

# Minority Protection in the EU Accession Process

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# Minority Protection in the EU Accession Process

*“Equal treatment of minorities is a cornerstone of the new united Europe.”*

– Romano Prodi, President of the European Commission<sup>1</sup>

## I. Introduction

In the century just ended, Europe repeatedly learned the costs – to peace, security and the human condition – of failing to safeguard racial and ethnic minorities from abuse. Perhaps not surprisingly, in view of this history, the EU’s decision to highlight “respect for and protection of minorities” as one of the core political criteria for accession has stimulated considerable interest and activity among governments and civil society. Minority protection is now high on the agenda both at the European level and within many candidate States, and a variety of legal and policy initiatives are underway to improve opportunities for racial and ethnic minorities.

Nevertheless, throughout the accession region, minorities remain vulnerable to debilitating marginalisation and prejudice, often due to candidate States’ inability to develop meaningful mechanisms to combat discrimination and promote minority rights. Salutory though the accession process has been, its capacity to foster heightened minority protection has not been sufficiently developed. The EU can enhance accession’s potential to leverage change by clarifying the standards it expects candidate States to meet, improving the performance of its own member States, encouraging candidate governments to muster genuine political will on behalf of reform, and engaging civil society as an equal partner.

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<sup>1</sup> R. Wright, “Prodi in Warning for Budapest”, *Financial Times*, 6 April 2001, p. 2.

## A. The Importance of a Comprehensive Approach to Minority Protection

Two main approaches to the protection of minorities have emerged in Europe: enforcement of anti-discrimination norms, and support for minority rights. Anti-discrimination measures are designed to ensure that individuals are not treated differently from others for unjustifiable reasons. Minority rights protections aim to allow individuals and communities to preserve their differences so as to avoid forced assimilation into a majority culture. Anti-discrimination and minority rights are complementary responses to the problems facing minorities, who confront risks both of exclusion and assimilation. They may properly be thought of as aspects of a single comprehensive approach that these Reports consider under the name “minority protection”.<sup>2</sup>

The Regular Reports of the European Commission employ the phrase “minority rights” broadly so as to include within its ambit both aspects of minority protection. Thus, the Copenhagen criteria requirement of “respect for and protection of minorities” necessarily embraces both protection from discrimination and traditional minority rights. Indeed, the Regular Reports confirm this understanding by devoting substantial attention to problems of discrimination when they address “minority rights”.

We support the Commission’s consideration of both aspects of minority protection in its evaluations of candidate countries. Addressing both anti-discrimination measures and minority rights reflects the common underlying issues faced by minorities in diverse

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<sup>2</sup> These reports do not attempt to resolve what some have suggested are contradictions between anti-discrimination and minority rights. Nonetheless, it may be useful to note that some of the alleged contrasts are not so clear. Although minority rights are often expressed as collective rights, the Framework Convention for the Protection of National Minorities (hereafter “FCNM”) establishes rights of individuals – i.e., “persons belonging to national minorities” – and expressly declines to create “collective rights” of a national minority. See e.g. FCNM, Art. 3(2); *Explanatory Report*, paras. 31, 37. Similarly, it is often suggested that minority rights involve positive obligations, whereas protection against discrimination requires only negative restraint. However, the right to be free from discrimination may entail positive obligations to prohibit discrimination between private parties, and/or to establish an adequate mechanism capable of providing effective redress. See, e.g., European Convention on Human Rights and Fundamental Freedoms (hereafter “ECHR”), Art. 14 (“enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination”) (emphasis added); International Convention on the Elimination of All Forms of Racial Discrimination (hereafter “ICERD”), Art. 6 (“States Parties shall assure to everyone within their jurisdiction effective protection and remedies”) (emphasis added). See *Explanatory Report*, Protocol No. 12, ECHR, para. 26 (“it cannot be totally excluded that the duty to ‘secure’ any right set forth by law without discrimination ‘might entail positive obligations’”).

settings throughout the accession region, including the two groups who form the principal subjects of these reports: Roma and Russian-speakers.<sup>3</sup>

More than any other group, Roma face immediate and pressing problems of systematic exclusion from the societies in which they live, including discrimination in access to education, employment, health care, and goods and services, for which legal redress is rarely forthcoming. Yet Roma are targeted in part because they form a separate community – a community which has been historically marginalised and prevented from developing according to its own interests. Roma culture, history and languages are neglected or denigrated; the fact that some Roma children speak a Romani language – or do not speak the national language well – is often cited as a justification for their assignment to separate and inferior-quality schools or classes.

Both aspects of minority protection are also a concern for Russian-speaking minorities in Estonia and Latvia. The principal problems confronting Russian-speakers are best understood as a denial of their right to be different and to maintain a different identity: restrictions on use of language in schools, and in public and political life. At the same time, because these linguistic restrictions have been attached to citizenship and employment requirements, they serve not only to restrict Russian-speakers' right to be different, but also to exclude them from participation in mainstream society as well – a problem of discrimination.

In short, the reality of the situation of both Roma and Russian-speakers compels attention to both perspectives. In view of the foregoing, these reports follow the Commission in evaluating conditions in the candidate countries through the lenses of both anti-discrimination and minority rights.<sup>4</sup>

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<sup>3</sup> Although ethnic Russians constitute the great majority of Russian-speakers in both Estonia and Latvia, these reports often refer to the “Russian-speaking minority” or to “Russian speakers,” since Russian-speakers who are not ethnic Russians – including members of the Belarussian, Jewish, and Ukrainian minorities – have also been affected by restrictive citizenship and related legislation.

<sup>4</sup> Unless stated otherwise, in these Reports “minority rights” denote the rights of members of minority groups to preserve and cultivate their own identity, language and culture, as described in the Framework Convention for the Protection of National Minority (“FCNM”) and related documents. As part of their broader examination of the situation of minorities in candidate countries, the Reports also consider the extent of protection against racially motivated violence, and the role of anti-minority statements, especially by public officials, in creating a climate conducive to violence and discrimination.

## B. The Impact to Date of the EU Accession Process

EU membership is among the principal priorities of governments across the region, and the European Commission's statements and recommendations carry great weight. Thus, it has been of genuine significance that the EU has made minority protection a main plank of its enlargement policy. Candidate State governments have undertaken significant efforts to comply with the Copenhagen criteria's minority protection component.

The Commission has extended considerable funding in support of minority protection. Its annual progress reports on candidate countries have addressed the issue in some detail, and senior Commission officials have gone out of their way, during visits to candidate countries, to underscore the importance of continuing improvements.

Other EU bodies too have lent their weight. The European Parliament recently issued a report denouncing the "widespread discrimination, racial harassment and violence" suffered by Roma and encouraging direct government collaboration with minorities.<sup>5</sup> In mid-2000, the European Council took a significant step forward in the fight against racial and ethnic discrimination by adopting the Race Equality Directive, "implementing the principle of equal treatment between persons irrespective of racial or ethnic origin."<sup>6</sup> The EU has also lent its support to OSCE efforts to monitor language laws in Estonia and Latvia that threaten to discriminate against those who do not speak the titular languages sufficiently well.

These efforts have been instrumental in encouraging positive changes. As outlined in the attached reports, structures to safeguard minorities are gradually improving across the accession region. Most candidate governments have acceded to the key international standards for minority protection. Several have undertaken legislative reform, including amendments to facilitate the naturalisation of some groups of Russian-speaking minorities in Estonia and Latvia, and the provisional adoption of anti-discrimination legislation in Romania. A number of governments that previously ignored the question have acknowledged racism in their midst, and have proclaimed programs to combat discrimination.

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<sup>5</sup> European Parliament, *Annual Report on human rights in the world in 2000 and the European Union Human Rights Policy*, Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, Rapporteur: Matti Wuori, A5-0193/2001, 30 May 2001.

<sup>6</sup> Council Directive 2000/43/EC, adopted by the Council of the European Union on 29 June 2000, *Official Journal* SOC 221 JAI 67 (hereafter "Race Equality Directive").

And at the grassroots level, with the support of the EU and other donors, minority organisations have emerged within civil society to monitor developments, raise awareness, and advocate for changes in government policy. Roma media has expanded. And a nascent public interest law movement has encouraged hundreds of Roma and Russian speakers to take their grievances to court, with some success. Increasingly, the hitherto intractable “minority problem” is seen as a question of rights and remedies that state institutions have the capacity, and the obligation, to secure.

And yet, if the EU accession process has sparked much-needed change, it has not systematically secured minority protection. Public declarations by senior officials underlining the importance of combating racism and discrimination remain rare, even as opinion polls regularly document the depths to which anti-Roma sentiment penetrates. In some cases, political leaders continue to voice, rather than condemn, anti-minority viewpoints.

In Slovakia this past April, the then Deputy Prime Minister for European Integration Pavel Hamzik suggested that Roma “need to know what is good for them – and that is to change their way of life.”<sup>7</sup> Robert Fico, head of the non-parliamentary SME party, and according to a March 2001 public opinion poll the “most trustworthy politician” in Slovakia,<sup>8</sup> has referred publicly to the Roma minority as a “time bomb that will cause trouble if not kept under control,”<sup>9</sup> explaining that “we have a great mass of Roma who do not want anything except to lie in bed and survive on social security.”<sup>10</sup>

When in August 2000 a group of Roma fled their home village of Zamoly in Hungary to seek asylum in France, one official accused them of “going abroad to discredit Hungary” and “making groundless allegations against the state and government.” The mayor of a nearby town was more direct: “the Roma of Zamoly have no place in this country. Just as in the animal world, parasites must be expelled.”<sup>11</sup> Far from

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<sup>7</sup> J. Keay, Interview with Pavel Hamzik, “Bratislava Goal: Fast Track Into EU”, *International Herald Tribune*, 18 April 2001, p. 2, <<http://www.iht.com/articles/17220.htm>> (accessed 23 July 2001).

<sup>8</sup> Findings of polling agencies of the State Statistics Office, cited in L Nicholsonova, “Opposition puts new early elections case,” *Slovak Spectator*, 26 March–1 April, 2001, Vol. 7, No. 12.

<sup>9</sup> C. Togneri, “Racial Beatings Increase”, *Slovak Spectator*, December 2000–January 2001, Vol. 6, No. 49.

<sup>10</sup> RFE/RL Newline, “Maverick Slovak politician wants to be ‘phenomenon’...and meanwhile makes racist statements,” 10 May 2001, <<http://www.rferl.org/newline/2001/05/100501.html>> (accessed 23 July 2001).

<sup>11</sup> “Botranyriport a zamolyi romakrol” (Scandalous report on the Zamoly Roma), *Magyar Hirlap*, 5 May 2000, <[http://errc.org/rr\\_nr3\\_2000/snap16.shtml](http://errc.org/rr_nr3_2000/snap16.shtml)> (accessed 26 July 2001).

condemning these statements, Prime Minister Viktor Orban exhorted Roma to “try to study and work more.”<sup>12</sup>

Comments such as these are deeply troubling, especially as they are made in the context of continuing violence and harassment against Roma. On 6 July 2001, a Romani man died in police custody in the Slovak town of Revuca, having been reportedly bound to a radiator and repeatedly beaten.<sup>13</sup> Later the same month, a 30-year-old Romani man was fatally stabbed in a Czech bar following a barrage of racial insults.<sup>14</sup>

Pervasive prejudice also contributes to a broad range of more subtle, but equally pernicious, discriminatory practices. Emerging data on education in several countries – particularly Bulgaria, the Czech Republic, Hungary, and Slovakia – paint an arresting picture of *de facto* racial segregation and exclusion of Romani children. Although several governments are developing draft proposals, no country in the region has yet adopted comprehensive anti-discrimination legislation in full compliance with the Race Equality Directive.

In Estonia and Latvia, despite the abolition of legislative restrictions, most members of the Russian-speaking minority still lack citizenship. Unequal access to political and decision-making processes over the past decade, at national and, particularly in Latvia, local levels has contributed to the development of legislation and policies that restrict the rights and opportunities of Russian speakers (including citizens) in the fields of minority education, language use, and the labour market.

### C. Capitalising on Enlargement

The accession process holds great potential to serve as a catalyst for further advances in the area of minority protection throughout Europe. To date, further headway has been limited by the dearth of clear standards elaborating the political obligations embodied in the Copenhagen criteria, especially as concerns minority protection; the inconsistency of EU member States’ own legislation and practice; the difficulty candidate governments have had in marshalling political will on behalf of sometimes unpopular

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<sup>12</sup> Statement of 9 August 2000, cited in European Roma Right Center (ERRC), *Roma Rights*, No. 3, 2000, <[http://errc.org/rr\\_nr3\\_2000/snap16.shtml](http://errc.org/rr_nr3_2000/snap16.shtml)> (accessed 25 July 2001).

<sup>13</sup> Amnesty International, News Release Issued by the International Secretariat (EUR 72/003/2001, 119/01), 11 July 2001.

<sup>14</sup> RFE/RL Newline, “Czech Rom killed in racial attack”, Vol. 5, No. 138, 24 July 2001.



reforms; and the failure of official bodies generally to harness the human and technical resources available in civil society organisations.

The EU and its principal partners in the accession process – candidate governments and civil society – can capitalise on the progress to date in the following ways:

- The EU should do more to clarify and articulate the substance of the common European standards for minority protection used to measure candidate country performance, and should establish a mechanism for monitoring compliance in both member and candidate States.
- Leading by example,<sup>15</sup> EU member States should ensure greater consistency in their own minority protection law and practice.
- Candidate governments should translate the manifest will for accession into an equally firm commitment to develop and apply effective minority protection policies.
- Both the EU and candidate governments should seek to maximise the effectiveness of minority protection policies by affording civil society organisations, particularly those representing minorities, meaningful opportunities to participate in policy development, implementation, and evaluation.

### *1. Articulating EU Standards*

The Copenhagen political criteria represent an important contribution to the notion of a Europe built on common values. Measurement of compliance with the criteria – and particularly, the requirement of “stability of institutions guaranteeing... respect for, and protection of, minorities” – would be facilitated by more precise and consistent elaboration of the standards underlying them, which candidate governments, like EU member States, are expected to satisfy.

To some extent, of course, the very nature of political criteria may render them less susceptible to precise calibration than other aspects of the Copenhagen criteria, such as the “existence of a functioning market economy” or the “capacity to withstand competitive pressure and market forces within the Union.” And yet, clarification of the scope and contours of the criteria would lend credibility to efforts to deepen the Union’s political dimension.

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<sup>15</sup> Compare Comité des Sages, *Leading by Example: A Human Rights Agenda for the European Union for the Year 2000*, European University Institute, 1998.

Anti-discrimination standards have been largely established. The Race Equality Directive, the first regional prohibition of discrimination on the basis of race or ethnicity, defines discrimination broadly and mandates liberal standards of proof and effective redress for violation. Its provisions must be transposed into domestic law in all EU member states by 2003 and, as part of the *acquis communautaire*, candidate States are required to modify their own laws and institutions in accordance with its terms. The Directive provides an effective basis for measuring progress in this area.<sup>16</sup>

By contrast, minority rights standards to which candidate and member States must conform have not been clearly delineated. Admittedly, this difference may reflect the absence of universal agreement on minority rights standards appropriate for all European states.<sup>17</sup> Nonetheless, having established “respect for, and protection of minorities” as one important test of readiness for accession, the EU would do well to formulate standards of conduct to make clear to candidates what is required. A number of international instruments addressing areas such as language use, minority education, and self-government might serve as appropriate reference points.

In addition to the need for more detailed standards, there exists some confusion regarding the scope of the criteria. Specifically, the failure to reproduce Copenhagen’s minority protection condition as a requirement throughout the Union generally permits the misperception that candidate countries may be held to different standards from those that currently obtain within the EU.<sup>18</sup> The disparity between EU member and candidate States in ratification of the FCNM only fuels potential misunderstanding.<sup>19</sup> Formal

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<sup>16</sup> The Charter of Fundamental Rights of the European Union prohibits discrimination on any ground, including, *inter alia*, race, colour, ethnic or social origin, language, religion or belief, and membership of a national minority. (Charter of Fundamental Rights of the European Union, *signed and proclaimed by the Presidents of the European Parliament, the Council and the Commission at the European Council meeting in Nice, on 7 December 2000* [2000/C364/01], Art. 21). The Charter also requires the Union to “respect cultural, religious and linguistic diversity.” (Art 22). However, the Charter is not binding and as yet has no defined legal status.

<sup>17</sup> The European Court of Human Rights recently noted within Europe an “emerging international consensus ... recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle.” At the same time, a divided Court pronounced itself “not persuaded that the consensus is sufficiently concrete for it to derive any guidance as to the conduct or standards which Contracting States consider desirable in any particular situation.” *Chapman v. United Kingdom*, ECHR Judgment of 18 January 2001 (No. 27238/95), paras. 93, 94.

<sup>18</sup> Art. 6(1) of the Treaty on European Union (hereafter “TEU”) defines the principles “common to Member States” as “liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law.” TEU Art. 49 makes clear that only a European state “which respects the principles set out in Article 6(1) may apply to become a member of the Union.” Unlike the Copenhagen criteria, neither provision explicitly mentions protection of minorities.

<sup>19</sup> Six of the fifteen EU member states (Belgium, France, Greece, Luxembourg, the Netherlands, and Portugal) have not ratified the FCNM, as against only one of the ten candidate states under review (Latvia).

clarification that political norms apply equally throughout the Union would go far towards defining common European values about minority protection.<sup>20</sup>

By continuing to assess compliance with the political criteria, although candidate states are deemed to have fulfilled them,<sup>21</sup> the Commission has emphasised the importance of sustaining these conditions through accession and beyond. Furthermore, foreseen amendments to the EU Treaty acknowledge the need – but have yet to establish the mechanism – for regular human rights monitoring in member States.<sup>22</sup> Systematic monitoring of the Copenhagen criteria in present and future EU countries would dispel concerns about double standards and arbitrariness in EU human rights policy. This is in keeping with the conclusion of the Three Wise Men commissioned by the EU to examine Austria’s record in 2000, who “strongly recommend[ed] the development of a mechanism within the EU to monitor and evaluate the commitment and performance of individual Member States with respect to the common European values.”<sup>23</sup>

## 2. *Leading by Example*

As the EU clarifies the substance and uniform application of relevant standards, its member States can do more to ensure greater consistency in their own minority protection law and practice. To date, the record of member States in this area has been mixed.

<sup>20</sup> Others have previously noted this problem. See G. Amato and J. Batt, “Minority Rights and EU Enlargement to the East”, European University Institute, RSC Policy Paper No. 98/5 (1998), p. 1.

