



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



Strasbourg, 3 May 2010

CommDH/PositionPaper(2010)3

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POSITIONS ON THE HUMAN RIGHTS OF ROMA

This is a collection of Positions on Roma rights from the Council of Europe Commissioner for Human Rights. It is a short summary of the findings of the Commissioner based on his country-monitoring and thematic reports, issue papers, recommendations, opinions and viewpoints. By collating these findings drawn from the different components of his work, the Commissioner presents a summary of his conclusions and recommendations concerning Roma rights. The Positions will be continuously updated in the further light of the Commissioner's ongoing work.

There is a shameful *lack of implementation* concerning the human rights of Roma. The issue has been put on the agenda of all major international organisations and national governments in Europe, for example through national action plans, but without much impact.

The Roma population – whether citizens, displaced persons or migrants – is worse off than any other group in Europe when it comes to education, health, employment, housing and political participation. Roma continue to suffer from widespread discrimination and anti-Gypsyism which feed the cycle of their disadvantage, exclusion, segregation and marginalisation.

In many countries hate speech, harassment and violence against Roma are commonplace, including alarming levels of violence and abuse by law enforcement officials. In recent years, migration of Roma from certain Council of Europe member states to others has given rise to further anti-Gypsyism and discrimination in receiving states¹.

A comprehensive and human rights-based approach

Today's rhetoric against the Roma is very similar to that used by Nazis and fascists before the mass killings started in the thirties and forties. Once more, it is argued that the Roma are a threat to safety and public health. No distinction is made between a few criminals and the overwhelming majority of the Roma population. This is shameful and dangerous.

A coherent, comprehensive and adequately resourced programme is needed to improve the situation of Roma, addressing problems in different fields of life simultaneously. A lesson from experiences to date is that proactive measures are absolutely crucial. It is not sufficient to remove obstacles - there is a need to compensate for the long history of exclusion and marginalisation through positive action.

A holistic approach is essential due to the inter-linked nature of these problems. For instance, problems in education affect chances of employment, which in turn affect housing, which in turn affect health.

Such an approach would be in accordance with the guidelines contained in Recommendation (2008)5 on policies for Roma and/or Travellers in Europe, adopted by the Council of Europe Committee of Ministers. The member states need to draw upon this Recommendation and promptly implement it.

Holistic strategies need to involve short and long-term action plans, targets and indicators for implementing policies. They need to not only address problems from a social, cultural or economic angle, but must also tackle discrimination and anti-Gypsyism.

In order for such strategies to be effective, the full participation by Roma themselves in the development, implementation and evaluation of the strategies is key. Another key factor is that they be drawn up and implemented in close co-operation with regional and local authorities. It is often the action or inaction of such authorities that has a concrete effect on the daily lives of Roma. The implementation of strategies also needs to be regularly monitored and evaluated.

Member states also need to firmly anchor change by acting promptly to fill the existing serious gaps in the protection of the human rights of Roma. Key steps involve adopting and implementing comprehensive anti-discrimination legislation and adopting Protocol No 12 to the European Convention on Human Rights. Laws against racially motivated violence and hate speech also need to be adopted. It is essential that these laws be fully implemented with effective and accessible

¹ C. Cahn, E. Guild, Study on Recent Migration of Roma in Europe, commissioned by OSCE HCNM and CommHR, 10/12/2008, http://www.coe.int/t/commissioner/Activities/themes/RomaMigration_2009_en.pdf.

remedies available to Roma who allege violations of their human rights. The establishment of low-threshold complaints bodies, such as specialised ombudspersons and anti-discrimination tribunals, are important steps to improving access to justice for Roma. Member states should also sign and ratify the Framework Convention for the Protection of National Minorities, and recognise Roma as a national minority, entitled to the individual and collective rights guaranteed by this Convention.

Roma participation in decision-making

Roma must be seen as key partners and be fully empowered in setting out and implementing the agenda for securing their own rights. All too often Roma themselves have been excluded from discussions on how their situation might be improved. Consultations with experts should always include participants of Roma origin. It is essential that Roma people be fully involved in all decisions concerning them at as grassroots a level as possible. Furthermore, it is critical that a wide range of measures be taken to guarantee the right of Roma to participate in the general administration of public affairs, on an equal footing, be it in elected bodies or in positions within an administration.

