 27481/28.02.2008 comprising the guidelines for organising admission to high-school for Roma students applying for special places set aside for them in the 2008/2009 academic year. The number of special places is increasing every year<sup>117</sup>.

Romania ratified the Framework Convention for the Protection of National Minorities through Law 33/1995 published in the Official Journal No. 82 of May 4th 1995. However, the Romanian Parliament did not adopt the pending law on the statute of national minorities in Romania, which is foreseen by Art 73, 3, r of the Romanian Constitution amended in 2003<sup>118</sup>.

## **VI.ii Migration and integration**

Although Romania has now been part of the EU for two years, and the number of migrants and asylum seekers has, according to the Romanian National Council for Refugees<sup>119</sup> increased in 2008, the status of refugees, migration and integration are not part of any noteworthy national debate. Furthermore, the research in the field is very scarce and mainly comes from international institutions. It is however also true that Romania continues to be a migration resource country in the EU and less of a country of destination.

The results of an opinion poll conducted by the Romanian Office for Immigration (ROI)<sup>120</sup> showed that 33.3 per cent of Romanians have a good opinion of

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<sup>114</sup> Available on the Decade website: <http://www.romadecade.org/index.php?content=70> (07.05.2009)

<sup>115</sup> Decade Watch, Activisti pentru drepturile romilor evalueaza progresele realizate in cadrul Deceniului de Incluziune a Romilor, (2005-2006), p. 58-59, available at: [http://demo.itent.hu/roma/portal/downloads/DecadeWatch/DecadeWatch%20Romania%20\(Romanian%20-%20Final\).pdf](http://demo.itent.hu/roma/portal/downloads/DecadeWatch/DecadeWatch%20Romania%20(Romanian%20-%20Final).pdf) (07.05.2009)

<sup>116</sup> See Center for Legal Resources intervention at the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe hearing on the Situation of Roma in Europe and relevant activities of the Council of Europe, Târgu Mureş, 18 May 2009, on file with the author

<sup>117</sup> Center for Legal Resources, Fundamental Rights Agency –RAXEN Complementary Data Collection Report 2008, p. 23, on file with the author

<sup>118</sup> NCCD 2008 Activity Report, p. 41, available at: <http://www.cncd.org.ro/presa/CNCD-a-prezentat-raportul-de-activitate-al-institutiei-pe-anul-2008-26/> (07.05.2009)

<sup>119</sup> Romanian National Council for Refugees 2008 Annual Report on file with the author

<sup>120</sup> Romanian Office for Immigration, People's Perception Regarding the Refugees from Romania. (2008), Opinion poll conducted on a sample of 1076 persons from areas where one can find welcoming centres in Romania, and with a 3.7 margin of error.

foreigners in Romania and 47.3 per cent declared they have a pretty good opinion of foreigners in Romania. With regards to the image Romanians seem to have of foreigners, 13.3 per cent believe they come to work, 12.7 per cent believe they are looking for a better life, 11.7 per cent see them as human beings like all other human beings, everyday people, good and bad, 10.3 per cent believe they are too many, 10.1 per cent associate them with poverty, misery and starvation, 10.1 per cent associate them with immigrants, 5.3 per cent with delinquency, 4 per cent do not want them and would like them to stay in their own country, and only 1 per cent think foreigners are taking the jobs of Romanians. In general, Romanians have a neutral opinion of foreigners. Arabs register a slightly higher percentage of persons who have a bad image of them, probably also due to the image created for this group of people in the media.

On the other hand, 32.6 believe that there are over 1 million foreigners in Romania. According to the ROI Annual Report on the situation of foreigners who have obtained a form of protection in Romania, in August 2008, there were 53,164 registered foreigners having a legal stay on the Romanian territory.<sup>121</sup>

The main legal documents affecting the status of asylum seekers, migrants and foreigners in Romania are Law 122/2006 regarding asylum in Romania, with subsequent amendments, the Government Emergency Ordinance 194/2002 regarding the regime of foreigners in Romania, with subsequent amendments and Government Emergency Ordinance 44/2004 with regards to the social integration of foreigners who have obtained a form of protection or the right to stay in Romania as well as of EU member states and EEA citizens. The Government Emergency Ordinance 55/2007 harmonizes Romanian legislation on asylum and migration with EU norms. This legislative act defines as a foreigner “the person who does not have Romanian citizenship, or the citizenship of an EU or EEA Member State”<sup>122</sup>.