<sup>21</sup> “Compliance with the Copenhagen political criteria is a prerequisite for the opening of any accession negotiations.” Conclusions of the Luxembourg European Council, 12/13 December 1997, PE 167.145, para. 25.

<sup>22</sup> Art. 1(1) of the Treaty of Nice, Amending the Treaty on European Union, and treaties establishing the European Communities and certain related acts (2001/C 80/01), amends Article 7 of TEU as follows: “The Council [...] may determine that there is a clear risk of a serious breach by a Member State of principles mentioned in Article 6(1) and address appropriate recommendations to that State [...] The Council shall regularly verify that the grounds on which such a determination was made continue to apply.” The EU’s European Monitoring Centre on Racism and Xenophobia was established in 1997 to monitor public and media attitudes towards racial and ethnic minorities.

<sup>23</sup> M. Ahtisaari, J. Frowein, M. Oreja, *Report on the Commitment of the Austrian Government to Common European Values*, 8 September 2000, para. 117. See also Comité des Sages, *Leading by Example: A Human Rights Agenda for the European Union for the Year 2000* (European University Institute, 1998), para. 19(e) (calling for regular reporting on human rights both within the EU and in the world at large as a foundation for a more systematic EU human rights policy). On 26 June 2001, the Citizens’ Rights and Freedoms Committee of the European Parliament adopted a report by Thierry Cornillet (EPP-ED,F) calling for the setting up of a permanent working group to monitor continuously the situation of fundamental rights in the European Union.

To be sure, a number of member States, including the Netherlands and the United Kingdom, have extensive legislation prohibiting discrimination on grounds of race or ethnicity, and have established effective institutions to oversee the law's implementation. Courts in several member States have imposed punishment – including fines and withdrawal of operating licenses – for discriminatory conduct.<sup>24</sup> Several Western European politicians have spoken out against racist violence and harassment in football arenas and elsewhere.<sup>25</sup>

And yet, violence against minorities and discrimination are pan-European phenomena. The Italian authorities have been criticised for failing to prosecute adequately the perpetrators of attacks against foreigners of African origin and Roma.<sup>26</sup> Many Roma in Italy – whom government officials persist in calling “nomads” despite their overwhelmingly settled lifestyle – are confined to unsanitary camps, surrounded by walls or fences, and located far from city centres, schools and public services. The consequences – for children deprived of education, adults denied basic health care, and criminal suspects imprisoned for long periods simply because they lack an address – can be dire.<sup>27</sup>

In Greece, members of the Roma community have been subjected by police to ill-treatment, including excessive use of force and verbal abuse. Police are rarely disciplined, let alone prosecuted, for misconduct involving Roma victims.<sup>28</sup> Roma are frequently targeted for forced eviction.

The Greek government has much work to do in educating judges and police about their obligations to protect minority rights. Last February, a man was convicted of “disseminating false information,” and given a suspended sentence of 15 months’ imprisonment,

<sup>24</sup> In Sweden, the highest court fined two store owners for excluding persons wearing long loose skirts, on the grounds that such a ban indirectly discriminated against Roma. See ERRC, “Swedish Supreme Court rules supermarket ban on Romani woman discriminatory”, *Roma Rights* No. 4, 1999. Courts in Ireland have sanctioned pub owners for refusing to serve Travellers. See “Publican Who Refused to Serve Traveller Loses License”, *Irish Times*, 26 September 1998.

<sup>25</sup> See e.g. R. Hughes, “The ‘Ugly Face’ of Racism Bedevils Soccer”, *International Herald Tribune*, 28 February 2001; J. Schmid, “Schroeder Is Urging Germans to Wake Up to Racism”, *International Herald Tribune*, 4 September, 2000; J. Vinocur, “In the Soccer Stadiums of Italy, a Fight to Break Grip of Racism”, *International Herald Tribune*, 2 February, 2000.

<sup>26</sup> *Concluding observations of the Committee on the Elimination of Racial Discrimination: Italy*. 07/04/99. CERD/C/304/Add.68. (Concluding Observations/Comments), para. 9.

<sup>27</sup> ERRC, *Racial Discrimination and Violence against Roma in Europe – Statement Submitted by the ERRC for consideration by the United Nations Committee on the Elimination of Racial Discrimination* (2000) (hereafter “*ERRC Statement to UN CERD*”), pp. 15–16;

<sup>28</sup> See *Conclusions and recommendations of the Committee against Torture: Greece*. 08/05/2001. CAT/C/XXVII/Concl.2/Rev.1. (Concluding Observations/Comments), para. 5(a): “the police sometimes use excessive or unjustifiable force in carrying out their duties particularly when dealing with ethnic and national minorities and foreigners”; *ERRC Statement to UN CERD*, p. 30.

for distributing a leaflet which acknowledged the existence of minority languages in Greece. The court found that the leaflet could “incite anxiety among citizens and create the impression that in Greece minorities exist.”<sup>29</sup>

Instances of discrimination or violence against Roma have been recorded in other EU countries as well.<sup>30</sup>

Perhaps most disturbing, Romani refugees from the candidate countries have often found little welcome in the EU. A wave of headlines warning of a “Gypsy invasion” and “human sewage” greeted Czech Roma who travelled to Britain in 1997–98.<sup>31</sup> In October 1999, Belgian authorities summarily deported 74 Slovak Roma, defying a European Court of Human Rights request to stay the action to allow consideration of allegations of mistreatment.<sup>32</sup> In July 2001, British authorities commenced, then suddenly terminated, a three-week experiment in immigration control at Prague’s international airport after monitors alleged Czech Roma were being singled out and prevented from traveling to Britain. Claiming the policy had been “effective” in reducing the number of asylum claims, British authorities reserved the right to reimpose the controls at any time.<sup>33</sup>

### 3. *Translating Political Will into Action*

There exists substantial political will among candidate States to join the European Union. Eager to demonstrate compliance with the political criteria, most have acceded to the key international standards for minority protection; many have initiated special government programmes to address problems faced by minorities in their countries.

All too commonly, however, political leaders have not demonstrated the same determination or committed the financial resources necessary to guarantee effective implementation of minority standards and programmes. The Framework Programme on the Equal

<sup>29</sup> Decision No. 11263/2001, Athens Court of First Instance, 2 February 2001 (unofficial translation).

<sup>30</sup> See ERRC, “Austrian administration violates due process rights of Roma”, *Roma Rights*, No. 2, 1999; “Forced eviction of 1000 Roma in Spain”, *Roma Rights*, No. 3, 1999; “Racially motivated attacks on Traveller homes in Northern Ireland”, *Roma Rights*, No. 4, 1999.

<sup>31</sup> ERRC, *Roma Rights*, No. 1, 1999.

<sup>32</sup> See C. Cahn and P. Vermeersch, “The Group Expulsion of Slovak Roma by the Belgian Government: A Case Study of the Treatment of Romani Refugees in Western Countries”, *Cambridge Review of International Affairs*, Spring/Summer 2000.

<sup>33</sup> “Airport Colour Bar”, *The Guardian*, 30 July 2001; “Havel joins attack on UK asylum checks”, BBC, 1 August 2001; “Czech Minister: British Checks Discriminatory”, RFE/RL Newline, 27 July 2001.

Integration of Roma in Bulgarian Society is a salient example. When announced by the Bulgarian government in 1999, the Programme – a series of pledges to combat discrimination and take positive measures to improve the situation for Bulgarian Roma – was greeted with much fanfare internationally. Two years later, there has been little progress on carrying out most of the programme's components. In January 2000, when European Commission President Romani Prodi praised the Programme in his speech to the Bulgarian Parliament, many MPs learned about its existence for the first time.<sup>34</sup>

Moreover, existing institutions for addressing minority issues are often ill-equipped to assume responsibility for implementation of the comprehensive minority policies encouraged by the accession process. In a number of instances, these essentially consultative bodies (including some Ombudsmen, as well as parliamentary and inter-ministerial commissions) have undertaken promising initiatives, but none so far possess the mandate either to coordinate policy implementation or to ensure that the law is enforced. On the whole, the structural limitations of these institutions have severely limited implementation and evaluation of government minority policies across the region.

Candidate governments have proven their capacity to make changes they believe the accession process requires. With assistance from the Commission, they should be encouraged not only to pledge improvements, but to establish the necessary institutions and to vest them with adequate powers, finances and capabilities.

#### 4. *Enhancing the Participation of Civil Society*

Support for accession in candidate States is generally high, and civil society organisations carry out numerous activities which – directly or indirectly – support the consolidation of democracy and the rule of law to which their governments are committed. However, the accession process is, for the most part, negotiated and discussed at governmental level, with few effective mechanisms for structured participation from civil society generally, or minority organisations in particular.

NGOs have noted a lack of transparency in the design of some governmental minority programmes, and in the allocation and expenditure of EU funds. For their part, some EU officials acknowledge the difficulty of obtaining accurate, official information

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<sup>34</sup> Information from Bulgarian Helsinki Committee.

regarding overall spending by governments on the implementation of minority policies.<sup>35</sup> This two-fold lack of transparency – on the part of candidate governments and the EU itself – has hindered effective monitoring and evaluation of both government policies and EU assistance.<sup>36</sup> Moreover, insufficient effort has been devoted to raising public awareness of the link between the objectives of government minority programmes and the political principles underlying enlargement.

The failure to provide accurate information about the extent and significance of official efforts to ensure minority protection has had other more pernicious consequences as well. Absent sufficient dialogue with local communities, the allocation of funding to improve the situation for minorities may increase tensions with majority populations. In Poland, one local council faced active opposition from its constituency to proposed improvements to the infrastructure of a Roma neighbourhood, on the grounds that “if the situation improves, more Roma will move here.”<sup>37</sup> Worse still, absent full information, minorities may be held accountable for “slowing down” the accession process. In March 2000, after returning from a meeting of the Romania-EU Association Council, then-Foreign Minister Petre Roman reportedly stated that the Romanian Government has an obligation to “protect 23 million Romanians against the few thousand Gypsies who are preventing the country from getting off the EU visa blacklist.”<sup>38</sup> More recently, Slovak foreign minister Eduard Kukan warned, “we would consider it very unfair if the Iron Curtain fell on Slovakia because of 90 Romany asylum applicants,” and Slovak President Rudolf Schuster suggested that the departure of Roma asylum-seekers for Western Europe was being organised by unidentified agents interested in hampering the country’s accession.<sup>39</sup> Increased transparency at all stages of the accession process would help correct such dangerous misconceptions.

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<sup>35</sup> One EU official compared trying to obtain such information from one candidate government to “street-fighting”, OSI Roundtable, March 2001. *Explanatory Note: OSI held roundtable meetings in a number of candidate countries to invite critique of country reports in draft form. Experts present included representatives of the government, the Commission Delegations, Roma representatives, and civil society organisations. References to this meeting should not be understood as endorsement of any particular point of view by any one participant.*

<sup>36</sup> Two of the largest international Roma associations, the Roma National Congress and International Romani Union, have recommended establishment of “a Romani-led study group to review the programs that have benefited from European financial support in these countries...”, Organisation for Security and Co-operation in Europe, OSCE Conference on Roma and Migration, Warsaw, Poland, 22–24 October 2000.

<sup>37</sup> OSI Roundtable, Warsaw, April 2000.

<sup>38</sup> RFE/RL Newsline, 23 March 2000.

<sup>39</sup> RFE/RL Newsline, 24 April 2001.

Because of their in-depth knowledge of local conditions and attitudes, and their rootedness in local communities, civil society organisations are natural partners for increased efforts to improve implementation of and public support for minority programmes. This would enhance not only the effectiveness of these programmes, but also the level of public commitment to minority protection as a central aspect of Europe's common democratic values.



## II. Minority Protection: Law and Practice

### A. Protection from Discrimination

The Race Equality Directive<sup>40</sup> offers clear and comprehensive requirements for tackling discrimination throughout the range of European Community competence, including employment, social protection (including social security and health care), education, and access to public goods and services, including housing. The Directive expressly prohibits both direct and indirect discrimination on grounds of race or ethnicity perpetrated by public or private bodies. It further provides for the reversal of the burden of proof in civil actions alleging discrimination and the imposition of “effective, proportionate and dissuasive” sanctions that should include “payment of compensation to the victim”. The Directive requires, not merely that States enact legislation, but that they establish enforcement bodies capable of providing independent assistance to victims of discrimination in pursuing complaints, conducting surveys and publishing reports. . The Directive acknowledges the validity of “specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin.”

The Directive concretises anti-discrimination norms contained in a number of European<sup>41</sup> and international instruments.<sup>42</sup> All ten candidate States have ratified the principal international instruments in this field, although five have failed to make the requisite declaration under the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”) Article 14 recognising the competence of the CERD to receive individual communications.<sup>43</sup>

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<sup>40</sup> Council Directive 2000/43/EC, adopted by the Council of the European Union on 29 June 2000, *Official Journal* SOC 221 JAI 67.

<sup>41</sup> Article 14 of the ECHR prohibits discrimination in the enjoyment of the rights otherwise secured by the Convention. On 26 June 2000, the Committee of Ministers of the Council of Europe adopted Protocol No. 12 to the ECHR, which would give rise to an independent non-discrimination guarantee. Protocol No. 12, opened for signature on 4 November 2000, will come into force once ratified by ten member states of the Council of Europe. See also FCNM, Art. 4.

<sup>42</sup> See Universal Declaration of Human Rights, Art. 7; International Labour Organisation Convention No. 111; United Nations Convention Against Discrimination in Education; ICERD; International Covenant on Civil and Political Rights (hereafter “ICCPR”), Arts. 2, 26; International Covenant on Social, Economic and Cultural Rights, Art. 2.

<sup>43</sup> See Appendix A. Estonia, Latvia, Lithuania, Romania and Slovenia have not yet signed the declaration.

Notably, the Directive does not prohibit discrimination on the grounds of language, an issue of particular relevance to Estonia and Latvia. Russian-speaking minorities who seek authority for claims of language discrimination must look to non-EU instruments, including Article 14 of the European Convention on Human Rights (“ECHR”) and Article 26 of the International Covenant on Civil and Political Rights (“ICCPR”), both of which expressly prohibit discrimination on grounds of language.

No candidate State has enacted anti-discrimination legislation incorporating all the elements of the Race Equality Directive. Legal protection from discrimination in most countries is largely confined to declarations in constitutions and minimal or dormant provisions in labour or criminal codes or in laws on social security or education. In the fall of 2000, with the provisional adoption of the “Ordinance on Preventing and Punishing All Forms of Discrimination”<sup>44</sup> Romania became the first state in the region to enact legislation addressing discrimination in all fields of public life, and to provide for an administrative body to oversee implementation. The Romanian law, adopted following sustained pressure from minority and other NGOs, sets a regional precedent in defining and outlawing discrimination by both public and private perpetrators.<sup>45</sup> The law authorises civil actions for discrimination and empowers courts to award compensation, withdraw the operating license of discriminating entities, or order restoration of conditions prior to the discrimination at issue.<sup>46</sup>

The Romanian law does not provide for reversal of the burden of proof; nor is its definition of “indirect discrimination” sufficiently clear. Moreover, the law’s effectiveness to date has been limited, in part, because the administrative body with primary responsibility for its enforcement has yet to be established. Finally, as of August 2001, the law remains subject to final Parliamentary approval or modification.

Comprehensive legislation prohibiting discrimination on grounds of, *inter alia*, race and ethnicity, is currently under discussion or in draft form in the Czech Republic, Hungary and Slovakia.<sup>47</sup> Despite a two-year-old commitment to adopt comprehensive

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<sup>44</sup> The Ordinance on Preventing and Punishing All Forms of Discrimination (Ordinance No. 137/31.08.2000) came into force on 2 November 2000.

<sup>45</sup> Ordinance No. 137/31.08.2000, Article 2 (2) and Article 3. As of May 2001, the Ordinance did not, as the Race Equality Directive requires, expressly stipulate a shift in the burden of proof in civil actions.

<sup>46</sup> Ordinance No. 137/31.08.2000, Art. 21.

<sup>47</sup> In Slovakia and Hungary, parliamentary committees have been established to draft legislation. The issue has generated heated debate in Hungary, where draft legislation was drawn up by the Minorities Ombudsman, prior to a December 2000 ruling by the Constitutional Court that such legislation was not constitutionally obliged. Although in 2000 the Hungarian Minister of Justice stated that comprehensive anti-discrimination legislation was not necessary, in early 2001 the Ministry established an ad hoc committee, which is reviewing existing legislation as of June 2001.

legislative measures to ensure protection against discrimination, the Bulgarian government has taken few concrete steps in this direction.<sup>48</sup>

Thus, at present, explicit protection from indirect discrimination is not provided in the legislation of any candidate State.<sup>49</sup> Hungary alone has introduced concrete measures to allow for the reversal of the burden of proof in cases of discrimination, but only in the field of employment; as yet there have been no rulings on the basis of this provision.<sup>50</sup>

The lack of anti-discrimination legislation in candidate States must be viewed in the context of the widespread discrimination against Roma documented by NGOs and international bodies in each of the areas covered by the Directive. Discrimination is underlined by the Commission as an issue of particular concern in six of the eight countries where the situation of Roma is addressed.<sup>51</sup>

And yet, efforts to monitor systematically discriminatory patterns and the impact of government programs have been complicated by the paucity of available ethnic-coded data throughout the region. Many Roma prefer *not* to identify themselves officially as such, fearing that data derived from self-identification may be misused by law enforcement and/or other authorities.<sup>52</sup> Thus, in the Czech Republic, fewer than ten percent of the estimated Roma population self-declared as Roma in the 2001 census; just a third of the number that did so in 1991. In a number of candidate States, the right to self-identification is interpreted selectively – ignored by some public authorities that collect statistics for particular purposes, while commonly cited by others as a justification for failure to monitor or redress discrimination.

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<sup>48</sup> See “The Framework Programme for the Equal Integration of Roma in Bulgarian Society”, adopted by the Bulgarian government in 1999.

<sup>49</sup> Hungary, however, has referred to the need for such provisions in its latest report to the CEDAW. See *Joint Fourth and Fifth Periodical report to the CEDAW Committee*, Ministry of Social and Family Affairs, Budapest, March 2000, p. 44.

<sup>50</sup> Hungarian Labour Code, Act XXII of 1992, Article 5 (2), provides: “In the event of any dispute related to a violation of the prohibition on discrimination, the employer shall be required to prove that his actions did not violate the provisions of [the Paragraph prohibiting discrimination].” At present one case invoking this paragraph is pending before the Budapest City Court.