Governments should repeal any laws or regulations which discriminate directly or indirectly against Roma in the area of political participation, such as discriminatory regulations regarding voter registration. Other barriers, such as the widespread problem of lack of personal identification documents, must also be addressed as a high priority. More outreach efforts are also needed to secure voter registration. In addition, civic education in Roma communities should be actively promoted by governmental and non-governmental actors; such programs should cover human rights as well as practical aspects of the electoral or judicial systems.

Furthermore, positive steps are needed to promote Roma candidates within political parties and their election at European, national and local levels, for example through reserved seats for Roma representatives in assemblies. Such positive steps are also needed within public administrations to promote the employment of Roma, for instance through the setting of quotas for Roma employment, targeted training or internship programmes for Roma and special efforts to encourage Roma applicants for positions. It is important that such measures also reach Roma women.

It is also essential that mechanisms for equal, direct and open consultation with Roma representatives and communities are established at European, national and local levels. The establishment of consultative or advisory bodies, for instance for Roma inclusion or equality, could give such consultations continuity and promote the legitimacy of Roma representatives. However, permanent consultative bodies need to be complemented by other consultations with different segments of Roma communities, for example between local authorities and the Roma population on housing and other concrete problems. It is crucial that consultations do not just concern a handful of representatives, but a broader range of voices representing different interests and identities within Roma communities, including women and youth. It is also essential that consultation be genuine and meaningful; any tendency towards symbolic action without real content will backfire.

Roma non-governmental organisations should be respected by authorities and supported in their activities. Such organisations are an important form of Roma participation and are themselves key vehicles for further political participation and capacity building of Roma representatives.

Statelessness

Member states need to act with more energy than they have done so far to provide nationality to the tens of thousands of Roma across Europe who are currently stateless. It is an obligation for states to avoid statelessness, including in the context of state succession, i.e. when new states are created. Both the UN Convention on the Rights of the Child and the International Covenant on Civil and Political Rights stipulate that children shall have the right to acquire a nationality. In other words, the host country has an obligation to ensure that children do have a nationality; the fact that their parents are stateless is no excuse.

Access to basic documents

Authorities urgently need to take steps to provide documents to those Roma lacking basic documents, such as birth certificates, personal identity documents, local residence papers and documents related to health and social security benefits. Administrative and financial obstacles preventing Roma from obtaining such basic documents should be removed and awareness raising measures taken to provide Roma with information about procedures for acquiring them. Special attention should be paid to the plight of the thousands of Roma and their families who were forced to move from or within the area of the former Yugoslavia, and who remain in host states for a number of years as legal ghosts.

Health care and social security

Resolving problems related to documents is also key to improving access to health care and social services. Urgent steps have been required in these sectors for many years. In the health sector access to emergency care is vital, but also to regular health care, including preventive care and vaccinations. Refusals by doctors or hospitals to treat Roma patients need to be effectively prevented through anti-discrimination legislation and measures taken to address discriminatory attitudes amongst health care and social service employees. Effective access for Roma to legal aid is another key measure which member states should adopt in this context.

Providing a quality, inclusive education

Education for Roma children must be inclusive and desegregated, and the persistent common practice of special "Roma" classes or schools must be terminated. Comprehensive measures have to be taken to increase the attendance of Roma children in mainstream schools and to deter dropping out. Special attention should be paid to the education of Roma girls, who suffer from double discrimination as Roma and as women.

It is especially important to recognise the value of pre-school education, in order to lower the entry threshold for children coming from a background where there is no tradition for studying and to familiarise children with the school institution. Pre-school classes may also play an especially important role in overcoming language barriers Roma children might face.

With respect to all levels of education, it is crucial that steps be taken to eliminate barriers to school attendance, such as:

- ensuring that financial considerations do not impede school attendance, via provisions for free schooling, financial assistance with school supplies and materials, and financial subsidies to parents;
- removing legal and bureaucratic obstacles to school attendance, such as the lack of identity documents and residence permits;
- providing Roma children with transportation to schools;
- placing an obligation on schools to enrol students regardless of their administrative status;
- taking firm measures to address the harassment of Roma children in schools.

In recent years, a wide range of measures to improve Roma participation and achievement in schools have been tested in different locations. Some successful measures that have been identified include:

- special training for teachers on how to handle classes with diverse backgrounds;
- teachers and teaching assistants who provide pedagogical support to Roma children and other children experiencing particular academic difficulties;
- Roma class assistants;
- Roma mediators to liaise between teachers, schools and Roma families;
- materials in the mother tongues of Roma children.