A recent study conducted by three NGOs and financed by the Soros Foundation Romania on working conditions of foreign workers in Romania identified several problems which foreign workers on the Romanian labour market face. Combining legislative analysis with field work and interviews, the study presents the following issues:

- Workers interviewed claimed: abuses from recruiting agents (who charge them between 6000 and 12000 EUR for a work place in Romania), the fact that initial contract becomes a different one when they get to Romania (the salary is lower, the working time is extended, etc..), abuses from the employer (keeping the work authorization in their own drawers, abusive and arbitrary work provisions and requests, non-payment of health leaves, etc..), difficulty to adapt and complete dependence on the employment agents to “translate” Romanian realities, lack of access to information in general because of language barriers and lack of adequate living conditions

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<sup>121</sup> Romanian Office for Immigration Annual Report regarding the situation of foreigners who have obtained a form of protection in Romania (2008), available at: <http://hdr.undp.org/en/statistics/> (07.05.2009)

<sup>122</sup> Iordache, Romanița; Ionescu, Iustina; Kovacs, Maria; Dan, Adrian; Pascu, Georgiana, RAXEN Data Collection Report 2007, Romania, p. 29 (on file with the author)

- the employer controls the possibility to obtain a work-permit upon which the right to work and all other social benefits depend. If someone is fired they have to find employment in the same field or leave within 30 days.
- no authority checks as a matter of its responsibility the legality of provisions of documentation submitted with the detaching file
- the Labour Code does not include clear provisions on the protection of fundamental rights and the right to non-discrimination for foreign workers
- the capacity of public institutions to control and monitor the activity of private employment agents is restricted;
- Romania has not ratified Convention No. 181 on private employment agencies and Convention No. 97 on migration for employment<sup>123</sup>.

Another category of persons remain unprotected, and that is persons whose asylum requests have been denied but have not been removed from the Romanian territory, and those who have been granted toleration. Toleration means the permission to stay on Romanian territory granted to those foreigners who do not have the right to stay but who, for objective reasons do not leave the Romanian territory<sup>124</sup>. There are several situations when the Romanian state may not remove foreigners from its territory, one of them being: "if there are justified fears that her/his life is in danger or that she/he will be submitted to torture, inhumane and degrading treatment in the state where the foreigner is about to be sent"<sup>125</sup>. Toleration is granted for a period of six months which can be prolonged for another six, and the tolerated person must thus present herself/himself in front of the Romanian authorities regularly, and also prove that s/he has a place to stay, or have someone willing to declare that they are going to host the tolerated person<sup>126</sup>.

The problem however, is that a toleration only provides for the right to stay on Romanian territory, but not for access to other rights such as social support, the right to access to the formal labour market, the right to health care (unless it is in emergency situations which is only granted for three days), the right to housing, etc...<sup>127</sup> These persons, due to a legislative gap, are being forced into destitution as a Jesuit Refugee Service Europe report shows. Lacking any financial means, many of them become homeless, and many also develop psychological problems. It must be mentioned that many come from conflict areas or have been persecuted. Some have seen their families die and hardly escaped themselves<sup>128</sup>. Once they arrive in Romania and receive a tolerated status, but not refugee status (although it is highly illogical from Romanian authorities to grant a toleration based on fear of persecution and ill treatment should they be

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<sup>123</sup> ARCA – Romanian Forum for Refugees and Asylum Seekers, the Group of Initiative for Dialogue, Pro WOMEN Foundation, Talk to Us! Study on the Working Conditions of Foreign Workers in Romania, (Bucharest: ARCA RFRA and Soros Foundation, 2009).

<sup>124</sup> Government Emergency Ordinance 194/2002, Art. 102, 1

<sup>125</sup> Government Emergency Ordinance 194/2002, Art. 92, 1, e

<sup>126</sup> Government Emergency Ordinance 194/2002, Art. 104, 1

<sup>127</sup> Jesuit Refugee Service Europe Report of Destitute Forced Migrants, (Brussels: Jesuit Refugee Service – Europe, 2007), p. 93

<sup>128</sup> Ibid.

returned to their home country, but not refugee status on the same grounds), these persons find that in the country where they sought refuge, they are not recognized as human beings with rights and dignity and in desperate need of help (including psychological help), but are left to depend upon charity and chance.

The Romanian JRS offers accommodation, but only for a limited period and their resources are also limited, while ARCA (Romanian Forum for Refugees and Migrants) offers food. Their resources are however not enough and Bucharest does not have free soup kitchens where they could go. Many of these people (coming from such places as Somalia, Ethiopia, Nigeria, Chechnya) have a strong desire to work and be able to provide for themselves and thus get their dignity back, but very few find jobs. The jobs they do find are on the black market because they do not have the right to work legally, and are usually daily, temporary jobs.