<sup>51</sup> See the Regular Reports on Bulgaria, the Czech Republic, Hungary, Poland, Romania and Slovakia.

<sup>52</sup> Council of Europe, “Race and Statistics”, MG-S-ROM (2000) 13, p. 7, No. 6 (summarising contribution of N. Gheorghe, ODIHR Adviser on Roma and Sinti Issues). See also Project on Ethnic Relations, “Roma and Statistics”, Strasbourg, France, 22–23 May 2000 (*passim*).

Ironically, efforts to protect the right to self-identification have produced additional challenges to the documentation of minority rights violations and discrimination against minorities. New data protection laws have appeared across the accession region,<sup>53</sup> largely in compliance with an EU Directive of 1995, according to which States “shall prohibit the processing of personal data revealing racial or ethnic origin...”<sup>54</sup> The directive terms such data “special” and authorises its processing only with the express written consent of the subject, or under exceptional circumstances.<sup>55</sup> The Directive also makes an exception for data that is rendered anonymous.<sup>56</sup> However, although several international bodies have noted the need for ethnic statistics in formulating coherent policy to combat discrimination,<sup>57</sup> there have been few attempts to establish yardsticks consistent with the need to safeguard privacy and protect against abuse.

### 1. Education

Discrimination in access to education is specifically prohibited by law in Bulgaria, Hungary, Latvia, Lithuania and Romania. However, there is no coherent system of sanctions in place in any of these countries, and successful application of these and related laws is extremely rare. Discrimination against Roma in the field of education is pervasive, and generates lasting and debilitating effects.

The Commission has noted the problem of discrimination against Romani children in access to mainstream educational systems in several candidate countries, and has particularly criticised the segregation of Roma in separate classrooms, separate schools,

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<sup>53</sup> Since 1998, the Czech Republic, Latvia, Poland, Slovakia and Slovenia have all adopted such laws. Hungary’s data protection law dates from 1992.

<sup>54</sup> Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, adopted 24 October 1995, *Official Journal* L 281, 23 November 1995, pp. 0031–0050, Art. 8(1).

<sup>55</sup> Directive 95/46/EC, Art. 8, paras. 2–5.

<sup>56</sup> Directive 95/46/EC, Preamble, (26): “whereas the principles of protection shall not apply to data rendered anonymous in such a way that the data subject is no longer identifiable.”

<sup>57</sup> See e.g. European Commission against Racism and Intolerance (hereafter “ECRI”), General Policy Recommendation No. 1, 4 October 1996; ECRI General Policy Recommendation No. 4, 6 March 1998; European Parliament, “Report on the Communication from the Commission Countering Racism, Xenophobia and Anti-Semitism in the Candidate Countries” (COM (1999) 256-C5-0094/1999–1999/2099(COS)) 28 February 2000, para. 13; United Nations Committee on Elimination of Racial Discrimination (hereafter: “UN CERD”), “General Guidelines Regarding the Form and Contents of Reports to be Submitted by States parties under Article 9, para. 1, of the Convention.”

or special schools for the mentally and/or physically handicapped.<sup>58</sup> In some countries, such as Bulgaria, separate education is primarily rooted in residential segregation. In others, such as the Czech Republic, Hungary, Poland and Slovakia, the separate education system is grounded in a test-based assignment system that purports to provide special assistance to (mostly Roma) students with special needs. In Ostrava, the Czech Republic's third largest city, Romani children outnumber non-Roma in special schools by a proportion of twenty-seven to one. Although Roma in Ostrava represent fewer than five percent of all primary school-age students, they constitute 50 percent of the special school population. Nationwide, approximately 75 percent of Romani children attend special schools.<sup>59</sup> In Slovakia, more than half of Romani students attend special schools.<sup>60</sup> The figure is upward of 42 percent in Hungary, rising to 94 percent in the north-eastern part of the country.<sup>61</sup> A majority of the 19,000 students in 130 Bulgarian schools for the mentally deficient are estimated to be Roma.<sup>62</sup>

In view of the demonstrably inferior quality of the curricula in most special classes and schools; the absence of monitoring systems to ensure that placements, once made, continue to be appropriate; and the fact that very few students ever return from special schools to mainstream education, these programs have had the effect of further entrenching patterns of discrimination and segregation, and of depriving Romani children of equal educational opportunities.

To date, governments in the accession region have not done enough to remedy these unlawful practices. In the Czech Republic, a 2000 amendment to the Law on Education<sup>63</sup> removed a legal prohibition which barred graduates of special schools from taking the entrance examination for secondary school. However, this change has

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<sup>58</sup> See *2000 Regular Report on Hungary* ("This proportion [of Roma children in special schools] is considered to be a sign of institutional prejudice and the failure of the public education system." p. 20); on the Czech Republic ("education levels for Roma children remain low and these still make up some 70 percent of children sent to special schools" p. 26); and on Slovakia ("There is under-representation of Roma students in the educational system, most particularly in higher education and university, and over-representation in schools for retarded children", p. 21). The *2000 Regular Report on Bulgaria* notes "lack of effective access to education" for Roma (p. 22). See attached reports for documentation of these practices in Bulgaria, the Czech Republic, Hungary, Poland, Romania, Slovakia and Slovenia.

<sup>59</sup> ERRC, *A Special Remedy: Roma and Schools for the Mentally Handicapped in the Czech Republic* (1999).

<sup>60</sup> Wide Open School Foundation, "Strategic Plan 2001–2003", Slovakia, 2000, p. 11.

<sup>61</sup> S. Loss, "Szakertői és Rehabilitációs Bizottságok hatásvizsgálata Borsod-Abaúj-Zemplén megyében" ("Survey on the Rehabilitation and Expert Committees in Borsod-Abaúj-Zemplén county"), manuscript, 1998. Data of the Hungarian Ministry for Culture and Education, 1993.

<sup>62</sup> Figures provided by the Bulgarian Helsinki Committee.

<sup>63</sup> Law no 19/2000 Coll. amending Law on Schools No. 29/1984, Article 19, Section 1 of the School Act.

not markedly altered discriminatory trends, as in practice students who have attended special schools are ill-equipped to succeed on the entrance exam. Hungary has recently introduced provisions that seek to ensure a more active parental role in the assignment process.<sup>64</sup>

Discriminatory school assignment patterns are compounded, in some countries, by the use of textbooks which condone racist stereotypes. One 2000 analysis found only three references to Roma in all books used in Slovene classes, one of which explicitly drew a parallel between the words “Gypsy” and “thief”.<sup>65</sup> In August 2000, the Hungarian Minister for Education requested the withdrawal of a 1998 textbook, containing the statement that “a significant portion of the Roma [...] were not willing or able to adapt to the European civil lifestyle” and “the life of many gypsies is marked by crime.”<sup>66</sup>

Few countries have adopted special legislative provisions intended to promote equal access to mainstream education for Roma. In Hungary, since 1993, a special allowance has been allocated on a quota basis to schools to develop remedial “minority education programmes” exclusively for Roma. However, the Minorities Ombudsman recently concluded that several local authorities “only organise Roma minority education in order to obtain supplementary normative support, and they exploit this form of education to segregate Roma pupils.”<sup>67</sup> Exceptionally, Romania’s Ministry of Education has supported a positive action programme in the area of minority education, with the adoption in September 2000 of a framework regulation for improving access for Roma

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<sup>64</sup> Decree 4/2001 of the Ministry of Education, requires written parental consent before testing a child’s mental abilities and mandates written communication of the expert committee’s opinion to parents, who are entitled to appeal a special school placement decision. Of course, these changes do not address other problems, such as the risk that parents are not adequately informed when asked for written consent, or the common lack of satisfactory monitoring to assure the continuing suitability of special school assignments.

<sup>65</sup> L. Vodosek, “Na mavrico po pravljico. Berilo za 1. razred osnovne sole in 2. razred devetletne osnovne sole” translation, 2000, pp. 20–21., diploma work in progress, School of Social Work, University of Ljubljana, 2001, on file with the EU Accession Monitoring Program. The reference is to a poem by Niko Grafenauer, “Glasbenik,” about a musician Pedenjped from whom a “Gypsy” had stolen his instrument. Accompanying exercises suggest that the word “Gypsy” is used as a symbol for a person who steals.

<sup>66</sup> Roma Press-Center: “Eloíteletes tananyag otodikesekeknek” (“Prejudiced material for fifth-graders”), 23 August 2000 (published in the newspapers *Nepszabadsag*, *Nepszava*, *Magyar Hirlap*, and in Magyar Radio news of 23/24 August 2000.) The Apaczai Publishing House eventually withdrew the book. See also Roma Rights, No. 3, 2000, <[http://errc.org/rr\\_nr3\\_2000/snap13.shtml](http://errc.org/rr_nr3_2000/snap13.shtml)> (accessed 16 May 2001).

<sup>67</sup> Reports on the Activity of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, Office of the Ombudsmen, Budapest, 2001, pp. 47–52. See also P. Rado, *Jelentes a cigany tanulok oktatasarol*, (*Report on the Education of Roma Students in Hungary*), National and Ethnic Minority Department, 1997.

students to vocational schools, secondary schools, colleges, faculties and universities.<sup>68</sup> The regulation builds on the success of previous Ministry quota programmes for Roma students at a number of Romanian universities and colleges. However, the commitment of the new Romanian government to these programmes has been questioned.

Faced with inadequate government policies, civil society initiatives have begun to focus attention on educational discrimination. Thus, in 1999, acting on a lawsuit filed by an NGO, a Hungarian court ordered the payment of compensation to Roma students subjected to segregation – including separate graduation ceremonies – at an elementary school.<sup>69</sup> In Bulgaria, where the government has still not allocated funding to implement its 1999 pledge to desegregate the schools, NGOs have recently launched a pilot bussing and supplementary educational programme in the town of Vidin to facilitate integration.<sup>70</sup> In April 2000, having exhausted domestic remedies, parents of eighteen Czech Romani school students filed an application in the European Court of Human Rights, alleging that they had been the victims of racial discrimination in access to education.<sup>71</sup>

## 2. *Employment*

Legislation in most candidate States prohibits discrimination in access to employment.<sup>72</sup> Yet despite anecdotal evidence that such discrimination is common, registered complaints are few and violators are not generally sanctioned. In line with the Race Equality Directive, Hungarian employment discrimination law reverses the burden of proof but does not apply to hiring decisions, where most discrimination allegedly occurs.<sup>73</sup> Labour Inspections “do not proceed *ex officio* in cases of discrimination and in general are reluctant to take action in such cases”, as the Hungarian Minorities Ombudsman

<sup>68</sup> Order of the Ministry of National Education no. 4542/18.09.2000 on the Access of Young Roma in Vocational Schools, High Schools, Colleges and Faculties and Universities.

<sup>69</sup> However, it has recently been reported that the school at issue continues to pursue racially segregatory practices. See Roma Press Center, “Segregation Graduation Ceremony Renewed?”, 4 May 2001.

<sup>70</sup> The project is organised by the Roma Participation Centre, <[www.osi.hu/rpp/](http://www.osi.hu/rpp/)> (accessed 13 June 2001).

<sup>71</sup> See <[http://www.errc.org/publications/letters/2000/cz\\_april\\_18\\_2000.shtml](http://www.errc.org/publications/letters/2000/cz_april_18_2000.shtml)> (accessed 13 June 2001).

<sup>72</sup> See Labour Codes of Hungary (Art. 5), Latvia (Art. 1), Poland (Art. 11(3)) and Slovakia (Art III); Czech Law on Employment No. 167/1999 (Art. 2); Lithuanian Law on Employment Contract (Art. 2); Romanian Ordinance 137/2000, Section I; Slovenian Constitution, Art. 49.

<sup>73</sup> Hungarian Labour Code, Act XXII of 1992.

has repeatedly pointed out.<sup>74</sup> In the Czech Republic, Slovakia and Romania, legal prohibitions against employment discrimination have not been enforced.

Unemployment rates among Roma are far higher than for other groups, often exceeding 50 percent.<sup>75</sup> Low levels of education among Roma certainly play a major role in determining patterns of Roma employment, but the situation is exacerbated by discriminatory hiring practices. In an illustrative case currently before the Hungarian courts, in April 2000 a woman waiting for a job interview arranged in advance by telephone for a position as a chambermaid, overheard the manager telling the hotel receptionist, "I do not hire Gypsies here. I hate them all." Minutes later she was told there were no more vacancies, although the post was not filled for another month.<sup>76</sup>

In Latvia, the language law restricts use of languages other than Latvian in a number of private professions (including health care professionals, notaries and taxi drivers) to the extent determined by a "legitimate public interest".<sup>77</sup> In 1999, the level of unemployment among ethnic Russians (18 percent) and other minorities (17 percent) was much higher than among ethnic Latvians (10 percent),<sup>78</sup> and one factor significantly limiting job opportunities for many Russian-speakers is knowledge of the titular language; a recent survey found that among non-native Latvian speakers, 38 percent of all non-citizens and 22 percent of all citizens could not work in a job requiring knowledge of Latvian.<sup>79</sup>

<sup>74</sup> See *Report on the Activity of the Minorities Ombudsman for 1999*, Office of the Minorities Ombudsman, Budapest, 2000. Also, for a full account of drawbacks with the implementation of anti-discrimination legislation in Hungary, see *Report on the Activity of the Minorities Ombudsman for 1998*, pp. 210–230.

<sup>75</sup> The rate of unemployment among Roma is estimated at 60–75 percent in Bulgaria (APIC/UNDESA, 2000); 70 percent in the Czech Republic (Ministry for Employment, 1997); 75.8 percent in Hungary (Kemeny et al, 1994); 57 percent in Poland (National Labour Office, 1997); 68 percent in Romania (Ombudsman's Office, 1999); 80 percent in Slovakia (ECRI, 2000); and 87 percent in Slovenia (European Commission, 2000). No figures are available for Lithuania.

<sup>76</sup> Legal Defence Bureau for Ethnic and Minority Rights, (hereafter: "NEKI") *White Booklet, 2000*, p. 29.

<sup>77</sup> State Language Law, Art. 6, and Amendments to the Regulations, passed by the Cabinet of Ministers on 21 November 2000. The UN CERD has expressed concern that "persons who do not qualify for citizenship under the Citizenship Law and who are also not registered as residents ... may not be protected against racial discrimination in", inter alia, access to employment. *Concluding observations of the CERD: Latvia*, 12/04/2001, CERD/C/304/Add.79, para. 13.

<sup>78</sup> A. Aasland, *Ethnicity and Poverty in Latvia*, Riga, 2000. According to the survey, among the working age population, 14 percent of ethnic Russians, 12 percent of other minorities and 7 percent of ethnic Latvians were unemployed.

<sup>79</sup> Baltic Social Sciences Institute, Latvian Naturalisation Board, *Cela uz pilsonisku sabiedrību, Latvijas iedzīvotāju aptauja 2000. gada novembrī (On the Road to a Civil Society, Opinion Poll of Latvia's Inhabitants in November 2000)* Riga, 2001, p. 99.



In Estonia, where levels of income for non-Estonians are on average 10 to 20 percent lower than those for Estonians,<sup>80</sup> legislative changes introduced in May 2001 require management and teaching staff in private schools and universities to demonstrate “middle level” Estonian-language proficiency, on the grounds that they are “responsible for guaranteeing the security of pupils and students.” All persons dealing directly with clients concerning goods and services are also obliged to meet the “lowest” level language-proficiency requirement.<sup>81</sup>

### 3. *Health Care and Other Forms of Social Protection*

Several candidate countries – including Bulgaria, Hungary, Lithuania and Slovenia – have constitutional or legislative provisions that prohibit discrimination in access to health care. However, enforcement is, as a practical matter, non-existent. Romania’s provisional 2000 ordinance prohibits, and provides sanctions for, discrimination in access to health care.<sup>82</sup> It has yet to be applied.

Throughout the region, Roma experience serious health problems associated with extremely poor living conditions which are compounded by large-scale exclusion from the public health system and a range of social services. In many communities, Roma have lower life expectancies and higher infant mortality rates than the majority, and suffer comparatively higher rates of heart and asthmatic ailments, as well as tuberculosis.<sup>83</sup>

Many Roma have no practical access to health care due to the physical isolation of Roma communities, lack of transportation, low levels of education, and inability to pay medical fees.<sup>84</sup> Long-term unemployment disqualifies many Roma from non-contributory health insurance in both Bulgaria and Romania.<sup>85</sup> Inadequate documentation and lack of citizenship or permanent residence disproportionately deprives Roma of access to public health care systems. In Hunedoara County in Romania, an estimated 25

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<sup>80</sup> See e.g. J. Inno, “Eestlaste ostujoud kasvab kiiremini kui muulastel” (“The Purchasing Power of Estonians is increasing more quickly than of non-Estonians”), EMOR, 1999.

<sup>81</sup> *Riigi Teataja* I 2001, 48, 269. *Riigi Teataja* is the official state journal in Estonia.

<sup>82</sup> Ordinance 137/2000, Art. 11.

<sup>83</sup> These problems are recognised *inter alia* in all regional government programmes, including those of Bulgaria, The Czech Republic, Hungary, Lithuania, Poland, and Slovakia.

<sup>84</sup> I. Zoon, *On the Margins: Roma and Public Services in Romania, Bulgaria, and Macedonia*, Open Society Institute, New York, 2001.

<sup>85</sup> Zoon, pp. 80–99.

percent of Roma allegedly cannot satisfy the permanent residency requirement.<sup>86</sup> As a result of these difficulties, regular medical attention is rare, and children in many communities are not properly vaccinated against disease. Health-care facilities located in Roma communities tend to be understaffed and under-equipped. Some political leaders have advocated race-neutral restrictions, such as the reduction of state allowances for large families, that in practice would further reduce Roma access to health care.<sup>87</sup> Denied access to medical services, one Roma community in Slovenia – and the only one with its own political representation – is shortly to launch its first ever community-wide check-up.<sup>88</sup>

Many Roma also report openly hostile treatment by health workers and refusals to provide care.<sup>89</sup> One hospital in Kosice, Slovakia, operates a weekly “Roma day” – on no other day are Roma admitted.<sup>90</sup> In the Bulgarian Roma neighbourhood of Faculteta, Romani maternity ward patients are reportedly isolated from other patients, because they are considered a “threat”.<sup>91</sup> Prior to intervention by a State official in August 2000, a hospital in Iasi, Romania prohibited access by Roma patients for 11 months, by order of the local health office.<sup>92</sup> Reports received from Romani asylum seekers<sup>93</sup> and medical personnel in Finland<sup>94</sup> suggest that Romani women in eastern Slovakia recently may have been subjected to involuntary sterilisation.