Today there are not many Roma teachers and it is critical that their numbers increase. More could also be done to ensure that other staff with Roma backgrounds are recruited in schools. Furthermore, in certain Roma communities, it is crucial to raise the awareness of Roma parents, who themselves might not have had the opportunity to attend school, of the necessity and benefits of adequate education for their children. In addition, it is extremely important that schools establish contact and build relationships with Roma parents. As this has not worked well to date, greater efforts are necessary. The adult generation must also be welcomed and offered, belatedly, an opportunity for basic education - if they so wish.

Where segregated education still exists in one form or another, it must be replaced with regular integrated education and, where appropriate, banned through legislation. It is essential that desegregation be combined with the necessary support measures for children in order for them to integrate into mainstream classes. Special classes or curricula for Roma are sometimes presented as a means of overcoming language barriers or remedying the lack of pre-school attendance of Roma children. While it is necessary to respond to such challenges, the systematic placement of Roma children in classes which follow a simplified or a special Romani-language curriculum, while isolating them from other pupils, is an inappropriate response and needs to cease. Special classes, if and when needed, should never become a tool of segregation. The necessary resources must be provided for academic assistance and support to the most disadvantaged children so that this flagrant discrimination is halted.

Furthermore, the practice of improperly placing Roma children in special schools or classes for pupils with intellectual disabilities needs to cease immediately. Selection tests should differentiate between children with intellectual impairment and children whose knowledge required for school was hindered by their environment but are otherwise fully capable. Proper pedagogical and psychological counselling and assessment should take place prior to any placement of a child in a special class.

Access to adequate housing

Concerted and sustained efforts are required at local, national and pan-European level to end the housing crisis of Roma. The rights of Roma to live in adequate housing in accordance with international legal standards need to be guaranteed. All public utilities, including water, electricity, collection of refuse and maintenance of access roads need to be provided to Roma settlements. Furthermore, settlements that lack recognised tenure should be formalised and brought up to standards adequate to ensure the dignity of the inhabitants.

Forced evictions carried out in violation of human rights standards and procedural safeguards must be stopped. The consequence of these standards is that forced evictions can only be carried out in exceptional cases and in a reasonable manner. Everyone concerned must be able to access courts to review the legality of planned evictions before they are carried out – this requires the existence of both legal remedies and legal aid possibilities. Alternatives to evictions should be sought in genuine consultation with the people affected, while compensation and adequate resettlement have to be offered when forced evictions take place. These standards also apply to local authorities. That abusive decisions are sometimes taken at the local level does not absolve central government from responsibility under its international obligations. The state should exercise oversight and, if necessary, regulate local action. States should also bring their legal protection against forced evictions into line with international law, notably with the case law of the European Court of Human Rights and of the European Committee of Social Rights. They are also encouraged to apply the Basic Principles and Guidelines on Development-Based Evictions and Displacement prepared by the Special Rapporteur under the auspices of the UN Human Rights Council².

In countries where there is a migrant Traveller population, there should be a statutory obligation on local authorities to provide short and long-term caravan sites, that meet basic standards of decency.

². Annex 1 of the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18

Local authorities should receive financial assistance for constructing or laying out those sites. Furthermore, the housing of Travellers should not be approached through the unique lens of 'halting sites', but possibilities for Travellers to live on private land in caravans must be included in urban planning and made possible in practice.

Access to employment

Measures are necessary to combat the discrimination that Roma face in access to employment. This can be done through effective anti-discrimination legislation, the identification and removal of discriminatory barriers (such as regulations that disproportionately affect Roma businesses) and targeted financial help. Funds could be allocated to developing programmes and various types of assistance that encourage the creation of enterprises, the recruitment of Roma in enterprises or administrative departments, or devising specific training programmes.

There is also a pressing need to increase the number and improve the quality of public vocational training programmes for Roma. Furthermore, measures to facilitate access to loans by Roma are needed, for example by making provisions for direct financial assistance and/or providing partial government guarantees for loans contracted between Roma enterprises and banking institutions. Consideration might also be given to granting tax breaks for entrepreneurs who employ Roma.

Police harassment and abuse of Roma

Firm action needs to be taken to put an end to all forms of police violence and abuse directed towards Roma, including unwarranted police raids, disproportionate use of physical force during questioning, insults, beatings, and disproportionate use of firearms. All such actions need to be effectively investigated and appropriately proscribed, in full compliance with the case law of the European Court of Human Rights. Where police actions are of a criminal nature, they need to be fully investigated, prosecuted, and punished. It must be ensured that investigations are conducted by independent and impartial bodies. In addition, it is important that high level police officials make it clear that discriminatory and abusive actions will not be tolerated. Police should be provided with training in non-discriminatory policing and policing in a diverse society. Members of Roma communities should be recruited into the police.