The JRS report also talks about another group of people, rejected asylum seekers, who are staying illegally on Romanian territory, and whom the Romanian state has not removed from its territory. They are roughly in the same situation as the tolerated persons, but, because they are illegal, they are not allowed to stay at the JRS, as they flee the police<sup>129</sup>. According to the law, these persons were probably issued a return decision (according to which s/he would have to leave the Romanian territory in 15 days)<sup>130</sup>, did not return, and the state has not removed them under escort<sup>131</sup> or taken them under public custody<sup>132</sup>.

The fact that tolerated persons are in contact with the authorities of the Romanian state on a regular basis for the renewal of their toleration status shows that the Romanian state is perfectly aware of their situation, as it must also surely have at least a record of the rejected asylum seekers who at some point followed the asylum procedures and were not granted a form of protection, but does not seem to be willing to assume responsibility for these people who are "left to die silent" - as a destitute from Bucharest declared for the JRS report -, in clear breach of basic human rights standards.

The Romanian Government Strategy for immigration, under the Asylum section, mentions the following: "In the period immediately following, a special attention will be granted to conditions of access to the asylum procedures, taking into account the phenomenon of change in the migratory fluxes, which, in the last period, have acquired a strong mixed character. Thus, the minimisation, as much as possible of the number of cases of persons who, although on Romanian territory with an illegal stay, are in a real need of international protection, will be taken into account, the regulation of their status being imperiously needed. The immediate regulation of the status of these persons is very important, essentially contributing to maintaining a low crime rate, and having a doubly protective effect

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<sup>129</sup> Ibid.

<sup>130</sup> According to Art 82, 3, a), iii. of the Government Emergency Ordinance 194/2002

<sup>131</sup> Such a procedure is activated according to the law, among others, in the case of foreigners who did not voluntarily leave following the return decision, according to Art. 87, 1, a of the Government Emergency Ordinance 194/2002

<sup>132</sup> Such a procedure is activated, according to the law, among others, in the case of foreigners who could not be removed under escort, Art. 97, 1 of the Government Emergency Ordinance 194/2002

– of the person and of the host society”<sup>133</sup>. Although the text is as vague as possible as to whom it is referring to, it seems that the Romanian state is recognising that on its territory there are illegally staying persons who are actually entitled to protection. These persons, in need of protection, are associated with a high crime rate although it is not mentioned on what grounds. Despite this official recognition, “the imperiously needed regulation of their status” has thus far not occurred.

The findings of another JRS report, assessing the Dublin II regulations in Europe from the perspective of JRS experiences, shows that in 2008 the number of persons transferred to Romania under the Dublin system has increased, but, according to JRS-RO, the Romanian asylum system does not have the necessary capacity to accept these cases. Furthermore, a 2007 decision by a Hungarian court suspended the Dublin transfer of an asylum seeker to Romania, arguing that the transfer would infringe against the prohibition of inhumane treatment of Article 3 of the European Convention on Human Rights. JRS-RO also explained that some asylum seekers leave Romania even if they know they might be transferred back under the Dublin system, but they take their chances because they feel it is useless to continue the procedure in Romania<sup>134</sup>.

In Romania there are five reception centres in Bucharest, Timisoara, Galati, Radauti and one in the Maramures county with a total capacity of 1080 places<sup>135</sup> and two closed centres for the taking in public custody in Bucharest and Arad.

An emergency transit centre, the first of its kind in Europe, with a 200 people capacity has been set up in May 2008 in order to provide a temporary safe haven with effective and immediate protection for individuals or groups who need to be evacuated immediately from life-threatening situations before being resettled to other countries. In 2008, it hosted 97 Sudanese refugees from Darfur fleeing a desert camp in Iraq where they had been stranded and abused for years. It further hosted 59 Palestinian refugees<sup>136</sup>.