Roma suffer discrimination in access to social welfare benefits in several countries. In Hungary, the Ombudsman has documented numerous complaints from Roma of

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<sup>86</sup> Zoon, p. 34.

<sup>87</sup> For example, at a press conference of the Slovak political party Smer in June 2000, the popular party chairman Robert Fico allegedly advocated the reduction of family allowance for large families as a measure to solve the “Romani problem”. See P. Vermeesch, “Vying for Position”, *Central European Review*, Vol. 2., No. 41, 27 November 2000.

<sup>88</sup> Information from Roma councillor for Murska Sobota municipality, 6 February 2001.

<sup>89</sup> Zs. Zadori, L. Puporka, *A magyarországi romák egészségi állapotja (The Health Situation of the Roma in Hungary)*, Roma Press Center, Budapest, 1999; L. Nesvadbova, A. Kroupa, J. Rutsch, S. Sojka, I. Vajnarova, *Zdravotni stav romske populace v CR, Pilotni studie*, 1998, IGA MZ CR 3621/3.

<sup>90</sup> I. Zoon, *Roma Access to Public Services in Slovakia*, Open Society Institute New York, 2001, [Forthcoming].

<sup>91</sup> Romani Baht Foundation, *1999 Annual Report*, p. 39.

<sup>92</sup> European Roma Rights Center, *State of Impunity: Human Rights Abuse of Roma in Romania*, 2001 (forthcoming), p. 63. (Hereafter “ERRC 2001”).

<sup>93</sup> OPRE Roma, “Roma and foreigners testify about racism and xenophobia in Slovakia”, 9 March 2000, press release.

<sup>94</sup> I. Zoon, *Roma Access to Public Services in Slovakia*, Open Society Institute New York, 2001, [Forthcoming].

irregularities in the provision of social benefits.<sup>95</sup> Welfare beneficiaries in one town – a majority of whom were Roma – were forced to perform “voluntary social work” in return for temporary social assistance.<sup>96</sup> In late 2000 and early 2001, several thousand Roma protested at municipal offices in northern Bulgaria to demand unpaid unemployment and welfare benefits for the last months of the year 2000. They were eventually paid in part only. In June 2000 in Lipník nad Bečvou, in the north-east Czech Republic, where 90 percent of the 200 Roma citizens are unemployed, a public official distributed a portion of social benefits in the form of food tokens, specifying approved retailers.<sup>97</sup>

With some exceptions, access to health care and other social services is formally the same for citizens and non-citizens of Latvia and Estonia.<sup>98</sup> However, in Estonia, those who have been unable to regularise their citizenship status (so-called “illegals”) have no access to public health care, since the Estonian Medical Insurance Fund (which administers public health care) is available only for citizens and aliens with residence permits.<sup>99</sup> According to one report, ethnic Russians are twice as likely as Estonians to refrain from certain services, such as dental treatment and overnight hospital stays, due to their generally lower incomes.<sup>100</sup>

#### 4. *Housing and Other Public Goods and Services*

##### *Housing*

Legislation expressly prohibiting discrimination in the provision of housing is largely absent throughout the candidate States. The provisional Romanian Ordinance outlaws “the refusal to sell or rent a plot of land or building for housing purposes” on grounds

<sup>95</sup> See *Report on the Activity of the Minorities Ombudsman for 1999*, Office of the Minorities Ombudsman, Budapest, 2000.

<sup>96</sup> NEKI, *White Booklet 1998*, p. 40.

<sup>97</sup> “V Lipníku Romum predepisuji, kde mají kupovat potraviny” (“Roma in Lipník are told in what shop to buy groceries”), *Romano Hangos*, Year 2, No. 9, 22 June 2000, p. 2. The practice stopped after a visit from an advisor to the Minister of Social Affairs.

<sup>98</sup> Non-citizens who have worked outside of Latvia/Estonia receive lower pensions than do comparably situated citizens in both countries. In Estonia, legal regulations guarantee certain types of public assistance to aliens only if they have a permanent residence permit.

<sup>99</sup> Exact numbers of “illegals” are unknown; estimations range from 30–80,000 people in Estonia. In 2000, 157 illegal residents addressed the Estonian Legal Information Centre for Human Rights, mostly ethnic Russians. No figures are available for Latvia.

<sup>100</sup> *Living Condition Study in Estonia 1999*. Baseline report. Norbalt II, ordered by the Ministry of Social Affairs of Estonia, carried out by Statistical Office of Estonia, University of Tartu and Institute of Applied Social Research Fafo (Norway), Tartu, 2000.

of racial origin.<sup>101</sup> Notably, this provision, which has not been enforced, does not cover social housing.

Although some Roma live in integrated housing among majority populations, substantial numbers reside in ethnically separate communities, in dire conditions. Throughout the region, many Roma are relegated to overcrowded, dilapidated and makeshift dwellings without permits or registration, and are denied access to basic public services such as running water, electricity, sanitation, paved roads, and public lighting.

Whole communities in Lithuania (the Vilnius “Kirtimai encampment”)<sup>102</sup> and Slovenia (the “Kerinov Grm” settlement)<sup>103</sup> live in illegal dwellings. One of every three Slovak Roma live in rural settlements located at the edges of, or outside, towns and villages.<sup>104</sup> Many Slovak Roma dwellings, described by the government as little more than “simple shelters built mostly of wood, clay and plate”,<sup>105</sup> have been constructed without planning permission, often far from basic infrastructural networks.<sup>106</sup> Around 70 percent of houses in Roma neighbourhoods in Bulgaria are built “illegally”, i.e. either outside of the municipal boundaries or without appropriate authorisation papers.<sup>107</sup> The Pata Rat Roma settlement in Romania is built on a garbage dump outside Cluj Napoca; in August 2000, three Roma children died and several adults were hospitalised after drinking contaminated water there.<sup>108</sup>

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<sup>101</sup> Ordinance 137/2000, Art. 12.

<sup>102</sup> For example, “In the Upper Kirtimai encampment [in Vilnius, Lithuania], 304 persons belonging to the Roma minority live in 60 unregistered houses; 111 persons live in 20 unregistered houses in the Lower encampment; and 56 persons live in seven unregistered houses in Rodunes Road’s encampment. Not one of these houses has a house book or [other] documents needed for construction.” Report of the Vilnius Third Police Commissariat, September 2000. Search warrants for raids on these illegal dwellings – eight of which were conducted in 2000 alone – are considered unnecessary.

<sup>103</sup> 27 Roma families, numbering around 180 people, live in Kerinov Grm without running water or electricity supply. Information from Kerinov Grm residents and Krsko municipality representatives, 2 February 2001.

<sup>104</sup> 67 settlements are located outside municipalities and 175 settlements are at the border or in close vicinity of the municipalities. Slovak Strategy 1999, Explanatory Report, Housing, p. 19.

<sup>105</sup> Slovak Strategy 1999, p. 19.

<sup>106</sup> J.Bucek, “Land, ownership and living environment of Roma minority in Slovakia”, *Local Government and Public Service Reform Initiative*, Open Society Institute, p. 10.

<sup>107</sup> Information from the district government and municipal government offices of Sliven, Stara Zagora, Shumen, Blagoevgrad, Kurdzhali and Lovech to the Bulgarian Helsinki Committee from October and November 2000.

<sup>108</sup> Information from the Minister of the Department for National Minorities, Bucharest, September 2000.

Reports have emerged from several countries of policies that encourage and enforce segregation, through race-based exclusion orders, the relocation or eviction from central or majority areas of Roma who have settled illegally or have not paid rent, and/or the indirectly discriminatory effects of rent increases in municipal flats. The unlawful destruction in summer 1997 of the houses of six Roma families from Zamoly in Hungary,<sup>109</sup> preceded a series of threats, insults and removals, leading eventually to their flight from the country in search of asylum. Evictions, a growing problem for Hungarian Roma, have been facilitated by anti-squatting amendments in May 2000, which allow public officials to carry out removals notwithstanding ongoing appeals.<sup>110</sup>

Examples of enforced segregation abound. In 2000, in the town of Grosuplje in Slovenia, two groups of Roma were moved against their will from separate locations into rows of cramped containers on either side of a putrid canal, with minimal facilities.<sup>111</sup> In Bulgaria, Plovdiv's "Sheker Mahala", Kazanlak's Roma neighbourhood and the Roma neighbourhood in Kustendil – all inhabited almost exclusively by Roma – are surrounded by two-meter high fences erected by the municipalities with public funds.<sup>112</sup> In 1997, two towns in Medzilaborce County, Slovakia, expressly barred Roma from settling there. The bans were lifted only when several Roma challenged them before the European Court of Human Rights and the UN CERD.<sup>113</sup> Two years later, municipal officials constructed a wall in Usti nad Labem, Czech Republic to isolate Roma inhabitants from their non-Roma neighbours. The wall was subsequently dismantled following intense international protest, including by EU officials.<sup>114</sup> The systematic relocation of residents from the city centre of Kosice, Slovakia to the Lunik IX settlement on the outskirts has had the effect of creating a vast Roma ghetto which persists to this day.<sup>115</sup>

<sup>109</sup> Ombudsman 1998, pp. 74–77.

<sup>110</sup> See L. Bihary, "Szocialis biztonsági orok" ("Social security guards"), *Fundamentum*.2000/3, p. 59.

<sup>111</sup> Articles in Ljubljana daily *Dnevnik*, July 1998 to November 2000; Information from residents of Grosuplje, 7 February 2001.

<sup>112</sup> Information from the Bulgarian Helsinki Committee.

<sup>113</sup> ERRC, "Lawsuit Filed by Czech Counsel and ERRC Against Usti Wall", 12 November 1999, <[http://errc.org/publications/letters/99/cz\\_oct\\_29\\_99.shtml](http://errc.org/publications/letters/99/cz_oct_29_99.shtml)> (accessed 14 June 2001); ERRC, "Czech authorities build ghetto wall, tear it down again", *Roma Rights* No. 4 1999, <[http://errc.org/rr\\_nr4\\_1999/snap02.shtml](http://errc.org/rr_nr4_1999/snap02.shtml)> (accessed 14 June 2001).

<sup>114</sup> ERRC, *United Nations CERD Finds Slovak Anti-Romani Municipal Ordinances Violate International Law*, 27 September 2000, <[http://errc.org/publications/letters/2000/slovak\\_sept\\_27\\_2000.shtml](http://errc.org/publications/letters/2000/slovak_sept_27_2000.shtml)> (accessed 14 June 2001).

<sup>115</sup> OSCE HCNM, *Report on the Situation of Roma and Sinti in the OSCE area*, March 2000, pp. 103–104. Officials reportedly commented that the "overall concept is based on the presumption that the scattering of Romas throughout Kosice during the last decades is not natural, that they should live together."

Public authorities have often reinforced segregatory trends by establishing restrictive eligibility criteria for social housing support and allocation of municipal housing or acquiescing in non-Roma resistance to Roma settling in majority neighbourhoods.<sup>116</sup> Efforts by authorities in Krsko, a Slovene municipality, to move Roma from the illegal Kerinov grom settlement to another location were called off after non-Roma, in a letter to the Prime Minister, threatened to resist the arrangement by force.<sup>117</sup>

### *Other Goods and Services*

Most States have yet to secure by law the right of access on a non-discriminatory basis to public goods and services. Again, Romania's provisional legislation is the exception.<sup>118</sup> Throughout the region, monitors have recorded routine discrimination against Roma seeking access to public establishments, including bars and restaurants. Public officials have at times demonstrated indifference to, or even complicity in, such practices.

Roma have been barred from all public establishments in the town of Mechka, Bulgaria, from 1999 to the present. The town mayor has reportedly called for their expulsion.<sup>119</sup> In early October 1999, municipal officials in the Polish town of Piotrkow Trybunalski condemned a public notice explicitly barring entry to "Romanians" – meaning Roma – not for its racist connotations, but for the bad reputation it would give the town. A press release noted that "a small note next to hotel would have been simpler."<sup>120</sup>

In Warsaw in September 2000, three Roma – including the OSCE's highest-ranking official on Roma issues – were forcibly removed from a cafe after they were refused service and ordered to leave. An official investigation was discontinued without result.<sup>121</sup>

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<sup>116</sup> Such incidents have been documented in Bulgaria, the Czech Republic, Hungary, Poland, Romania, Slovakia and Slovenia.

<sup>117</sup> Information from T.A., Manager of the Branch Office Krsko of the Public Fund for Cultural Activities of the Republic of Slovenia, 2 February 2001.

<sup>118</sup> Ordinance 137/2000, Art. 13 prohibits discrimination on ethnic grounds in access to "hotels, theatres, cinemas, libraries, shops, restaurants, bars, discotheques or any other service providers, whether they are public or private property, or by public transportation companies (by plane, ship, train, subway, bus, trolley-bus, tram car, taxi or by any other means of transport)."

<sup>119</sup> R.Russinov, S. Danova, "When the state is on 'city leave'", *Obektiv*, January–April 2000.

<sup>120</sup> *Przypadki dyskryminacji i rasistowskiej przemocy wobec Romow w Polsce: Raport Stowarzyszenia "Nigdy Wiecej"* (Cases of discrimination and racist violence against the Roma in Poland: A Report of the "Never Again" Association), 21 March 2000, p. 3.

<sup>121</sup> ERRC, "Racial discrimination and attacks on Roma in Poland", Roma Rights, No.1 2001. See <[http://errc.org/rr\\_nr1\\_2001/snap11.shtml](http://errc.org/rr_nr1_2001/snap11.shtml)> (accessed 14 June 2001).

The Czech Republic's single Romani Member of Parliament was denied access to a Brno club on 15 October 1998. Police decided in November not to bring charges and a subsequent appeal filed by the victim's attorney was rejected on 12 January 1999.<sup>122</sup> In the absence of specifically targeted anti-discrimination legislation, Hungarian courts have on at least two occasions relied on a broad provision of the civil code to award damages for the racially-motivated exclusion of Roma from public establishments.<sup>123</sup>

## 5. *Criminal Justice*

Although the European Union has yet to adopt explicitly its own standards in this area,<sup>124</sup> discrimination in the administration of justice is clearly prohibited by a range of international and European norms.<sup>125</sup> Reports by NGOs and state bodies alike catalogue discriminatory treatment of Roma within the criminal justice system in most of the eight countries at issue. Racist prejudices that affect the larger society are present among law enforcement officials as well.<sup>126</sup> Allegations from a number of countries suggest that Roma believed to have committed a crime are more likely than members of the majority to be arrested, detained, prosecuted and, if convicted, sentenced

<sup>122</sup> ERRC, "Czech Romani MP barred from entering a disco", *Roma Rights*, Autumn, 1998, p. 9. See <[http://errc.org/tr\\_aut1998/snapshots\\_november.shtml](http://errc.org/tr_aut1998/snapshots_november.shtml)> (accessed 14 June 2001).

<sup>123</sup> In 1997, a Hungarian court found for the first time that a pub owner's refusal to serve Roma was a violation of the law. The court awarded damages and ordered that the pub owner pay for publication of a written apology in the country's most popular daily. See NEKI, White Booklet 1999, at <<http://www.neki.hu/ff/wb1999.doc>> (accessed 10 August 2001). On 29 November 2000, the Kisvarda Court found a club in Dombrod in violation of the law for refusing Roma admission to their disco. The court imposed a fine of 200,000 Hungarian HUF (c. € 750). ERRC, *Roma Rights*, No. 1 (2001), p. 18.

<sup>124</sup> The Race Equality Directive does not expressly apply to discrimination in the criminal justice system, although some have suggested that the services of the police, the prosecution and the courts might be considered "goods and services" under Art. 3.

<sup>125</sup> See e.g., ICERD, Art. 5(a) (prohibiting racial discrimination in enjoyment of the "right to equal treatment before the tribunals and all other organs administering justice"); ICCPR, Arts. 2, 14 (prohibiting discrimination on any ground in administration of justice); ECHR, Arts. 6, 14 (prohibiting discrimination on any ground in administration of justice); FCNM, Art. 4(1) (guaranteeing "to persons belonging to national minorities the right of equality before the law and of equal protection of the law").

<sup>126</sup> One 1997–98 study of 1,530 Hungarian police officers revealed that 54 percent agreed that criminality was a key element of Roma identity; 50 percent agreed with the statement that the high crime rates of Roma are connected to some kind of genetic determination; 64 percent thought incest was a characteristic feature of Roma; 88 percent thought that Roma characteristically do not respect private property, and 74 percent believed that the population expected the police to be hard on Roma. Gy. Csepeli, A. Orkeny, M. Szekelyi, "Szertelen módszerek" ("Insustantial methods"), *Szovegyujtemeny a kisebbségi ügyek rendorsegi kezelesenek tanulmanyozasahoz* ("Collection for the examination of how the police handle cases involving minorities") Budapest, 1997, COLPI, pp. 130–173.

harshly. For example, data from the Hungarian Prosecutor's Office indicate that complaints about police mistreatment in the course of an investigation are four times more prevalent among Roma than among non-Roma suspects.<sup>127</sup> The European Commission against Racism and Intolerance has noted "evidence of differential treatment of members of minority groups, especially Roma/Gypsies, on the part of some Czech national and municipal law enforcement officials."<sup>128</sup> According to one study, convicted Roma in the Czech Republic are on average sentenced to 12 months longer than non-Romani defendants of a similar age and background for crimes of a similar nature.<sup>129</sup> More systematic monitoring of racial bias in the justice system is required to verify conclusively these disturbing trends.

## B. Protection from Racially Motivated Violence

Racially motivated violence is a violation of the right to respect for physical integrity, including, in some circumstances, the rights to security of person and life.<sup>130</sup> Government obligations in this regard extend to protection against violence by State

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<sup>127</sup> Whereas 20 percent of non-Roma detainees make such complaints, 80 percent of Roma detainees did. See *2000 Regular Report*. The Council of Europe has also expressed "concern[...] at evidence that severe problems in the administration of justice exist as regards discrimination against members of the Roma/Gypsy community and non-citizens. There are authoritative reports that Roma/Gypsies are kept in pre-trial detention for longer periods and more frequently than non-Roma, although the prohibition of the recording of the ethnic origin of suspects makes it difficult to evaluate the extent of such discrimination." Council of Europe, European Commission against Racism and Intolerance, "Second Report on Hungary", CRI(2000)5, 21 March 2000, para. 14, cited in ERRC Statement to UN CERD, No. 51. See also United Nations Committee against Torture, *Concluding Observations: Hungary*, November 1998, expressing "concern that a disproportionate number of detainees and/or prisoners serving their sentence are Roma", cited in "ERRC Statement to UN CERD", pp. 13–14.