Roma should not be subjected to any kind of policing that would differ from that encountered by the general population.

Racial violence

The European Court of Human Rights has ruled that: "Racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction."³ Political leaders need to unequivocally and publicly condemn all forms of violence targeting Roma. Racial violence should be designated as a criminal offence so as to strengthen the relevant legal provisions and deliver a clear message to perpetrators. Racial motivation should also be considered as an aggravating circumstance in the sentencing of criminal offences. In practice, allegations of racial violence towards Roma must be thoroughly and systematically investigated and, where appropriate, prosecuted. Furthermore, proactive steps should be taken to encourage victims to report more incidents.

³. *Nachova and others v. Bulgaria*, Grand Chamber (6 July 2005).

Hate speech and anti-Gypsyism

It is absolutely essential to combat anti-Gypsyism.

Without changes in attitudes within the majority population, all programmes aimed at improving the situation of the Roma people are bound to fail. It is therefore important to raise public awareness about Roma history and the diversity of their identities. Knowledge about the cruelties and the genocide that Roma have suffered should also be disseminated.⁴ Such information should be included in the school curriculum.

There is a close link between hate crimes and hate speech. Rhetoric from some politicians and xenophobic media has revived age-old stereotypes about the Roma and this in turn has “legitimised” actions, sometimes violent, against Roma individuals. Media professionals should exercise particular vigilance to avoid promoting negative stereotypes about Roma and instead provide coverage that is balanced, impartial and promotes an atmosphere of appreciation of diversity.

Hate speech and the propagation of negative stereotypes about Roma must be stopped. It is crucial that leading politicians and other opinion makers avoid anti-Roma rhetoric and, instead, stand up for the principles of non-discrimination, tolerance and respect for people from another background. Possible ways to promote this could be through reconciliation processes and apologies concerning the exclusion and persecution the Roma people have suffered.

⁴. The Council of Europe Factsheets on Roma History are an excellent tool that may be used in this domain.

KEY RECOMMENDATIONS

Council of Europe member states should adopt comprehensive, coherent and adequately resourced strategies to improve the situation of Roma. These need to include positive measures and to tackle discrimination and anti-Gypsyism. States also need to firmly anchor change through adopting and fully implementing comprehensive anti-discrimination legislation and laws against racially motivated violence and hate speech.

Roma must be empowered as key partners in the implementation of their rights and must be allowed to take an active part in the administration of public affairs. Political participation, voter registration and civic education should be promoted, and mechanisms for equal, direct and open consultation with Roma representatives and communities should be established at European, national and local levels.

Member states must take steps to put an end to the problem of de iure or de facto statelessness still affecting many Roma.

Authorities must take urgent steps to provide basic documents, as well as effective access to health care and social security, to Roma who lack them. Ensuring access for Roma to legal aid is one of the key measures in this context.

The education of Roma children should be inclusive and desegregated; this entails taking steps to increase the attendance of Roma children in mainstream schools and to prevent dropping out. Particular attention should be paid to promoting the education of Roma girls. Pre-school education should be encouraged and barriers to school attendance must be eliminated. Furthermore a range of positive measures are needed, providing additional support and assistance to Roma and teachers and improving mutual communication.

Authorities must guarantee the rights of Roma to live with dignity in adequate housing, including the provision of all public utilities. Roma settlements lacking recognised tenure should be formalised, and forced evictions carried out in violation of human rights standards and procedural safeguards must be stopped.

Sufficient short and long-term caravan sites in line with basic standards of decency should be provided for Travellers as well as other housing possibilities enabling them to live on private land in caravans.

Access to employment should be facilitated through effective anti-discrimination legislation, the identification and removal of discriminatory barriers and targeted financial help, including tax breaks. It is also important to further develop vocational training.

States must take firm action against all forms of police violence and abuse directed towards Roma, through adequate investigations and sanctions. Police training should be oriented towards non-discriminatory policing and members of Roma communities should be recruited into the police.

Vigorous measures are needed to combat racially-motivated violence against Roma, including unequivocal condemnation by political leaders, penalising such violence, systematically investigating and prosecuting all offences, and encouraging victims to report incidents.

Sustained efforts are needed to eliminate negative stereotyping of Roma from political discourse and the media. A message of non-discrimination, tolerance and respect for people from another background should be promoted. It is also essential to raise public awareness about Roma history and the diversity of their identities, as well as the persecutions and genocide that they have suffered.