According to UNHCR statistics, there were 1080 asylum applications submitted to Romania in 2008 as opposed to 660 in 2007. The countries of origin were: Pakistan (252), Bangladesh (172), India (141), Iraq (133), Turkey (79), China (53), Georgia (43), Cameroon (25), Serbia (25) and Republic of Moldova (15)<sup>137</sup>. According to a newspaper article, about one in five requests is solved with the

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<sup>133</sup> Decision 1.122 of 18 September 2007 for the approval of the national Strategy for immigration for the period 2007-2010, Art. 2.3.1 available at: [http://81.181.207.62/api/media/userfiles/1122\\_2007.pdf](http://81.181.207.62/api/media/userfiles/1122_2007.pdf) (28.05.2009)

<sup>134</sup> Jesuit Refugee Service Europe Dublin : A summary of JRS experiences in Europe (2008) available at: [http://www.detention-in-europe.org/images/stories/dublin%20ii\\_summary%20of%20jrs%20responses\\_final.pdf](http://www.detention-in-europe.org/images/stories/dublin%20ii_summary%20of%20jrs%20responses_final.pdf) (07.05.2009)

<sup>135</sup> ROI new website available at: <http://81.181.207.62/detalii/pagina/ro/Cazare/115> (28.05.2009)

<sup>136</sup> See UNHCR Romania news section available at: <http://www.unhcr.org/cgi-bin/texis/vtx/country?iso=rom&expand=news> (07.05.2009)

<sup>137</sup> UNHCR (2009), Asylum and trends in industrialized countries 2008. Statistical overview of Asylum Applications Lodged in Europe and selected Non-European Countries, available at: <http://www.unhcr.org/statistics/STATISTICS/49c796572.pdf> (07.05.2009)

granting of protection<sup>138</sup>. In the period August 2007-August 2008, 223 foreigners received a form of protection with the following first three countries of origin: Iraq (167), Somalia – (15) and Serbia (9). Out of them, 62 per cent participated in integration programmes as opposed to 28 per cent in the previous year, which shows a higher intention to remain on the Romanian territory<sup>139</sup>. In 2008, only 64 refugees were granted the reimbursable aid<sup>140</sup> and, following the implementation of the National Action Plan for Employment, 61 foreigners were hired and only three refugees<sup>141</sup>.

The 2008 UNHCR Central Europe evaluation report on the living conditions of refugees and asylum seekers, based on data from 2007, revealed several problems encountered in Romania such as language barriers, followed by lack of access to vital information. The Romanian Office for Immigration – (ROI) produced a film on how the asylum procedures work, but it was only available in Romanian, English and Arabic. Refugees speaking rare languages who did not live in Bucharest found that there were no translators for them outside the capital. Specialized lawyers who offer free assistance are not numerous enough to cover their needs and they only exist in Bucharest. The report also points to flawed decisions because of inappropriate documentation on the country of origin, and to the lack of gender adapted mechanisms such as women translators for rare languages, gender adapted interviews and ability to identify gender persecution. The monthly aid granted by the state does not seem to be enough, which excludes the asylum seekers' families from the possibility to participate in the social life, both for them and for their children. When accessing state services, refugees are confronted with the ignorance of civil servants who have no clue as to what the specific rights of refugees are. Furthermore, on the labour market, employers demonstrate reluctance because they do not know what the status of the refugee is. Their educational background is in most cases irrelevant because most of their diplomas are not recognized by the Romanian state<sup>142</sup>. According to Law 122/2004 regarding asylum in Romania family reunification can be requested by a person granted a form of protection. Family, under the law includes the spouse (they would have to be legally married beforehand) and children. Once these persons enter the Romanian territory, they would have to undergo the asylum procedure.<sup>143</sup> In the case of unaccompanied minors, the ROI

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<sup>138</sup> Alina Badalan Turictu, "Romanian refugees migrate to other countries for better jobs" in Gandul available at: <http://www.gandul.info/societatea/refugiarii-romania-emigreaza-strainatate-dupa-joburi-bune.html?3932;834778> (07.05.2009)

<sup>139</sup> Romanian Office for Immigration, Annual Report regarding the situation of foreigners who have obtained a form of protection in Romania (2008), available at: <http://hdr.undp.org/en/statistics/> (07.05.2009)

<sup>140</sup> According to the Ministry of Labour Family and Social Protection statistics available at: [http://www.mmuncii.ro/pub/imagemanager/images/file/Statistica/Buletin%20statistic/2009/asistentia%20sociala1\\_65.pdf](http://www.mmuncii.ro/pub/imagemanager/images/file/Statistica/Buletin%20statistic/2009/asistentia%20sociala1_65.pdf) (09.06.2009)