<sup>128</sup> Council of Europe, European Commission against Racism and Intolerance, *Second Report on the Czech Republic*, para. 16, cited in "ERRC Statement to UN CERD", No. 47.

<sup>129</sup> Preliminary Results of the "First Step" project by Czech Tolerance and Civil Society cited in B. Bukovska, "Romani men in black suits: racism in the criminal justice system in the Czech Republic, in ERRC, *Roma Rights*, No. 1 2001. See <[http://errc.org/rr\\_nr1\\_2001/noteb4.shtml](http://errc.org/rr_nr1_2001/noteb4.shtml)> (accessed 18 June 2001).

<sup>130</sup> See e.g., Universal Declaration of Human Rights (1948), Art. 3 ("Everyone has the right to life, liberty and the security of the person"); ICCPR, Art. 6(1) (right to life), Art. 7 (prohibition against "torture or ... cruel, inhuman or degrading treatment or punishment"), Art. 9(1) (right to "security of person"); ECHR, Arts. 2 (right to life), 3 (prohibition against "torture or ... cruel, inhuman or degrading treatment or punishment").



actors as well as by private parties.<sup>131</sup> The FCNM obliges States' Parties "to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity."<sup>132</sup>

Racially motivated crimes and/or sentencing enhancement provisions in several countries – including the Czech Republic, Hungary, Poland and Slovakia – suffer from imprecision, incompleteness, and/or infrequent enforcement. Bulgaria's criminal code prohibits racially-motivated violence against persons or property damage, but provides *less* severe penalties than those which apply to the same crimes absent racial motivation, thus creating a perverse disincentive to prosecute racially-motivated crimes.<sup>133</sup> Romania's penal code does not recognise, or stipulate increased penalties for, acts motivated by racial animus.

The OSCE High Commissioner on National Minorities recommended in April 2000 that "... States enact legislation mandating sentencing enhancements for offences that are racially motivated."<sup>134</sup>

Although government statistics on the subject generally do not present a clear or coherent picture of violence against Roma specifically,<sup>135</sup> the limited data available suggest

<sup>131</sup> See ICERD, Art. 5(b) (prohibiting discrimination in enjoyment of "right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution"). The European Court of Human Rights has found that States have "in certain well-defined circumstances a positive obligation ... to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual." *Osman v. United Kingdom*, 29 EHRR 245 (1998), para. 115. See also *A. v. United Kingdom*, 27 EHRR 611 (1998) (recognising positive obligation of States to take measures to ensure that individuals are not subjected to torture or inhuman or degrading treatment or punishment, including ill-treatment administered by private individuals); *HLR v. France*, 26 EHRR 29 (1997) (same); *X & Y v. Netherlands*, 8 EHRR 235 (1985) (recognising positive obligation to provide and enforce criminal penalties for rape).

<sup>132</sup> FCNM, Art. 6(2).

<sup>133</sup> Art. 162(2) of the Penal Code provides: "A person who uses violence against another or damages his property because of his nationality, race, and religion or because of his political convictions shall be punished by deprivation of liberty for up to three years and by public censure." However, other provisions of the penal code provide for imprisonment of up to 15 years for severe bodily injury and up to 10 years for moderate bodily injury.

<sup>134</sup> OSCE High Commissioner on National Minorities, *Report on the Situation of Roma and Sinti in the OSCE Area*, 2000, p. 55.

<sup>135</sup> For example, statistics collected by the Czech Ministry of Interior and Ministry of Justice on racially-motivated crime include such crimes under the more general category of "extremism", and do not identify victims by ethnicity. Ministry of the Interior, *Report on the situation of public order, inner security on the territory of the Czech Republic in 1998*" (1999).

that Roma are the most frequently targeted group in the region.<sup>136</sup> In the past three years, Roma deaths as a result of violent attacks have been reported from Bulgaria, the Czech Republic, and Slovakia. It has been alleged that special “crime prevention programs” – sometimes targeting Roma communities – have encouraged anti-Roma harassment and official violence at least as successfully as they combat crime. “Preventive” and/or “punitive” raids against entire Romani communities have been recorded in 2000 in Lithuania and Romania, and recurrently in Bulgaria since 1992.<sup>137</sup>

Despite the frequency of violence against Roma, there have been few investigations and even fewer convictions of perpetrators of such crimes, particularly when committed by police officials.<sup>138</sup> Complaints by Roma of ill-treatment are often ignored.

At least twice in the past few years, courts in the Czech Republic and Slovakia have sought to avoid application of racially-motivated crimes provisions to violence indisputably

<sup>136</sup> The high incidence of violence against Roma has been documented by international monitoring organs in Bulgaria, the Czech Republic, Hungary, Romania and Slovakia. See “ERRC Statement to UN CERD”, August 2000, pp. 19–35 (describing cases and summarising reports); European Commission, *2000 Regular Report: Hungary* (noting that “Roma and foreigners” are the most frequent victims of police ill-treatment); European Commission, *2000 Regular Report: Bulgaria* (“violence against Roma is higher than against other Bulgarians”); UN Committee against Torture, *Concluding Observations: Slovakia* (11 May 2001), para. 6(c), *infra*; UN Committee against Torture, *Concluding Observations: Czech Republic*, 14 May 2001, para. 8(b), *infra*. In its most recent report on Hungary, the Committee for the Prevention of Torture noted “a number of allegations of physical ill-treatment by the police”, including striking with truncheons, punching, kicking, slapping and verbal abuse by police officers, and observed: “Foreign nationals, juveniles and Roma seemed to be particularly at risk of such ill-treatment.” Council of Europe, Committee for the Prevention of Torture, *Report on Hungary* (29 March 2001), para. 14.

<sup>137</sup> *Report of the Third Vilnius Police Commissariat*, 18 September 2000; Romani Criss, Roma Centre for Social Intervention and Studies, *Documenting Reports January–March 2001*, pp. 5–6; Bulgarian Helsinki Committee, *Annual Reports on Human Rights in Bulgaria for 1992–1999*.

<sup>138</sup> For example, in its most recent report on Slovakia, the UN Committee against Torture expressed “concern” about “allegations of instances of police participation in attacks on Roma and other members of the population, as well as allegations of inaction by police and law enforcement officials who fail to provide adequate protection against racially motivated attacks when such groups have been threatened by ‘skinheads’ or other extremist groups.” The Committee further expressed concern about the “failure on the part of the authorities to carry out prompt, impartial and thorough investigations” into such allegations or to prosecute and punish the responsible parties. UN Committee against Torture, *Concluding Observations: Slovakia* (11 May 2001), para. 6(c), para. 6(d). In its most recent annual report, Human Rights Watch observed that, in Bulgaria, police and private citizens engaged in anti-Roma violence “with impunity”; in the Czech Republic, “increasing racial violence against the ethnic Roma minority demonstrated an alarming pattern of neglect on the part of police and legal authorities in failing to investigate and prosecute hate crime”; in Romania, a “pattern of blaming or prosecuting the victims of crimes, particularly Roma ... continued”; and in Slovakia, “skinhead (racist youth) violence and police brutality and weak ... enforcement threatened the Slovak Roma minority.” Human Rights Watch, *World Report 2001*, <<http://www.hrw.org/wr2k1/europe/index.html>> (accessed 13 August 2001).

motivated by anti-Roma animus by employing the specious argument that Roma do not constitute a distinct “race” from the Czech or Slovak majority.<sup>139</sup> Although, following international protest, each decision was corrected on appeal, the interpretation of racially-motivated crimes provisions remains a matter of concern. In Poland, police “repeatedly deny that such incidents [reported by NGOs] are committed on racial grounds, and most cases collapse due to insufficient evidence.”<sup>140</sup> In Slovakia, “the Prosecutor’s Office, courts and police bodies are reluctant to admit that physical attacks of Roma by extremist groups are organised with obvious racial motivation.”<sup>141</sup> Following a July 1998 police raid in the Roma neighbourhood of Mechka, Bulgaria, during which ethnic Bulgarians threatened several Roma with violence, the district prosecutor of Pleven refused a request to initiate criminal proceedings under Bulgaria’s racially-motivated crimes provision, arguing that the crime envisaged therein applies only to “racial”, not “ethnic” animus.

The European Court of Human Rights has twice ruled against the government of Bulgaria for failing adequately to investigate allegations of police abuse against Roma.<sup>142</sup> Complaints of official ill-treatment of Roma and inadequate domestic remedies are presently pending in several other applications before the European Court.

Just this May, after years of reports of violence against Roma in the Czech Republic, the UN Committee against Torture expressed its “concern” about “reports of degrading treatment by the police of members of minority groups, continuing reports of violent attacks against Roma and the alleged failure on the part of police and judicial authorities to provide adequate protection, and to investigate and prosecute such crimes, as well as the lenient treatment of offenders.”<sup>143</sup> The same month, a Romani man who went to a police station in Hungary to file a complaint about a shooting which allegedly took place on 5 May 2001, was reportedly refused permission to register the complaint, verbally abused, and threatened with physical punishment.<sup>144</sup>

Last December, neo-Nazi groups allegedly broke several windows and sprayed racist graffiti on the houses of Roma families on three streets in the Polish town of Brzeg.

<sup>139</sup> See e.g. “ERRC Statement to UN CERD”, pp. 19–20, No. 36 (describing 1999 decision of Banska Bystrica district court in Slovakia, and 1996 decision of Hradec Kralove district court in Czech Republic).

<sup>140</sup> Information from the Centre of Roma Culture, Poland, 2000.

<sup>141</sup> Good Romani Fairy Kesaj Foundation Kosice, “Human Rights” in *White Book 2000*, p. 8.

<sup>142</sup> *Velikova v. Bulgaria*, Application No. 41488/98, 18 May 2000; *Assenov and Others v. Bulgaria*, Application No. 24760/94, 28 October 1998.

<sup>143</sup> UN Committee against Torture, *Concluding Observations: Czech Republic*, 14 May 2001, para. 8(b).

<sup>144</sup> ERRC, Press Release, “ERRC Letter to Director of Hungarian Police”, 23 May 2001.

The local police commander reportedly dismissed the attacks as false and suggested that the Roma had painted the graffiti themselves in order to claim asylum in Western Europe.<sup>145</sup> And in March 2001, a Romani woman from Kosice, Slovakia, alleged that a group of 15 skinheads had beaten her and her 10-year-old daughter, doused her in gasoline and tried to set her aflame, while shouting, “Die, Gypsy bitch.” Although the woman received hospital treatment for multiple facial and back wounds, the chief of the district police publicly doubted the beating had taken place. “In my opinion, she made it up”, he told a newspaper. “I don’t know why she would do it, but the Roma are probably preparing the groundwork to leave [the country].”<sup>146</sup>

With sufficient political will, the authorities can successfully prosecute anti-Roma violence. This March, a chorus of international condemnation led to the conviction and seven-year sentence of a Slovak soldier and a skinhead for the brutal murder of a 49-year-old Romani mother of eight. The victim had been beaten to death with a baseball bat by thugs who broke into her home, screaming, “We will kill you, black faces!”<sup>147</sup> All too often, however, such cases are the exception, motivated by intense international scrutiny and high-level political interest.

Many law enforcement officers, prosecutors, judges, and other public officials are simply unaware of legal obligations to protect against and/or punish discrimination, and governments could do more to overcome this widespread ignorance. At the same time, many Roma are impaired in pressing charges by fear of retaliation, insufficient awareness of their rights, lack of identity documents, and/or inadequate access to legal assistance. The absence of free legal counsel across the region in civil cases and its limited availability and poor quality in criminal matters affects the poor – among whom Roma figure prominently – disproportionately.

### C. Protection of Minority Rights

There exist no EU standards specifically in the field of minority rights. Nonetheless, general European standards for minority rights protection may be found in a number of Europe-wide and international instruments to which most European States are

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<sup>145</sup> ERRC, “Racial discrimination and attacks on Roma in Poland”, *Roma Rights*, No. 1, 2001. See <[http://errc.org/rr\\_nr1\\_2001/snap11.shtml](http://errc.org/rr_nr1_2001/snap11.shtml)> (accessed 14 June 2001).

<sup>146</sup> M. Pisarova, original title “New gulf divides Roma and police” *Slovak Spectator*, 26 March–1 April 2001, Vol. 7, No. 12.

<sup>147</sup> ERRC, “Romani woman in Slovakia dies after beating”, *Roma Rights*, No. 3, 2000.

party.<sup>148</sup> These provide broad guidelines for the development of country-specific policies.<sup>149</sup> These reports will focus on the rights to choice of identity; to use of minority languages in both the public and private spheres; to minority education; of access to media; and to effective participation in public life.

## 1. Identity

The principle of self-identification of persons belonging to minorities has been set forth in several international instruments.<sup>150</sup> These documents guarantee the right of all individuals to choose to identify (or not to identify) with a minority group, and stipulate that no disadvantage should derive from that choice. Most candidate States at least formally recognise the right to free choice of ethnic identity.

However, some candidate States have placed restrictions on the number or character of the minority groups they officially recognise or to which they afford financial support, or otherwise limit freedom of self-identification. Slovenia has restricted enjoyment of minority rights within its legal framework to Italians and Hungarians<sup>151</sup> – a fact that

<sup>148</sup> The rights of minorities are expressly articulated in a number of international standards, including ICCPR, Art. 27 (recognising rights of minorities to culture, religion and language); the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (hereafter “UN Declaration”); the UNESCO Convention Against Discrimination in Education, Art. 5(1c) (recognising, with qualification, the “right of members of national minorities to carry on their own educational activities”); the FCNM; ECHR, Art. 14 (prohibiting discrimination on the grounds of, *inter alia*, “national or social origin” or “association with a national minority”); the European Charter for Regional and Minority Languages (hereafter “ECRML”); and the OSCE Document of the Copenhagen Meeting of the Conference on the Human Dimension (the Copenhagen Document). For a list of ratifications where relevant, please see Appendix A.

<sup>149</sup> For example, State Parties to the FCNM are required to implement the provisions of the Convention “through national legislation and appropriate governmental policies”, yet they are given “a measure of discretion” to allow them to “take special circumstances into account”. *Explanatory Report* Paras. 11, 13 <[http://www.riga.lv/minelres/coe/FC\\_exr.htm](http://www.riga.lv/minelres/coe/FC_exr.htm)> (accessed 2 May 2001).

<sup>150</sup> See e.g. FCNM, Article 3 (1); Copenhagen Document, para. 32; UN Declaration, Article 3(2). See also *The Lund Recommendations on the Effective Participation of National Minorities in Public Life* (hereafter, “*The Lund Recommendations*”), The Foundation on Inter-Ethnic Relations, June 1999, p. 19. UN Human Rights Committee, “The rights of minorities (Art. 27), 08/04/94, CCPR General comment 23. (General Comments)” (Fiftieth Session, 1994) para. 5.2: “The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria.” See also UN CERD, Recommendation VIII of 1990 (on the right of minorities to self-identification); Recommendation XXIV of 1999 (on the uniform criteria to be applied in determining state recognition of minorities).

<sup>151</sup> *Report submitted by Slovenia Pursuant to Article 25 Paragraph 1 of the FCNM*, Part I, para. 12, November 2000. The 1991 Constitution (Article 65) provides that rights for the Roma should be addressed in a separate statute, but no such statute has appeared to date.

has been noted with concern by CERD.<sup>152</sup> Although Bulgaria has ratified the FCNM, the Bulgarian Constitution recognises only “citizens whose mother tongue is not Bulgarian”, but not ethnic or racial minority groups *per se*, which has impeded the exercise of a range of rights, including political participation, by Roma and other minorities.

Latvia continues the Soviet-era practice of mandatory registration of ethnic origin in passports, a practice criticised in the most recent report of the UN CERD.<sup>153</sup> It further requires that, in order to register a change in ethnicity, an individual must prove ancestry of the desired ethnicity within two generations.<sup>154</sup>

Although the FCNM refers to “all persons living on [a State’s] territory”,<sup>155</sup> both Estonia and Slovenia – countries in which a large section of the minority population lacks citizenship – have entered declarations restricting its application to citizens only. In Estonia this stipulation effectively excludes 22 percent of the country’s population – or more than half the Russian-speaking minority – from protection under the Convention.<sup>156</sup> No clear guidance on this issue is offered by the practice in EU member States.<sup>157</sup>

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<sup>152</sup> *Concluding observations of the Committee on the Elimination of Racial Discrimination: Slovenia*. 10 August 2000. A/55/18, paras. 237–251: “The Committee expressed concern that minority groups, such as Croats, Serbs, Bosnians and Roma, did not enjoy the same level of protection from the State party as the Italian and Hungarian minorities, and it recommended that Slovenia, in accordance with article 2 of the Convention, ensure that persons or groups of persons belonging to other minorities were not discriminated against.” Reportedly, the practice may not be maintained when a series of new passports is issued later in 2001.

<sup>153</sup> “It is noted with concern that the legislation of the State party requires a person’s ethnic origin to be recorded in his or her passport, which may expose members of some minorities to discrimination on grounds of their origin.” *Concluding observations of the Committee on the Elimination of Racial Discrimination: Latvia*, 19/08/99, A/54/18, para. 399.

<sup>154</sup> Law on Change of Name, Surname, and Ethnicity Record, Art. 11(1), <[http://www.riga.lv/minelres/NationalLegislation/Latvia/Latvia\\_EthnChange\\_excerpts\\_English.htm](http://www.riga.lv/minelres/NationalLegislation/Latvia/Latvia_EthnChange_excerpts_English.htm)> (accessed 2 May 2001).

<sup>155</sup> FCNM, Art 6(1).

<sup>156</sup> Despite exhortations from the OSCE HCNM not to restrict the definition of “minority” to “non-ethnic-Estonians who are Estonian Citizens” in ratifying the FCNM, Estonia entered a declaration limiting its application to “citizens...motivated by a concern to preserve together their cultural traditions, their religion or their language”. See REFHC/1/97 – Letter to the Minister for Foreign Affairs of the Republic of Estonia, S. Kallas, 28 October 1996, <<http://www.osce.org/hcnm/recommendations/estonia/1996/41hc17.html>> (accessed 15 June 2001).

<sup>157</sup> Austria and Germany reserve official minority status only to citizens. See declarations by Austria and Germany to the FCNM, Council of Europe Treaty Office. See <<http://conventions.coe.int>> (accessed 2 May 2001). A number of members, including France and Greece, do not recognise the existence of minorities, and have not ratified the FCNM. According to one Commission Delegation official, since EU members have no “unified line” on the definition of minorities, it would be “inconsistent” to expect such from candidate countries. OSI Roundtable, March 2000.