<sup>141</sup> According to the Ministry of Labour Family and Social Protection statistics available at: [http://www.mmuncii.ro/pub/imagemanager/images/file/Statistica/Buletin%20statistic/2009/somaj\\_ocupare1\\_65.pdf](http://www.mmuncii.ro/pub/imagemanager/images/file/Statistica/Buletin%20statistic/2009/somaj_ocupare1_65.pdf) (09.06.2009)

<sup>142</sup> UNHCR, *Being a refugee. Refugee assistance from the perspective of gender and age diversity. Report 2007. How refugees and asylum seekers live in Europe*, (Budapest: UNHCR Regional Office for Central Europe, 2008) p. 21-24

<sup>143</sup> Romanian Parliament Law 122/2006 regarding asylum in Romania, Art. 71,

will start the family reunification procedure ex officio, and the solution, which can be attacked in front of a court of law, will be given by a civil servant designated by the ROI.<sup>144</sup> There are no assessments as to how the procedure works in practice.

With regards to the *11 Common Basic Principles of the European Commission on a Common Agenda for Integration. The Framework for the Integration of Third-Country Nationals in the European Union*<sup>145</sup>, under Government Emergency Ordinance 44/2004 with regards to the social integration of foreigners who have obtained a form of protection or the right to stay in Romania as well as of EU member states and EEA citizens, the rights of persons who have obtained a form of protection is granted under the same conditions as for Romanian citizens. Thus, the right to access to the labour market, housing, the medical system, pensions, social security and social aid and education are provided. A one year course of Romanian language is offered to both children and within the integration programme for adults. The Ministry of Education is supposed to develop a diploma recognition methodology up to high-school for those refugees who can no longer prove their educational background. According to the ROI 2008 Annual Report, the methodology had been developed and was in the process of being approved, but the Ministry still did not have a proper mechanism for recognizing university diplomas.

After obtaining a protected status, the foreigner can be included into integration programmes based on an individual request. After an interview, an individual plan for integration is developed. What the Romanian state mainly offers during this programme are: counselling and support in order to access their rights, cultural accommodation sessions and Romanian language courses. Persons participating in the programme may benefit from housing for a maximum of one year and within the resource limits. After the integration programme, local authorities must ensure, within the limit of available resources, social housing for refugees. If such housing is not available, the ROI will help with up to 50 per cent of the rent for a maximum of one year<sup>146</sup>. If the asylum procedure takes more than one year, the person in question has access to the labour market under the same conditions as Romanian citizens, and persons who have been granted a form of protection have the right to a reimbursable state aid for a period of 6 months with the possibility of another three, and within the limits of state resources<sup>147</sup>. This aid is usually at the level of the minimum wage.

In the future, ROI plans to undertake information campaigns targeted at the population, train civil servants, improve the Romanian language course, improve communication with governmental and non-governmental organizations in the field, develop housing access programmes and programmes to improve access to employment<sup>148</sup>. The Romanian protection and integration system is still at its

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<sup>144</sup> Romanian Parliament Law 122/2006 regarding asylum in Romania, Art. 72, 73

<sup>145</sup> Information available at: [http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005\\_0389en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0389en01.pdf) (07.05.2009)

<sup>146</sup> Government Emergency Ordinance 44/2004

<sup>147</sup> Romanian Parliament Law 122/2006 on asylum in Romania, Art. 17, 1, o and Art 20, 1, m

<sup>148</sup> Romanian Office for Immigration, Annual Report regarding the situation of foreigners who have obtained a form of protection in Romania (2008), available at: <http://hdr.undp.org/en/statistics/> (07.05.2009)



beginnings, while NGOs working in the field<sup>149</sup>, for various reasons linked to the organizational capacity and available funding mechanisms among others; do not have the capacity to take over state responsibilities in the area of asylum<sup>150</sup>. A general national strategy for immigration for 2007-2010 has been adopted in September 2007<sup>151</sup> having the purpose of managing migration in the sense of strengthening border control and limiting illegal immigration. No assessment of its implementation is available.

## **VI.iii Criminal justice**

### **VI.iii.i Racism as a crime**

The legislative framework in the field of racist violence and crime, provides for two types of criminal offences: specific criminal offences which are racist or discriminatory in nature, and general criminal offences which in some cases can be conducted with a racist or discriminatory motive.

The first includes acts such as abuse in the exercise of authority against the rights of the person (a limitation of the use or exercise of the citizen's rights or the creation of an inferiority situation on the ground of nationality, race, sex or religion conducted by a public officer) – Art. 247 of the Penal Code – nationalistic and chauvinistic propaganda, along with the incitement to racist or nationalistic hatred – Art 317 of the Penal Code, impeding the free exercise of religion of any religious denomination recognized by the law – Art 318,1 of the Penal Code – desecration through any means of a grave, monument, funeral urn or dead body – Art 319 of the Penal Code. In July 2006, as a result of lobbying from two Romanian NGOs (Accept and the Center for Legal Resources), in partnership with the NCCD, the Romanian Parliament adopted new amendment to the Penal Code introducing a legal aggravating circumstance for any criminal offence conducted with discriminatory motivation or any ground prescribed in the anti-discrimination legislation, including race, ethnic origin or nationality – Art 75, 1 of the Penal Code. Furthermore, responding to pressures from the Roma minority representative NGOs and public persons, Romania's President, Traian Basescu, requested the inclusion in the legal definition of the Holocaust, in addition to the extermination measures taken against the Jewish population, the ones taken against the Roma, and also conducted by the Nazi regime and its allies – Government Emergency Ordinance 31/2002 prohibiting organisations and symbols having a fascist, racist xenophobic nature and making the apology of the

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<sup>149</sup> Ibid., the NGOs which assist migrants, asylum seekers and refugees are: ARCA – The Romanian Forum for Refugees and Migrants, Save the Children Romania, the Romanian National Council for Refugees, the Organization of Refugee Women from Romania, the ICAR Foundation. There is also the UNHCR Romania which finances part of the assistance programmes of the NGOs.

<sup>150</sup> Munteanu, Alison "Partners for Protection: a review of the organizational capacity of NGOs in Romania" in *New Issues in Refugee Research*, July 2008, available at: <http://www.unhcr.org/publ/RESEARCH/487b4a5d2.pdf> (07.05.2009)

<sup>151</sup> Decision 1.122 of 18 September 2007 for the approval of the national Strategy for immigration for the period 2007-2010, available at: [http://81.181.207.62/api/media/userfiles/1122\\_2007.pdf](http://81.181.207.62/api/media/userfiles/1122_2007.pdf) (28.05.2009)

persons guilty of crimes against peace and humanity<sup>152</sup>. In its Annual report for 2008, the National Council for Combating Discrimination considered that the Emergency Ordinance 31/2002 is not actually being applied by the courts of law, and recommended that the Law be amended in order to ensure its effective application and that courses on anti-Semitism be introduced in the curricula of Police Academies and of the National Institute for Magistrates<sup>153</sup>. There are no statistics on hate crime.

Authorities responsible for gathering data and statistics reported not having among statistical indicators the ethnic origin, religion and race of the perpetrator or the victim. Furthermore, the aggravating circumstance included in the Penal Code in 2006 does not represent a statistical indicator. The only authority publishing statistics on crimes is the Police. However, their statistics are not relevant. As opposed to other years, in 2008 the Police reported that, as a general rule, Police statistics, aside from those already published on its website are classified information<sup>154</sup>.

Statistical data is scarce and does not come from public authorities. Authorities competent to collect such data on the basis of which to develop policy invoke a provision of the Law 677/2001 on the protection of persons regarding the use of personal data and the free movement of personal data which prohibits under Art 7 (1): 'the use of personal data regarding the racial or ethnic origin, political, religious, philosophical or similar beliefs, trade union membership, as well as personal data regarding the health status or sexual life'. However, the same Law provides under Art 7 (2) for an exemption if, among others, such usage would serve the public interest<sup>155</sup>.

#### **VI.iii.ii Counter terrorism**

No information available.

#### **VI.iii.iii Racial profiling**

Excessive use of force or abuse from the police continued throughout 2008, as APADOR-CH NGO case law shows. Most of the incidents which can be considered racial profiling are targeted at the Roma and include police abuse against the Roma, as recorded by the US Department of State Human Rights Report: Romania<sup>156</sup>. Incidents include beatings, abusive arrests and evacuations, descending upon Roma houses, etc... Romania has been convicted by the ECHR in some such cases.

<sup>152</sup> See ENAR Shadow Report Romania 2006, available at: [http://cms.horus.be/files/99935/MediaArchive/national/Romania\\_2006.pdf](http://cms.horus.be/files/99935/MediaArchive/national/Romania_2006.pdf) (07.05.2009)

<sup>153</sup> NCCD 2008 Activity Report, p. 41, available at: <http://www.cncd.org.ro/presa/CNCD-a-prezentat-raportul-de-activitate-al-institutiei-pe-anul-2008-26/> (07.05.2009)

<sup>154</sup> Center for Legal Resources, *Fundamental Rights Agency –RAXEN Complementary Data Collection Report 2008*, p. 9, on file with the author

<sup>155</sup> Ionescu, Iustina and Iordache, Romanița, *FRA Thematic Study on the impact of the race equality directive for Romania*, 2009, on file

<sup>156</sup> US Department of State Human Rights Report, available at: <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119100.htm> (07.05.2009)

See also Section V.v.