## 2. Language

Although the EU has not set forth its own rules in this area, international standards provide that States should take steps to facilitate the use of minority languages in contacts between public officials and individuals belonging to national minorities. These standards also underline the right of anyone belonging to a national minority to “use freely and without interference his or her minority language, in public and in private, orally and in writing.”<sup>158</sup> In certain circumstances, the FCNM requires states to “make possible the use of minority languages in communications with administrative authorities.”<sup>159</sup> The FCNM further sets forth the right to use minority languages in “signs, inscriptions and other information of a private nature visible to the public”<sup>160</sup> – which has been interpreted to mean that States may not impose restrictions on the choice of language in the administration of private business enterprises.<sup>161</sup> International law requires that, where necessary, States provide interpreters free of charge during criminal proceedings.<sup>162</sup>

### *Communications with Public Authorities*

Romania and Slovakia have recently enacted laws allowing the use of minority languages in official communications in districts in which the minority population constitutes at least 20 percent of the total population.<sup>163</sup> However, concerns have been raised over the implementation of the laws in both countries – due to the paucity of Romani-speaking officials, poor public information<sup>164</sup> and, in Romania, low concentrations of Roma in

<sup>158</sup> FCNM, Art. 10(1); ICCPR Art. 19(2); Art. 27; and ECHR Art. 10(1).

<sup>159</sup> FCNM Art. 10(2). This requirement applies “[i]n areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need...”; ECRML, Art. 10; Foundation on Inter-Ethnic Relations, *The Oslo Recommendations*, February 1998, pp. 27–29.

<sup>160</sup> FCNM, Art. 11(2).

<sup>161</sup> *The Oslo Recommendations*, p. 26.

<sup>162</sup> FCNM Art. 10(3); ECHR, Art. 6(3)(a) (right of criminal suspect “to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him”); Art. 6(3)(e) (right “to have the free assistance of an interpreter if he cannot understand or speak the language used in court”); Art. 5(2); ICCPR, Arts. 14(3)(a), 14(3)(f); ECRML Art. 9; *Oslo Recommendations* (7, 18, 19).

<sup>163</sup> Slovak Law on the Use of Languages of National Minorities No. 184/1999 Coll, adopted on 10 July 1999; Romanian Law on Public Administration, April 2001.

<sup>164</sup> The European Commission notes that “It appears that in many areas national minorities do not make use of the rights granted under the law due to lack of information. For instance, no Roma village has apparently taken advantage of the possibilities to use the Romany language.” *2000 Regular Report on Slovakia*, p. 20. The Slovak Government has listed 656 villages where minorities amount to at least 20 percent of the population, including 57 villages where the Roma minority meets this criterion. Governmental Decree No. 221/1999, “Regulation of the Government of the Slovak Republic issuing the list of municipalities where the citizens of the Slovak Republic belonging to national minorities compose at least 20 percent of the population.”

many areas, despite their greater numbers nationwide.<sup>165</sup> A newly enacted Czech law provides similar language rights where minorities make up ten percent of the population.<sup>166</sup> The broader Hungarian formulation (“In the Republic of Hungary everybody may freely use his/her mother tongue wherever and whenever s/he wishes to do so”)<sup>167</sup> formally allows for comprehensive use of minority languages in a wide range of public communications, “at the request of the minority self-government”.<sup>168</sup>

There are no such provisions in Bulgaria, while in Slovenia rights to use minority languages in communications with public authorities are accorded to the Hungarian and Italian minorities only. In Poland, communication with authorities must be conducted in Polish, “unless detailed regulations provide otherwise”.<sup>169</sup> As yet there are no such regulations.<sup>170</sup>

The protection of the language rights of minorities causes particular concern in Estonia and Latvia, where minority languages are officially “foreign” despite being spoken by more than 30 percent of inhabitants.<sup>171</sup> In both countries, legal provisions require that all communications with public authorities must be carried out in the majority language. In Latvia, where about 43 percent of the population do not speak Latvian as a first language,<sup>172</sup> state authorities are nevertheless explicitly prohibited from receiving written submissions in languages other than the State Language, except in emergency cases.<sup>173</sup> This provision has resulted in widespread official refusals to consider appeals and petitions submitted to various state institutions by Russian-speaking prisoners and persons under investigation.<sup>174</sup> In Estonia, local governments may adopt languages

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<sup>165</sup> Information from the Romanian Ombudsman’s Office, Bucharest, 1 May 2001.

<sup>166</sup> Czech Law on Ethnic Minorities. Approved by the Chamber of Deputies on 23 May 2001. See RFE/RL Newline, Vol. 5, No. 100, Part II, 25 May 2001.

<sup>167</sup> Hungarian Minorities Act, Art. 51(1). Furthermore, “the conditions of the language use of minorities – in cases provided for by a separate law – must be guaranteed by the state.” (2) “In the course of civil or criminal proceedings, or in administrative procedures the use of the mother tongue is ensured by the applicable procedural acts.”

<sup>168</sup> Hungarian Minorities Act, Art. 53.

<sup>169</sup> Act of 7 October 1999 on the Polish Language, Art. 5.

<sup>170</sup> A draft Minorities Law has reportedly been in existence since 1993.

<sup>171</sup> Latvian Law on the State Language, Article 5; Estonian Law on Language, Art. 2(2).

<sup>172</sup> European Commission, *Progress Report 2000*, p. 22.

<sup>173</sup> Latvian Law on the State Language, Art. 10. Article 10(2) of the law explicitly prohibits acceptance and consideration of any applications or complaints from individuals if they are not written in the state language or not supplied with a certified translation into the state language. For the full text of the Law, see <[http://www.riga.lv/minelres/NationalLegislation/Latvia/Latvia\\_Language\\_English.htm](http://www.riga.lv/minelres/NationalLegislation/Latvia/Latvia_Language_English.htm)> (accessed 2 May 2001).

<sup>174</sup> *Rigas Bals* (*The Voice of Riga*, Russian edition), 19 March 2001.



other than Estonian as their “official working language” where minorities make up at least 50 percent of permanent residents, upon the approval by the national government of a formal (local government) request.<sup>175</sup> No such requests have been approved to date, and at least two have been denied.<sup>176</sup> In response to a July 2001 request from deputies on the Narva city council, the Minister of Population Affairs reportedly stated that the government would have to ensure fulfilment of the language law requirement that officials be fluent in Estonian at the required level before it could approve the proposal.<sup>177</sup> In practice, however, Russian is commonly used in communications with public authorities.<sup>178</sup>

### *Language/Alphabet Use in Signs/Documentation*

In Estonia, signs in languages other than Estonian are legally banned.<sup>179</sup>

In Latvia, interventions by the OSCE High Commissioner for National Minorities and the European Commission appear to have resulted in moderation of some objectionable elements of prior draft language legislation regulating the use of language in business and civil institutions.<sup>180</sup> In addition, as a result of amendments enacted in November 2000, the State Language Law now allows publicly visible signs to be posted in minority languages. Nonetheless, official protection of the state language has led to the introduction of restrictions on the use of minority languages, particularly Russian. Russians and persons belonging to other minorities using Cyrillic or non-Latin alphabets are deprived

<sup>175</sup> Estonian Language law, Articles 10, 11.

<sup>176</sup> Requests by the city council of Sillamae (95 percent Russian-speaking) to use Russian officially as an internal working language were twice rejected. Statement of I.T., Director General of the Estonian Language Inspection. V. Poleshchuk, *Accession to the European Union and National Integration in Estonia and Latvia*, Tønder, Denmark, 7–10 December 2000, Flensburg, ECMI February 2001, p. 17

<sup>177</sup> RFE/RL Newline, “Deputies in Estonian City Seek Equal status for Russian Language”, Vol. 5, No. 151, Part II, 10 August 2001.

<sup>178</sup> According to the government, “in practice, several local government units, where the majority of the population is of immigrant origin and does not [have] command of the Estonian language, have benefited from this provision and are using the Russian language as an internal working language in parallel to the official language. This is the case, for instance, in Narva, Kohtla-Jarve and Sillamae.” *Report Submitted by Estonia Pursuant to Article 25 Paragraph 1 of the FCNM*, Art. 14 (2).

<sup>179</sup> Estonian Law on Language, Art. 23 (1).

<sup>180</sup> With regard to the 2000 Latvian Law on the State Language, the OSCE had particularly criticised the draft for state regulation of the use of languages “in all enterprises (companies), institutions, civil institutions, civil institutions and organisations (including private cultural and religious organisations).” Office of the OSCE HCNM, *Opinion on the compatibility of the draft Latvian State Language Law with international standards*, 22 September 1997. While the draft law was under discussion in autumn 1999, the Commission noted certain incompatibilities with EU principles in the field of free movement of goods. Some objectionable provisions of the draft law were subsequently amended or removed.

of the opportunity to use their native names in their native alphabets in official documentation. And legal provisions that entered into force in 2001 require that private enterprises and NGOs create and use names in the Latvian language or the Latin alphabet.<sup>181</sup> The OSCE High Commissioner for National Minorities noted in August 2000, with respect to these provisions, that “certain specific matters will have to be reviewed upon Latvia’s anticipated ratification of the Framework Convention for the Protection of National Minorities.”<sup>182</sup>

### *Language in Criminal Proceedings*

Reports from Lithuania and Slovenia, where domestic law tracks the international requirements,<sup>183</sup> indicate that law enforcement authorities routinely address Romani suspects in the titular languages without adequately verifying their ability to understand. In all countries where Roma are present, few Romani-speaking interpreters are available to assist Roma during court proceedings.

### 3. *Education*

An important subset of language rights concerns use of language in education, and with it substantive education in subjects of concern to minority members. Although the EU has established no standards of its own on language use in schools, and its member State practice is not consistent, the right to receive education in one’s mother tongue is set forth in several instruments.<sup>184</sup>

Further, a number of international standards variously require States to “foster knowledge of the culture, history, language, and religion” of their minorities,<sup>185</sup> including through the creation of conditions to promote minority identity.<sup>186</sup>

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<sup>181</sup> Governmental Regulations No. 295, adopted on 22 August 2000.

<sup>182</sup> Press statement of 31 August 2000, <[http://www.osce.org/news/generate.php3?news\\_id=985](http://www.osce.org/news/generate.php3?news_id=985)> (accessed 17 June 2001).

<sup>183</sup> Slovene Constitution, Art. 19; Criminal Procedure Code of the Republic of Lithuania, Art. 15.

<sup>184</sup> See FCNM, Art. 14(2) (“In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language”). See also UN Declaration, Art. 4; UNESCO Convention, Art. 5; and the Copenhagen Document, para. 34.

<sup>185</sup> FCNM, Article 12(1). See Copenhagen Document, para. 33; UN Declaration, Art. 4; FCNM, Art. 12.

<sup>186</sup> Copenhagen Document, para. 33.

The FCNM provides that minorities have the right to establish and manage educational facilities,<sup>187</sup> and while there is no obligation upon States to fund them, a separate provision in the Copenhagen Document explicitly notes that such facilities may “seek public assistance in conformity with national legislation[.]”<sup>188</sup>

Legislation in the Czech Republic, Hungary, Lithuania, Poland, Romania, and Slovakia permits the establishment of minority language classes and schools. Slovenian law extends these rights to Hungarians and Italians, but not Roma. In practice, few Romani-language classes exist for Roma children in any of these countries, with the exception of Romania. Minority language classes (but not schools) are permitted in Bulgaria, where a governmental programme launched in 1990–91 to offer Romani-language education for Roma children foundered for lack of teacher-training, materials, and a plan for integration into the general educational system. By 1999, the number of Roma children studying the Romani language in Bulgaria had decreased to zero.<sup>189</sup>

The Roma minority in Hungary has a number of schools maintained by a combination of private and state funding.<sup>190</sup> The Czech government has also provided support for a number of private educational initiatives,<sup>191</sup> and has further supported the placement of Romani teaching assistants in primary schools across the country to facilitate learning by Romani students. At the university level, Bulgaria provides for the recognition of a university degree in the study of minority languages including the Romani language. In Romania, universities may set up faculties, sections and groups in minority languages and minorities may set up private universities.<sup>192</sup>

In Estonia and Latvia, the state currently finances Russian-language schools, although education policy in both countries favours a transition to bilingual schooling. In Latvia, Russian language secondary schools are to be gradually phased out by 2003<sup>193</sup>

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<sup>187</sup> FCNM, Art. 13.

<sup>188</sup> Copenhagen Document, para. 32(2).

<sup>189</sup> Information from the Bulgarian Helsinki Committee.

<sup>190</sup> The Kalyi Jag Romani Minority School of Budapest, the Jozsefvaros School in Budapest, the Gandhi High School in Pecs, and the Alternative Foundation School for the Ethnic Roma in Szolnok are all primarily for Roma students.

<sup>191</sup> The primary Premysla Pittra school in Ostrava and the Roma Social Secondary School in Kolin are two examples.

<sup>192</sup> Law 84/1995, Arts. 122–123.

<sup>193</sup> Transitional Regulations of the Latvian Law on Education, para. 9(3), adopted on 29 October 1998. In Estonia, all secondary schools are required to teach at least 60 percent of subjects in Estonian by 2007/2008. Amendment to the Law on Basic School and Gymnasium, RT I 2000, 33, 195.

– a move that is opposed by some minority leaders. Some Russian-speakers complain that the governments in both Latvia and Estonia have not allocated sufficient funding for teacher training in minority languages. Without the right to vote, Russian-speaking non-citizens have little ability to influence decisions concerning the opening or closing of schools (including minority schools) or the allocation of resources to minority schools at the local level. The UN CERD has recently expressed “concern” that, in both Estonia and Latvia, instruction in minority languages may be reduced in the near future.<sup>194</sup>

#### 4. *Media*

Fundamental to minority rights protection is the right to produce and disseminate minority language publications, television and radio programmes and the right of access to public/state media. The EU has not elaborated any standards with reference to minority use of or access to media, nor have its member States developed any clearly consistent pattern in their own legislative practice. International norms oblige states not to hinder the flourishing of private minority media,<sup>195</sup> and to take measures not merely to allow but to facilitate minority access to public media.<sup>196</sup>

In general, throughout the accession region, legal guarantees of minority access to media are weak, although Hungary obliges public media to give half-hour weekly slots – and secures a place on the national television radio boards – to representatives of each recognised minority.<sup>197</sup> Polish legislation requires only that public media “take into consideration the needs of national minorities and ethnic groups[.]”<sup>198</sup> The Czech TV and Radio Laws oblige electronic media to contribute to the development of the Czech national identity as well as to the identities of ethnic and national minorities.<sup>199</sup> In Slovenia, the Roma, among others, are excluded from the comprehensive media access

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<sup>194</sup> *Concluding observations of the Committee on the Elimination of Racial Discrimination: Latvia*. 12/04/2001. CERD/C/304/Add.79, para. 18; *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Estonia*. 19/04/2000. CERD/C/304/Add.98, para. 12.

<sup>195</sup> ICCPR, Art. 19 (2); FCNM, Arts. 9 (1) and (3).

<sup>196</sup> See FCNM, Art 9 (4) “the parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities”; *Oslo Recommendations*, pp. 22–23 “a national minority consisting of a substantial number of members should be given access to its fair share of broadcast time, on public radio and/or television, with the numerical size of the minority in question having a bearing on its share of broadcast time.”

<sup>197</sup> Hungarian Act I of 1996 on Radio and Television Broadcasting.

<sup>198</sup> Polish Broadcasting Act of 29 December 1992, Art. 21.2, subparas. 9 and 6 (unofficial translation).

<sup>199</sup> See Law No. 484/1991 Coll., on Czech Radio, as amended; Law No. 483/1991 Coll., on Czech Television, as amended.

rights (including a channel for minority programmes and representation on the official media board) accorded by law to the Hungarian and Italian minorities. In Latvia, the law limits the amount of broadcast time in minority languages to 25 percent on private television and radio channels;<sup>200</sup> in Estonia television programming on both public and private channels in languages other than the state language is limited to ten percent where translation into Estonian is not provided.<sup>201</sup>

The relative growth in Romani media output in recent years is encouraging. In some countries, such as Slovakia and Slovenia, state support extends to partial or full funding of Romani newspapers (sometimes in Romani languages), or to including Romani editorial teams on public radio, as in the Czech Republic. There are five new Romani newspapers in Slovakia since 1999, and three exist in Poland. Hungary's first independent Roma radio station, "Radio C", began broadcasting in February 2001.

Still, the circulation of minority publications is limited, and mainstream media has a far greater impact on popular attitudes and opinions. Extensive studies on the image of minorities in the mainstream media conducted in a number of countries reveal disturbingly consistent patterns of negative stereotyping with regard to the Roma minority. In Lithuania and Slovenia, the little coverage that Roma receive is generally in the context of crime or conflict.<sup>202</sup> In Hungary the situation is more nuanced: treatment of Roma issues has increased dramatically in importance since the eighties; however the dominant themes are still crime, inter-ethnic conflict, government aid, and poverty.<sup>203</sup>

There have been efforts to challenge press stereotyping, not only through the adoption of codes of conduct by certain newspapers,<sup>204</sup> but also by changing government policy. Governments in Bulgaria, Hungary and Slovakia have formally discarded the previously common practice, whereby police would routinely inform journalists of the ethnicity of those charged with crimes. However, even though ethnic statistics are widely unavail-

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<sup>200</sup> The Law on Radio and Television, Art. 19, para. 5, was amended in 1998 to reduce the total airtime permitted in non-Latvian languages from 30 to 25 percent.

<sup>201</sup> Estonian Law on Language, 1995, Art. 25(4).

<sup>202</sup> See K. Erjavec, S. B. Hrvatin, B. Kelbl, *We about the Roma*, Open Society Institute/MediaWatch, Ljubljana, 2000.

<sup>203</sup> G. Bernath, V. Messing: "Vágokepcent, csak nemaban" – *Romak a magyarországi mediában* ("As a cut-off, just in mute – Roma in the Hungarian media"), Department of National and Ethnic Minorities, Budapest, 1998.