#### **VI.iv Social inclusion**

The first strategy report on social inclusion and social protection under Commission guidelines was adopted in 2006 and the second, updating the first, in 2008. To our knowledge, these strategies did not make the object of public debate while the final plans are inexistent at the level of public opinion<sup>157</sup>.

Although the 2006 strategy is directed at vulnerable groups, these groups are seen from an economic point of view and discrimination as a determining factor for vulnerability is not tackled as such. Although it mentions vulnerable groups several times, with the exception of the Roma community whose problems are treated separately, these groups are not clearly specified. The 2008 Romanian Government 'Strategic National Report Regarding Social Protection and Social Inclusion (2008-2010)' makes a certain evaluation of what has happened since the 2006 plan and establishes the new priorities: increasing employment level for disadvantaged persons; promoting integrated family policies by means of promoting a package of efficient social benefits and services measures; the continuation of efforts to improve the quality of life for Roma citizens. However, the actions enumerated to achieve these objectives as well as the lack of clearly established budget lines do not actually offer a coherent strategy which would outline an image of how it is going to be put into practice. In the evaluation made for the 2006-2008 period, due to the lack of established targets the evaluation is actually an enumeration of the projects which have been undertaken or the programmes that have been set up, without actual evaluation of their efficacy or impact also taking into account the scale of the problem addressed. The 2006-2008 period was also used for the establishment of monitoring mechanisms which do not, as yet, exist.

The 2009 Joint Report for Social Protection and Social Inclusion for Romania points to the same problems of the strategy: "Taken as a whole, the strategy can be considered ambitious but, in absence of quantifiable objectives, it risks to become a declaration of good intentions at a moreover general level" (...) "Both the Strategy and the Report on Progress, moreover offers a descriptive image of programmes and projects targeting vulnerable groups, without offering an image which adequately analyses results. Progress exists, but the figures presented are moreover confusing because they do not offer an image of the impact of measures within a general evaluation"<sup>158</sup>.

The assessment of the Roma situation in the 2008 report can be considered offensive for the Roma community, taking into account that, after almost seven years since the adoption of a strategy for the Roma, the Government still claims lack of adequate data, and selectively quotes from a commissioned study on the

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<sup>157</sup> The plans can be found at: [http://ec.europa.eu/employment\\_social/spsi/strategy\\_reports\\_en.htm](http://ec.europa.eu/employment_social/spsi/strategy_reports_en.htm) (20.03.2009)

<sup>158</sup> Report available at: [http://ec.europa.eu/employment\\_social/spsi/joint\\_reports\\_en.htm](http://ec.europa.eu/employment_social/spsi/joint_reports_en.htm) (09.06.2009)

situation of the Roma to make the situation look less serious than it is<sup>159</sup>. The measures envisaged for the Roma are roughly the same measures as the ones from the Romanian government 2001 Strategy for the Roma, repeated here, once again, seven years later. Furthermore, there are no indicators, calendar, or more specific measures to be mentioned, and the financial sources indicated are general ones, such as the state budget, European funds, etc... The migration situation is moreover tackled from the point of view of Romanians migrating and thus leaving the country without the main working force, and not from the point of view of Romania as a host country for migration.

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<sup>159</sup> The study in question is: Fleck, Gabor and Rughinis Cosima (eds.) *Come closer: inclusion and exclusion of the Roma in today's Romanian society*, Bucharest: National Agency for the Roma, 2008, p. 100-101

## **VII. National recommendations**

### **VII.i General**

- The Romanian political class in permanent electoral campaign, as well as the Romanian media, in their capacity to influence public opinion, should become more responsible in their declarations with regards to minority communities and make sure that in times of economic crisis scapegoating and collective blaming do not happen, by publicly condemning and sanctioning any such incidents.