<sup>204</sup> The Polish *Rzeczpospolita*, for example, distributes a Professional Code of Conduct among its journalists, which includes the guideline: "[j]ournalists should report age, race, colour of skin, disability, sexual orientation only when relevant." See "Zawodowe zasady etyczne dziennikarzy Rzeczpospolitej", ("The professional principles of the journalists of Rzeczpospolita"), p. 1.

able, levels of Roma criminality remain the subject of public speculation by police and other public officials. In December 1999, the spokesperson of the District office of Poprad, Slovakia declared on television that 90 percent of all crimes in Poprad district were caused by Roma, claiming to have received the information from police sources.<sup>205</sup> Moreover, media outlets continue to make gratuitous references to ethnicity even absent official government encouragement. Recent headlines from major Bulgarian papers include the following: “Gypsies Kill Old Man for Pension”,<sup>206</sup> “Gypsies Attack Policeman and Tear Off His Epaulette”,<sup>207</sup> and “Gypsy Slaughtered his Fiancee”.<sup>208</sup> In some countries, Roma have been depicted as obstacles to EU accession. Following release of the Commission’s 2000 Regular Reports, a Romanian newspaper headline proclaimed: “The Path of Romania towards Europe is Blocked by Gypsies and Police”.<sup>209</sup>

## 5. *Public Participation*

International law obliges states to “respect” the rights of minority individuals to effective participation in public affairs,<sup>210</sup> including in matters relating to minority identity,<sup>211</sup> and in regional and national decision-making.<sup>212</sup> The FCNM requires States to “create” conditions necessary for such participation.<sup>213</sup> The ICERD requires that “equal access

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<sup>205</sup> K.Magdolenova, “When a Slovak goes to Europe, everything is OK. When a Roma goes to Europe it is an international scandal”, *Forum*, 9 April 2001. In its most recent state report submitted to UN CERD, the Slovak government acknowledged that the Ministry of Justice uses “statistical information on the development of crime”. Government of the Slovak Republic, *Reports Submitted by State Parties Under Article 9 of the Convention – Third periodic reports of States parties due in 1998 Addendum: Slovakia*, CERD/C/328/Add.1, 14 December 1999, para. 211. Indeed, the Ministry of Justice publishes on its website graphs giving the numbers of convicted Roma for the years 1984–1999. See <<http://www.justice.gov.sk/>> Archiv – Statistika – I. Trestna agenda (accessed 15 March 2001).

<sup>206</sup> *24 Chassa*, 14 April 2000.

<sup>207</sup> *Monitor*, 16 April 2000.

<sup>208</sup> *Trud*, 9 November 2000.

<sup>209</sup> *Evenimentul Zilei*, 9 November 2000. In Slovakia, according to one analysis, migration of Roma into EU countries significantly increased the frequency of news items about Roma in Slovak media, with several blaming Roma for the visa restrictions introduced by EU member states. Slovak Helsinki Committee/ B. Benkovi, L. Vakulova, “Obraz Roma vo vybranych slovenskych medi” (“The Picture of Roma in Selected Media”), 1 June 1998–31 May 1999, Bratislava 2000.

<sup>210</sup> For a general discussion of related rights, see “The Lund Recommendations on the Effective Participation of National Minorities in Public Life”, The Foundation on Inter-Ethnic Relations, June 1999.

<sup>211</sup> Copenhagen Document, para. 35.

<sup>212</sup> UN Declaration, Art. 2, paras. 2, 3.

<sup>213</sup> FCNM, Art. 15.

to public service” not be denied on grounds of race or ethnicity.<sup>214</sup> The ICCPR sets forth the right of every citizen, without discrimination, to be elected at genuine periodic elections, guaranteeing the free expression of the will of electors.<sup>215</sup>

### *Political Representation*

Candidate States have undertaken a number of innovative measures to create channels of participation for minority groups. In practice, however, neither the Roma nor the Russian-speaking minorities can be said to have achieved effective representation in national parliamentary or governmental structures.

Low levels of political representation for Roma throughout the accession region at the national level reflect widespread social exclusion and marginalisation. Very few mainstream political parties are willing to adopt a public position favourable to Roma, as in every country the issue is considered politically unpopular among the majority. Romanian Roma are guaranteed one seat in parliament on the basis of Romanian legislation, but otherwise governments have made few affirmative efforts to secure representation for Roma in national legislative bodies.<sup>216</sup> As of May 2001, there was one Romani MP among the current government coalition in Bulgaria; one Romani member of the Czech Parliament; and no Romani MPs in the Parliaments of Hungary or Slovakia. In Romania, in addition to occupying a reserved “minority seat” in Parliament, several Roma have been elected as MPs for non-ethnic parties.

Roma candidates enjoy more proportionate electoral representation at the regional and municipal levels, notably in Bulgaria, Romania and Slovakia. In several other countries, special measures to enhance minority participation have been implemented. Hungary has developed an extensive system of elected minority self-governments for its thirteen recognised minorities, including Roma, which have authority over cultural and educational issues, and a limited role in the affairs of the parallel regular governments.<sup>217</sup> Some have noted that since minority self-governments in Hungary are strictly consultative in nature, the system has effectively institutionalised the political marginalisation of Roma. Moreover, local governments often ignore the requirement to consult with minority

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<sup>214</sup> ICERD, Art. 5(c).

<sup>215</sup> ICCPR, Art. 25.

<sup>216</sup> Slovenia makes legal provision for guaranteed parliamentary representation only for its Hungarian and Italian minorities. Hungarian legislation creates a legal possibility of guaranteed parliamentary representation for minority groups, but necessary implementing legislation has never been passed. See Constitution of Slovenia, Art. 64. Hungarian Act LXXVII of 1993 on the Rights of National and Ethnic Minorities.

<sup>217</sup> Act LXXVII of 1993 on the Rights of National and Ethnic Minorities.

self-governments.<sup>218</sup> Slovenia assures autochthonous minorities seats on municipal councils in areas where they are sufficiently numerous, but only 40 percent of the Roma population in Slovenia is considered autochthonous, and only one such representative has been elected. A new Czech minorities law allows for the establishment of minority local bodies – but sets a population threshold requirement of ten percent that precludes the participation of most Roma. The remaining candidate States have not developed any such systems.

Barriers to citizenship in a number of countries have also impaired access for many Roma to political participation. Significant numbers of Roma allegedly lack citizenship in Lithuania and Romania. Many Slovak Roma have reportedly experienced difficulties obtaining the “citizenship card” (*obciansky priukaz*).<sup>219</sup> In Slovenia, large numbers of Roma are stateless due to a government policy that transferred thousands of citizens of the former Yugoslavia to the “Foreigner’s Register”. Many Roma who were born and resided in Slovenia do not possess these documents, and have been denied citizenship on these grounds. Reportedly, these Roma have been denied identification documents, passports, health services, pensions, access to education, and even humanitarian aid.

In Estonia and Latvia, most members of the Russian-speaking minority still lack citizenship, and therefore face limitations to full political participation. An estimated 550,000 stateless “non-citizens” in Latvia – the majority of whom are Russian-speakers – are denied the rights to vote and form political parties at all levels. Thus, Russian-speakers in Latvia are under-represented in both the national legislature and at the municipal level.<sup>220</sup> In many Latvian municipalities – including some in which Russian speakers constitute as much as half the population – Russian speakers are not represented at all. In Estonia, provision has been made for Soviet-era settlers to vote in local elections, although non-citizen Russian speakers – approximately 22 percent of the population – are still unable to participate in national elections.

Moreover, legislation in both Estonia and Latvia prescribes language requirements for Members of Parliament and candidates for representative bodies, with the consequence

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<sup>218</sup> B. Berkes, “Erotlennek mutatkoznak a cigany onkormanyzatok” (Roma minority self-governments appear to be powerless), *Nepszabadsag*, 26 July 2001, p. 5.

<sup>219</sup> The “citizenship card” is required for obtaining access to almost all public and social services; some have asserted that it is easier for Roma to obtain a passport to leave the country than a citizenship card. The Slovak cabinet on 23 May 2001 approved measures designed to introduce stricter conditions for issuing passports to “citizens suspected of trying to emigrate”. RFE/RL Newline Vol. 5, No. 99, Part II, 24 May 2001.

<sup>220</sup> In Riga, for example, where non-Latvians constitute more than half the population, only eight out of 60 deputies belong to a minority, and not a single Russian-speaker occupies a top executive position. See “Report on Latvia”.



that Russian-speaking citizens can be – and sometimes are – barred from running for public office. In Latvia, Russian-speaking candidates have been refused registration to stand for election even when linguistic requirements have been fulfilled.<sup>221</sup> The Estonian National Election Committee has initiated legal action against elected deputies of local councils on the grounds that their knowledge of the state language was insufficient.<sup>222</sup> Estonian and Latvian requirements have been criticised by international bodies such as the Commission for Baltic Sea States and the OSCE.<sup>223</sup>

### *Public Employment*

Very few Roma or Russian-speakers are employed in the public service. Among Roma, a number of those who do achieve higher-level positions allegedly choose not to identify openly as Roma. In Bulgaria, the Czech Republic, and Romania, special “Roma advisers” or “Roma assistants” have been employed as civil servants – often as part of a broader governmental programme for Roma – but their sphere of competency is generally ill-defined, rendering them largely dependent on the good will of the institutions to which they have been assigned.

In both Estonia and Latvia, language legislation restricts the employment of non-citizens in a wide range of public and private positions (see above, section II.A.2, Discrimination in Employment). Furthermore, while requiring Latvian language proficiency for most public sector and some private sector jobs, the state has not provided commensurate language training to satisfy this requirement. Language restrictions have contributed to under-representation of Russian-speakers in decision-making bodies and state bureaucracies in both countries.

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<sup>221</sup> In March 1999, the European Court of Human Rights registered an application from a Latvian citizen whose name was struck off the candidates’ list for the 1998 parliamentary elections after a State Language Inspector deemed her knowledge of Latvian to be insufficient, despite the fact that she had presented the requisite certificate to the Central Electoral Commission when registering her candidacy. ECHR Case No. 46726/99.

<sup>222</sup> See <<http://www.nc.ee/english/>>, Constitutional Decision 3-4-1-7-98 (accessed 13 August 2001).

<sup>223</sup> For example, Commissioner of the Council of Baltic Sea States Ole Espersen suggested that Estonian legislation “seem[s] to be a pre-selection of candidates which restricts both a citizen’s right to run for office and the right of the electorate to vote for whom ever they please”. *The Annual Report of the Commissioner of the CBSS*, June 1998–June 1999, p. 62.

### III. Institutions for Minority Protection

Candidate governments have in recent years adopted a range of policies and programs aimed at improving minority protection. Unfortunately, meaningful implementation has often been hampered by the insufficient authority and resources assigned by governments to official bodies, as well as by lack of public support for such measures. In a number of countries, institutions originally created for more limited purposes have been struggling with difficulty to undertake different – and more imposing – responsibilities to carry out tasks mandated by the accession process.

Civil society organisations have performed important work to stimulate and complement official efforts to improve the situation for minorities and to address minority rights violations, including discrimination. Some have developed model programmes that can be – and have been – usefully taken up by governments. However, most are not in a position to pursue systematic reforms independently of the government. And to date, neither the EU nor candidate governments have sufficiently engaged NGOs in the process of improving minority protection, or building public awareness of the importance of minority rights and non-discrimination in the enlargement project.

#### A. Official Bodies

Since opening accession negotiations, all states surveyed have either established or strengthened institutional structures to address issues affecting minorities. On paper, the primary responsibility of many of these institutions is to oversee the distribution of government financial support to minority organisations and to advise the government on issues of concern to minorities. Some have titles suggesting the linkage of minority issues with other concerns: the Bulgarian “National Council on Ethnic and Demographic Issues” ties minority issues to social issues such as population growth and migration. A public relations function is suggested by the Lithuanian “Department of National Minorities and Lithuanians Living Abroad” and by the location, within the Ministry of Public Information, of the Romanian “Department for Inter-Ethnic Relations”.

More recently, as the EU accession process has developed, government institutions in Bulgaria, the Czech Republic, Hungary, Lithuania, Poland, Romania, and Slovakia have been charged with helping to develop and overseeing implementation of new government policies or programs aimed specifically at improving the situation for Roma. This has led to clear articulation of problems and elaboration of goals for improvement in a variety of areas, including education, health, and housing.

[However, on the whole T]hese bodies suffer from three principal shortcomings. First, in all cases their mandate with respect to governmental counterparts remains essentially

consultative. None have been awarded the expanded authority necessary to require coordinated implementation and evaluation of minority policies on the part of other government bodies. For example, the Slovak Plenipotentiary for Roma Issues is formally responsible for coordinating implementation of the government's "Strategy for the Solution of the Problems of the Roma National Minority" by various government ministries and state local administration offices.<sup>224</sup> In practice, however, the Office of the Plenipotentiary collects information and compiles reports from the ministries, but lacks power to ensure effective implementation of government programmes. As a member of the Office staff explained, "All we can do is ... encourage the state organs to fulfil their tasks... and then critically comment on their implementation reports."<sup>225</sup> The Czech "Interministerial Commission for Roma Affairs" has been described as "toothless" by critics and members alike.<sup>226</sup> It, like the Hungarian Office for National and Ethnic Minorities and the Bulgarian National Office for Ethnic and Demographic Issues, lacks the authority to oblige ministries to fulfil programme tasks.

Second, none of these institutions have been invested with sufficient financial or human resources to confront problems such as discrimination. The recently adopted "2001 Strategy for Improving the Situation of Roma in Romania" outlines activities without specifying estimated costs, and makes no provision for implementation in the national budget.<sup>227</sup> Throughout the region, inadequate funding has been devoted to raising public awareness of the importance of state-supported minority rights and non-discrimination measures. In Estonia, where the "State-Programme – Integration in Estonian Society 2000–2007"<sup>228</sup> identifies heightened public understanding of the integration process as an important goal, little state funding has been approved for this purpose as of mid-2001. The gap between officially proclaimed aspirations and financial wherewithal is unfortunate. Government programmes that do not obtain some measure of popular support stand little chance of effective implementation,

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<sup>224</sup> Slovak Government, *Resolution No.294/2000 from May 3, 2000, on the Elaboration of the Government Strategy for Addressing Problems of the Romani National Minority into a Package of Concrete Measures for year 2000 – Stage II*, 2000, p. 3: "The Government ... instructs ministers and heads of regional state administration offices ... (B.1) to secure the implementation of the elaborated Strategy II and ... the Plenipotentiary ... (B.2) to co-ordinate the fulfilment of the elaborated Strategy II, (B.3) to prepare information ... on the implementation of the strategy ... and ... (B.4.) to mobilize Romani associations, Romani initiatives and Romani non-governmental organizations to execute the Elaborated Strategy II."

<sup>225</sup> Information from the Office of the Plenipotentiary, Bratislava, 2 March 2001.

<sup>226</sup> OSI Roundtable, Prague, March 2001.

<sup>227</sup> Government of Romania, "Strategy for Improving the Roma Situation", Government Ordinance of 25 April 2001.

<sup>228</sup> Approved on 14 March 2000, <<http://www.riik.ee/saks/ikomisjon/programme.htm>> (accessed: 13 August 2001).

particularly when they are dependent on the cooperation of relatively autonomous local councils.

Third, government institutions responsible for minority affairs have not been granted the legal powers necessary to ensure adequate enforcement of minority protection laws. Thus, to date, no country in the accession region has a functioning official body with specific responsibility to enforce anti-discrimination law or assist victims in seeking legal redress. Such an office, the Council for the Prevention of Discrimination, was due for establishment in Romania by 24 May 2001, but as of August 2001, no steps have been taken to set it up. In the absence of bodies charged with the investigation and prosecution of racial discrimination or racially motivated crimes, the role of the ombudsman is potentially significant. However, no country apart from Hungary has an ombudsman or analogous institution expressly authorised even to receive complaints of minority rights violations. Bulgaria is notable in having no ombudsman at all. In other candidate countries, ombudsmen or similar offices<sup>229</sup> have general responsibility for human rights and/or other issues, including but not limited to minority matters.<sup>230</sup>

Hungary offers a useful example of the challenges governments face in establishing effective institutions. Hungary has established an extensive network of official bodies to ensure minority protection, including a governmental Office for National and Ethnic Minorities (“NEKH”) and an Inter-Ministerial Committee for Roma Affairs (“IMC”); a special Law on Minorities, establishing a system of minority self-governments;<sup>231</sup> and an independent Minority Ombudsman. Moreover, in 1999, the government adopted a comprehensive “Medium Term Action Plan for the Improvement of the Living Conditions of the Roma Minority. The Action Plan outlines measures to be taken in the following areas: education; culture; employment; agriculture and regional development; social, health and housing programs; anti-discrimination; and communication.”<sup>232</sup>

<sup>229</sup> Estonia has a “Legal Chancellor Office”, which fulfils some functions of an ombudsman, as does Latvia’s “National Human Rights Office”. See Estonian Legal Chancellor Act, passed on 25 February 1999 (RT I, 1999, 29, 406), entered into force 1 June 1999; and Latvian Government Regulation No. 204 “On the National Human Rights Office”.

<sup>230</sup> The Polish “Ombudsman for Citizen’s Rights” has carried out meetings with national Roma groups and highlighted their situation. The office receives 30–50 complaints by minorities each year, the majority concerning Roma. Lithuania has an elaborate system of five ombudsmen, but Roma representatives claim to have been unaware of the existence of these ombudsmen. OSI Roundtable, Vilnius, March 2001. The single reference to the Roma minority in the last four annual reports of the outgoing Slovenian Human Rights Ombudsman merely notes that they may submit applications. See *Annual Report 1999 (The Fifth Annual Report – Abbreviated Version)*, Republic of Slovenia, Human Rights Ombudsman, May 2000, p. 33. See <<http://www.varuh-rs.si/slike/annrep99.pdf>> (accessed 3 May 2001). For all four reports, see <<http://www.varuh-rs.si/>> (accessed 3 May 2001).

<sup>231</sup> Act LXXVII of 1993 on the Rights of National and Ethnic Minorities.

<sup>232</sup> Government Resolution No 34/1997 (VIII.30); amended by Government Resolution 1047/1999.

However the IMC has not been able to ensure consistent participation or reporting on the activities or allocation of budgetary resources by the different government ministries assigned responsibilities within the Action Plan.<sup>233</sup> For example, only in June 2001 – four years after it had first been requested to do so – did the Ministry of Agriculture submit to Parliament a proposal to implement the Action Plan’s measures to improve housing conditions for Roma. Even then, in preparing its proposal, the Ministry allegedly failed to consult with other relevant partners – the National Roma minority self-government, other Action Plan implementing Ministries on the IMC, and respective regional governments.<sup>234</sup>

Indeed, Hungary’s institutions have proven better equipped to identify problems than to address them. The Ombudsman, minority self-governments, and NGOs have documented widespread discrimination against Roma in employment, housing, access to goods and services, and education, as well as ill-treatment within the criminal justice system.<sup>235</sup> And yet, there exists no government institution in Hungary responsible for enforcing anti-discrimination norms or assist victims in seeking legal redress; the Ombudsman can do little more than investigate and publicise his findings.<sup>236</sup> Largely as a result of these deficiencies, “[m]ost of the objectives in the Hungarian government’s medium term plan for Roma rights were unmet at the end of 2000.”<sup>237</sup>

In other countries as well, what information is available from official bodies, corroborated by the far more voluminous data reported by NGOs and international monitoring organs, suggests the need for a more effective institutional response to discrimination and minority rights violations. Romania’s Ombudsman’s Office has reported that claims of racial discrimination received by the Office have not been investigated due to the absence of anti-discrimination legal provisions, a situation which the Ordinance, provisionally enacted in the fall of 2000, may alter. Between January 1998 and September 2000, the Bulgarian Parliamentary Committee on Human Rights, Religious Denominations and Petitions of Citizens recorded a total of nine cases of alleged racial discrimination. All were declared unsubstantiated as the committee found no

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<sup>233</sup> For details, see “Report on Hungary”.

<sup>234</sup> B. Berkes, “Luxusgettok putrisorok helyett” (“Luxury ghettos in place of rows of hovels”), *Nepszabadsag*, 5 June 2001, p. 8.

<sup>235</sup> Of 431 complaints received by the Hungarian Minorities Ombudsman in 2000, 291 were lodged by Roma. The respective figures in 1999 were 262 out of 439, and for 1998, 281 out of 409. See *Reports on the Activity of the Minorities Ombudsman for 1998, 1999, and 2000*, Office of the Minorities Ombudsman, Budapest, 2000.

<sup>236</sup> The status, rights and obligations of the Hungarian Minorities Ombudsman are set forth in Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights.

<sup>237</sup> Human Rights Watch, *HRW World Report 2001*, p. 298.

discrimination or insufficient evidence. In Latvia and Estonia, a substantial number of ethnic Russians claim to be victims of discrimination,<sup>238</sup> but court filings and judicial remedies are few.

## B. Civil Society

With official institutions often handicapped by insufficient authority, inadequate funding, and lack of coordination, civil society organisations have assumed substantial responsibility for minority protection activities. Throughout the region, the number of NGOs involved in anti-discrimination work and/or the protection of minority rights has grown markedly in the last ten years. NGOs are responsible for some of the most innovative efforts to improve minority rights protection as well as to provide victims of discrimination with legal advice and assistance. From Bulgaria to the Czech Republic to Hungary, NGOs and public interest attorneys have launched litigation to challenge police abuse, educational segregation, and discrimination against Roma in other fields of public life. In Estonia and Latvia, civil society organisations have provided extensive documentation of the impact of government policies on minority populations in those countries, and in Latvia in particular, have sought relief for individual violations in the European Court of Human Rights.

Still, distribution of government funding for minority protection activities by independent groups is often controversial. With a wide range of organisations competing for limited funds and official recognition, some governments have not successfully dispelled the suspicion of favouritism toward NGOs whose activities do not directly challenge or critique government policies.<sup>239</sup> The problem is compounded where mechanisms for awarding funding are not sufficiently transparent. For example, little information is publicly available concerning the allocation, expenditure and effect of significant EU funding to support implementation of a Latvian Phare programme entitled “Programme to Accelerate the Integration of Minority Groups”.<sup>240</sup>

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<sup>238</sup> 31 percent of ethnic Russians surveyed as part of a January 2000 study considered that they have been discriminated against within the last 3 years, and 36 percent of non-Latvians cited language as the reason for violation of their rights. *Human Rights*, survey by Baltic Data House in December 1999–January 2000.

<sup>239</sup> For example, in Bulgaria, under the government in power until 1997, allegedly “the only Roma group that was accepted as a member of the National Council on Social and Demographic Issues was the pro-socialist Confederation of Roma”, while the present government has “favoured and even helped in the creation of the Social Council ‘Kupate’ [a Roma NGO].” See “Report on Bulgaria”.

<sup>240</sup> The programme was allocated one million Euros in 1998 and one-half million Euros in 1999. For details, see “Report on Latvia”.

EU funding has played a significant role in the support of a number of minority and human rights organisations. And the Commission has encouraged candidate governments to provide opportunities for greater participation of minority NGOs in designing government minority policies. For example, the Commission recently praised the government of Lithuania for adopting a programme on the integration of Roma, but noted that “successful implementation of this programme would benefit from increased consultation with the Roma community.”<sup>241</sup> Nonetheless, both the EU and candidate governments could do more to increase the transparency of decision procedures and to involve minority groups and other civil society organisations more directly in the development, implementation, and evaluation of minority protection programmes. Failure to consult with minority representatives may lead to the adoption of programmes that do little to address the primary needs and concerns of minority communities. In Slovakia, for example, a plethora of health education programmes are carried out on the presumption that the health conditions of Roma can be attributed to poor hygiene habits. As one Roma woman put it, “they all insist on teaching us how to wash our hands and always forget to ask if we have water.”<sup>242</sup>

Building public support for the common democratic values expressed in the Copenhagen political criteria is essential to the success of enlargement. It will require the sustained commitment and effort of the Commission as well as of the governments of candidate States – and the full participation of civil society.

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<sup>241</sup> See *2000 Regular Report on Lithuania*.

<sup>242</sup> Information from I.R., Kezmarok, 13 March 2001.

## IV. Recommendations

The following reports yield a range of possible suggestions for augmenting the contribution of the accession process to minority protection in the candidate States and the EU itself. Following are several of the most important. All begin from the premise that accession is a positive development, whose potential to spark needed reform should be reinforced.

### To the European Union

#### *Clear Standards*

Clarify and articulate in greater detail the substance of the common European standards used to measure the performance of candidate State governments in the field of minority protection.

#### *Universal Application*

Make clear that the political criteria for membership in the European Union are applicable equally to candidates for EU accession and to EU member States.

#### *Monitoring*

Undertake systematic monitoring of government policies and practices on a continuous basis throughout the EU and in the candidate States, to underscore the importance of monitoring per se in consolidating minority protection, and to permit fact-based, competent and non-arbitrary responses as the need arises in any individual State.

#### *Race Equality Directive*

Highlight the importance of non-discrimination specifically, and minority protection more generally, by requiring full and effective transposition of the Directive into national law and institutions prior to accession.

#### *Civil Society Participation*

Involve civil society organisations more directly in the design, development and evaluation of minority protection policies and programmes.

#### *Capacity-Building*

Provide financial and technical assistance for the training of public officials, minority group advocates, lawyers and others in the drafting and application of minority protection legislation.



## To National Governments of EU Candidate States

### *Political Will*

Capitalise upon existing public support for accession to adopt and implement effective minority policy as part of the effort to satisfy the political criteria.

### *Leadership/Public Education*

Provide leadership by senior officials and broad public education in underlining the pervasiveness and unacceptability of racism and discrimination, and the importance of minority protection in the context of the accession process and beyond.

### *Legislation*

As a matter of priority, adopt legislation incorporating all elements of the Race Equality Directive. In addition, enact legislation which incorporates relevant international standards protecting minority rights to choice of identity, language use, education, and access to citizenship and media, and mandating sentencing enhancements for racially-motivated violence.

### *Official Bodies*

Establish, adequately fund and suitably staff public institutions capable of effectively enforcing minority protection laws and policies through monitoring, investigation, and, where appropriate, seeking legal redress for victims of racial or ethnic discrimination.

### *Enforcement*

Improve the quality of enforcement by training police officers, prosecutors, judges and other relevant public officials in – and sanctioning failure to comply with – their respective obligations to secure effective minority protection.

### *Accurate Information*

Consistent with international data protection standards, establish mechanisms for documenting and measuring patterns of discrimination, minority rights violations and racially-motivated violence in all relevant fields.

### *Civil Society Participation*

Involve civil society organisations – and especially minority representatives – more directly in the design, development, funding and evaluation of minority protection policies and programmes.

## Appendix A

## EU Member States: Ratification of International Instruments

	FCNM		ECRML		ICERD Art. 14 Entered into Force	ICCPD	ICCPD - OPT	ECHR		PROTOCOL 12 Signed	ICESCR Ratified	ILO 111 Ratified
	Signed	Ratified	Signed	Ratified				Signed	Ratified			
Austria	01.02.95	31.03.98	05.11.92		09.05.72	10.09.78	10.12.87	13.12.57	03.09.58	04.11.00	10.09.78	10.01.73
Belgium					07.08.75	21.04.83	17.05.94	04.11.50	14.06.55	04.11.00	21.04.83	22.03.77
Denmark	01.02.95	22.09.97	05.11.92	08.09.00	09.12.71	06.01.72	06.01.72	04.11.50	13.04.53		06.01.72	22.06.60
Finland	01.02.95	03.10.97	05.11.92	09.11.94	14.07.70	19.08.75	19.08.75	05.05.89	10.05.90	04.11.00	19.08.75	23.04.70
France			07.05.99		28.07.71	04.11.80	17.02.84	04.11.50	03.05.74		04.11.80	28.05.81
Germany	11.05.95	10.09.97	05.11.92	16.09.98	16.05.69	17.12.73	25.08.93	04.11.50	05.12.52	04.11.00	17.12.73	15.06.61
Greece	22.09.97				18.06.70	05.05.97	05.5.97	28.11.50	28.11.74	04.11.00	16.05.85	07.05.84
Ireland	01.02.95	07.05.99			29.12.00	08.12.89	08.12.89	04.11.50	25.02.53	04.11.00	08.12.89	22.04.99
Italy	01.02.95	03.11.97	27.06.00		05.01.76	15.09.78	15.09.78	04.11.50	26.10.55	04.11.00	15.09.78	12.08.63
Luxembourg	20.07.95		05.11.92		01.05.78	18.08.83	18.08.83	04.11.50	03.09.53	04.11.00	18.08.83	21.03.01
Netherlands	01.02.95		05.11.92	02.05.96	10.12.71	11.12.78	11.12.78	04.11.50	31.08.54	04.11.00	11.12.78	15.03.73
Portugal	01.02.95				24.08.82	15.06.78	03.05.83	22.09.76	09.11.78	04.11.00	31.07.78	19.11.59
Spain	01.02.95	01.09.95	05.11.92	09.04.01	13.09.68	27.04.77	25.01.85	24.11.77	04.10.79		27.04.77	06.11.67
Sweden	01.02.95	09.02.00	09.02.00	09.02.00	06.12.71	06.12.71	06.12.71	28.11.50	04.02.52		06.12.71	20.06.62
United Kingdom	01.02.95	15.01.98	02.03.00	27.03.01	07.03.69	20.05.76		04.11.50	08.03.51		20.05.76	08.06.99

## Abbreviations

FCNM	Framework Convention for the Protection of National Minorities < <a href="http://conventions.coe.int/treaty/EN/searchsig.asp?NT=157&amp;CM=&amp;DF=&gt;">http://conventions.coe.int/treaty/EN/searchsig.asp?NT=157&amp;CM=&amp;DF=&gt;</a> (accessed 26 April 2001).
ECRML	European Charter for Regional or Minority Languages < <a href="http://conventions.coe.int/treaty/EN/searchsig.asp?NT=148&amp;CM=8&amp;DF=26/04/01&gt;">http://conventions.coe.int/treaty/EN/searchsig.asp?NT=148&amp;CM=8&amp;DF=26/04/01&gt;</a> (accessed 26 April 2001).
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination < <a href="http://www.unhcr.ch/pdf/report.pdf">http://www.unhcr.ch/pdf/report.pdf</a> > (accessed 26 April 2001).
ICEDR art 14	Declaration under the Article 14 of ICERD on individual complaints < <a href="http://www.unhcr.ch/html/menu2/8/stat4.htm">http://www.unhcr.ch/html/menu2/8/stat4.htm</a> > (accessed: 11 June 2001).
ICESCR	International Covenant on Economic, Social and Cultural Rights. <i>It enters into force three months after the presentation of the instrument of ratification</i> < <a href="http://www.unhcr.ch/pdf/report.pdf">http://www.unhcr.ch/pdf/report.pdf</a> > (accessed: 11 June 2001).
ICCPR	International Covenant on Civil and Political Rights < <a href="http://www.unhcr.ch/pdf/report.pdf">http://www.unhcr.ch/pdf/report.pdf</a> > (accessed 26 April 2001).
ICCPR-OP1	International Covenant on Civil and Political Rights – First Option < <a href="http://www.unhcr.ch/pdf/report.pdf">http://www.unhcr.ch/pdf/report.pdf</a> > (accessed 26 April 2001).
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms < <a href="http://conventions.coe.int/treaty/EN/searchsig.asp?NT=005&amp;CM=8&amp;DF=27/04/01&gt;">http://conventions.coe.int/treaty/EN/searchsig.asp?NT=005&amp;CM=8&amp;DF=27/04/01&gt;</a> (accessed 27 April 2001).
Protocol No.12 to the ECHR	< <a href="http://conventions.coe.int/treaty/EN/searchsig.asp?NT=177&amp;CM=&amp;DF=4/26/01&gt;">http://conventions.coe.int/treaty/EN/searchsig.asp?NT=177&amp;CM=&amp;DF=4/26/01&gt;</a> (accessed 26 April 2001).
ILO 111	ILO Convention 111 on Discrimination <i>It comes into force for any Member twelve months after the date on which its ratifications have been registered</i> < <a href="http://ilolex.ilo.ch:1567/cgi-tex/convde.pl?C111">http://ilolex.ilo.ch:1567/cgi-tex/convde.pl?C111</a> > (accessed: 11 June 2001).

# Appendix A (continued)

## Candidate States: Ratification of International Instruments

	FCNM		ECRML		ICERD Art. 14 Entered into Force	ICCPD	ICCPR - OPI	ECHR		PROTOCOL 12 Signed	ICESCR Ratified	ILO 111 Ratified
	Signed	Ratified	Signed	Ratified				Signed	Ratified			
Bulgaria	09.10.97	07.05.99	09.11.00		12.05.93	21.09.70	26.03.92	07.05.92	07.09.92		21.09.70	22.07.60
Czech Republic	28.04.95	18.12.97			11.10.00	22.02.93	22.02.93	21.02.91	18.03.92	04.11.00	01.01.93	01.01.93
Estonia	02.02.95	06.01.97			21.10.91	21.10.91	21.10.91	14.05.93	16.04.96	04.11.00	21.10.91	
Hungary	01.02.95	25.09.95	05.11.92	26.04.95	13.09.90	17.01.74	07.09.88	06.11.90	05.11.92	04.11.00	17.01.74	20.06.61
Latvia	11.05.95					14.04.92	22.06.94	10.02.95	27.06.97	04.11.00	14.04.92	27.01.92
Lithuania	01.02.95	25.03.00			10.12.98	20.11.91	20.11.91	14.05.93	20.06.95		20.11.91	2609.94
Poland	01.02.95	20.12.00			01.12.98	18.03.77	07.11.91	26.11.91	19.01.93		18.05.77	30.05.61
Romania	01.02.95	11.05.95	17.07.95			09.12.74	20.07.93	07.10.93	20.06.94	04.11.00	09.12.74	06.06.73
Slovakia	01.02.95	14.09.95	20.02.01		17.03.95	28.05.93	28.05.93	21.02.91	18.03.92	04.11.00	28.05.93	01.01.93
Slovenia	01.02.95	25.03.98	03.07.97	04.10.00		06.07.92	16.07.93	14.05.93	28.06.94	07.03.01	06.07.92	29.05.92

## Abbreviations

FCNM	Framework Convention for the Protection of National Minorities < <a href="http://conventions.coe.int/treaty/EN/searchsig.asp?NT=157&amp;CM=&amp;DF=&gt;">http://conventions.coe.int/treaty/EN/searchsig.asp?NT=157&amp;CM=&amp;DF=&gt;</a> (accessed 26 April 2001).
ECRML	European Charter for Regional or Minority Languages < <a href="http://conventions.coe.int/treaty/EN/searchsig.asp?NT=148&amp;CM=8&amp;DF=26/04/01&gt;">http://conventions.coe.int/treaty/EN/searchsig.asp?NT=148&amp;CM=8&amp;DF=26/04/01&gt;</a> (accessed 26 April 2001).
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination < <a href="http://www.unhcr.ch/pdf/report.pdf">http://www.unhcr.ch/pdf/report.pdf</a> > (accessed 26 April 2001).
ICEDR art 14	Declaration under the Article 14 of ICERD on individual complaints < <a href="http://www.unhcr.ch/html/menu2/8/stat4.htm">http://www.unhcr.ch/html/menu2/8/stat4.htm</a> > (accessed: 11 June 2001).
ICESCR	International Covenant on Economic, Social and Cultural Rights. <i>It enters into force three months after the presentation of the instrument of ratification</i> < <a href="http://www.unhcr.ch/pdf/report.pdf">http://www.unhcr.ch/pdf/report.pdf</a> > (accessed: 11 June 2001).
ICCPR	International Covenant on Civil and Political Rights < <a href="http://www.unhcr.ch/pdf/report.pdf">http://www.unhcr.ch/pdf/report.pdf</a> > (accessed 26 April 2001).
ICCPR-OP1	International Covenant on Civil and Political Rights – First Option < <a href="http://www.unhcr.ch/pdf/report.pdf">http://www.unhcr.ch/pdf/report.pdf</a> > (accessed 26 April 2001).
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms < <a href="http://conventions.coe.int/treaty/EN/searchsig.asp?NT=005&amp;CM=8&amp;DF=27/04/01&gt;">http://conventions.coe.int/treaty/EN/searchsig.asp?NT=005&amp;CM=8&amp;DF=27/04/01&gt;</a> (accessed 27 April 2001).
Protocol No.12 to the ECHR	< <a href="http://conventions.coe.int/treaty/EN/searchsig.asp?NT=177&amp;CM=&amp;DF=4/26/01&gt;">http://conventions.coe.int/treaty/EN/searchsig.asp?NT=177&amp;CM=&amp;DF=4/26/01&gt;</a> (accessed 26 April 2001).
ILO 111	ILO Convention 111 on Discrimination <i>It comes into force for any Member twelve months after the date on which its ratifications have been registered</i> < <a href="http://ilolex.ilo.ch:1567/cgi-tex/convede.pl?C111">http://ilolex.ilo.ch:1567/cgi-tex/convede.pl?C111</a> > (accessed: 11 June 2001).