### **VII.ii Anti discrimination**

- Whatever progress has been achieved in the area of discrimination must be safeguarded in times of crisis and budgets for anti-discrimination measures must not be decreased, quite to the contrary.
- The appointment of new members to the NCCD Steering Committee must be made based on competence and not on political interests or algorithms.
- The Romanian Government Strategy for the Improvement of the condition of the Roma should be backed by real political will, and the National Agency for the Roma should be restructured and given more powers to actually become effective

### **VII.iii Migration and integration**

- The Romanian asylum procedures, and the competence of civil servants dealing with asylum seekers and refugees should be very much improved to assess the real needs of asylum seekers and refugees and grant asylum to all those who are in need of asylum, regardless of the financial burden which they would place on the Romanian state.
- The integration programme for persons granted a form of protection should be extended to last longer and to include psychological assistance.
- The financial support to both persons granted a form of protection and supporting NGOs coming from the Romanian state should be increased.
- The situation of tolerated persons and illegal immigrants should be solved through a legislative amendment to grant rights and social protection for tolerated persons and to control the situation of asylum seekers whose application for asylum has been rejected on justified grounds in full respect of human rights standards.

### **VII.iv Criminal justice**

#### **VII.iv.i Racism as a crime**

- Competent authorities should no longer prevail themselves of the personal data protection regulations in order to not gather data for statistics and thus claim that no policies can be formulated because of lack of data.

#### **VII.iv.iii Racial profiling**

- Responsible authorities should sanction and prosecute police officers who abuse their power in general and in relation to the Roma minority based on racist motives in particular demonstrating zero tolerance.

#### **VII.v Social inclusion**

- The Romanian state should demonstrate real commitment to the topic of social inclusion by adequately drafting and implementing the plans for social inclusion based on thorough initial research with specific measures attached to specific budget lines, with indicators, timelines, monitoring and evaluation mechanisms included.

## VIII. Conclusion

One of the most important developments in the realm of anti-racism and anti-discrimination is the steady institutional development and increase in transparency of the equality body, the National Council for Combating Discrimination. Despite certain shortcomings, such as the incapacity to monitor decision implementation, the lack of a mediation procedure, the activity of the Council is extensive despite insufficient budgetary allocations, and compared to any other human rights institution in Romania. Furthermore, through some of its decisions, the Council has established standards in anti-discrimination legislation<sup>160</sup>.

Another important development is the establishment of the EU Platform for Roma Inclusion following the September 2008 EU Roma Summit. Despite expectations of Romanian politicians that the EU would take over the responsibilities of the Romanian state, which is underperforming, this has not happened since the EU would not be able to have a mandate in this sense. However, the EU is able to help with coordination, benchmarking and mutual learning through the open method of coordination, and with funding through the structural funds. The EU involvement, will hopefully give new impetus to the implementation of programmes for the Roma. Nevertheless the level of involvement remains with the good will and commitment of national governments, while structural funds accessing and management with the aim of helping the Roma also rests at the national level<sup>161</sup>.

In 2008, the number of migrants and asylum seekers in Romania has increased, as shown above, while the Romanian asylum and integration system is still not coping with the new developments after Romania's entry into the EU. NGOs such as the Romanian National Council for Refugees are extending their activity in many cases supplying state-like activities. In 2008, the RNCR offered legal counselling for 699 asylum seekers, to 926 persons in asylum centres, cultural orientation to 76 asylum seekers and 221 free medical evaluations and undertook various other projects<sup>162</sup>.

NGOs in the field of anti-discrimination are only now beginning to access EU structural funding. However, the way the Romanian state has developed the guidelines for application (although gender and equality with a special focus on the Roma are included in certain areas) generally excludes such activities as lobbying, advocacy and campaigning while the focus is moreover on the provision of social services<sup>163</sup>.

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<sup>160</sup> NCCD 2008 Activity Report, p. 43, Chapter on Decisions of the Steering Committee, available at: <http://www.cncd.org.ro/presa/CNCD-a-prezentat-raportul-de-activitate-al-institutiei-pe-anul-2008-26/> (07.05.2009)

<sup>161</sup> EU Platform for Roma Inclusion (Prague, 24 April 2009), Press Release <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/193&format=HTML&aged=0&language=EN&guiLanguage=en> (07.05.2009)

<sup>162</sup> RNCR Annual Report 2008, on file with the author

<sup>163</sup> Information available at: <http://www.fonduri-structurale.ro/> (07.05.2009)

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## **X. Annex 1: List of abbreviations and terminology**

JRS – Jesuit Refugee Service

NAR - National Agency for the Roma

NCA – National Council of the Audio-Visual

NCCD – National Council for Combating Discrimination

RNCR - Romanian National Council for Refugees

ROI - Romanian Office for Immigration



european network against racism

ENAR Shadow Report 2008