
Recommendation CM/Rec(2017)10 of the Committee of Ministers to member States on improving access to justice for Roma and Travellers in Europe

*(Adopted by the Committee of Ministers on 17 October 2017
at the 1297th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recognising that Roma and Travellers¹ continue to face widespread and enduring anti-Gypsyism, which entails, *inter alia*, widespread discrimination and other violations of their rights, while at the same time creating barriers which prevent them from accessing justice;

Recalling that, under the European Convention on Human Rights (ETS No. 5, hereinafter “the Convention”), member States have committed to guarantee human rights and fundamental freedoms, and that the European Court of Human Rights (hereinafter “the Court”) has noted on several occasions that Roma and Travellers have become a specific disadvantaged and vulnerable minority who therefore require special protection;

Recalling that access to justice is an inherent aspect of the rule of law and a fundamental requirement of any democratic society, and that the right of access to justice and to a fair hearing are guaranteed under Article 6 of the Convention and must be secured for all without discrimination, in accordance with Article 14 of the Convention;

Recalling that Roma and Traveller women face compounded barriers in their access to justice resulting from a number of inequalities at the legal, institutional, structural, socio-economic and cultural levels, and that these obstacles are especially serious for women and girls who are victims of violence;

Recalling the Committee of Ministers' Recommendation CM/Rec(2012)9 on mediation as an effective tool for promoting respect for human rights and social inclusion of Roma, Recommendation CM/Rec(2009)4 on the education of Roma and Travellers in Europe, Recommendation CM/Rec(2008)5 on policies for Roma and/or Travellers in Europe, Recommendation Rec(2006)10 on better access to health care for Roma and Travellers in Europe, Recommendation Rec(2005)4 on improving the housing conditions of Roma and Travellers in Europe, Recommendation Rec(2004)14 on the movement and encampment of Travellers in Europe, Recommendation Rec(2001)17 on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe, Recommendation Rec(2000)4 on the education of Roma/Gypsy children in Europe, Recommendation Rec(83)1 on stateless nomads and nomads of undetermined nationality, and Resolution Res(75)13 containing recommendations on the social situation of nomads in Europe;

¹ The terms “Roma and Travellers” are being used at the Council of Europe to encompass the wide diversity of the groups covered by the work of the Council of Europe in this field: on the one hand a) Roma, Sinti/Manush, Calé, Kaale, Romanichals, Boyash/Rudari; b) Balkan Egyptians (Egyptians and Ashkali); c) Eastern groups (Dom, Lom and Abdal); and, on the other hand, groups such as Travellers, Yenish, and the populations designated under the administrative term “Gens du voyage”, as well as persons who identify themselves as Gypsies.

Referring to the Committee of Ministers' Recommendation Rec(81)7 on measures facilitating access to justice, Resolutions Res(76)5 on legal aid in civil, commercial and administrative matters and Resolution Res(78)8 on legal aid and advice, and to the United Nations resolutions on human rights and extreme poverty, in particular Resolution 1992/11 of 21 February 1992 of the Commission on Human Rights and Resolution A/RES/46/121 of 17 December 1991 of the General Assembly;

Bearing in mind Parliamentary Assembly Resolution 2054 (2015) on "Equality and non-discrimination in the access to justice", Recommendation 2003 (2012) on "Roma migrants in Europe", Recommendation 1941 (2010) on "Roma asylum seekers in Europe", Recommendation 1557 (2002) on "The legal situation of the Roma in Europe", Recommendation 1203 (1993) on "Gypsies in Europe", and Recommendation 563 (1969) on "The situation of Gypsies and other travellers in Europe";

Recalling the Congress of Local and Regional Authorities of the Council of Europe Recommendation 315 (2011) and Resolution 333 (2011) on "The situation of Roma in Europe: a challenge for local and regional authorities", and Resolution 249 (1993) on "Gypsies in Europe: the role and responsibility of local and regional authorities";

Recalling the European Commission against Racism and Intolerance (ECRI) General Policy Recommendation No. 3 on combating racism and intolerance against Roma/Gypsies, General Policy Recommendation No. 13 on combating anti-Gypsyism and discrimination against Roma, and General Policy Recommendation No. 15 on combating hate speech;

Considering that court procedures are often so complex, time-consuming and costly that private individuals, especially those in an economically or socially vulnerable position, and particularly those facing discrimination, encounter serious difficulties in the exercise of their rights in member States;

Recalling the Council of Europe Strategy for Gender Equality 2014-2017 and its objectives to guarantee the equal access of women to justice, and to ensure the integration of a gender equality perspective in all policies and measures;

Considering that Roma and Traveller women and girls face specific and serious forms of violence based on gender, as defined by the Council of Europe Convention on Combatting Violence against Women and Domestic Violence (CETS No. 210), and recalling that Article 48 of this convention prohibits the use of mandatory alternative dispute resolution in relation to all forms of violence against women and girls;

Bearing in mind that Goal 16 of the Sustainable Development Goals, included in the United Nations 2030 Agenda for Sustainable Development (A/RES/70/1), is to "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels";

Bearing in mind the principles relating to the status of national human rights institutions ("the Paris Principles"), adopted in the framework of United Nations General Assembly Resolution 48/134 of 20 December 1993, ECRI General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, and ECRI General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination;

Recalling General Recommendation No. 33 on women's access to justice, adopted by the United Nations Committee on the Elimination of Discrimination against Women (2015), which states that, "a number of obstacles and restrictions ... impede women from realizing their right of access to justice on a basis of equality", and that, "[t]hese obstacles occur in a structural context of discrimination and inequality, due to factors such as gender stereotyping, discriminatory laws, intersecting or compounded discrimination, procedural and evidentiary requirements and practices, and a failure to systematically ensure that judicial mechanisms are physically, economically, socially and culturally accessible to all women";

Referring to the study prepared by the international movement ATD Fourth World entitled “Towards justice accessible to all: legal aid machinery and certain local initiatives as seen by families affected by severe poverty” (H (92) 2), to the Council of Europe handbook for lawyers entitled “Ensuring access to rights for Roma and Travellers”, to the report of the 2015 Council of Europe Conference entitled “Towards Guaranteeing Equal Access of Women to Justice”, and the “Handbook on access to justice in Europe” published by the European Union Agency for Fundamental Rights (FRA);

Recognising that different approaches have been adopted in different member States in order to secure access to justice for Roma and Travellers, which may include measures which target Roma and Travellers directly, or which instead take a universalist approach in which there is no ethnic targeting, but which may instead target certain geographic areas, and/or which target certain social, economic, linguistic, or national groups;

Recognising that many Roma and Travellers are subjected to intersectional forms of discrimination, for example based not only on ethnicity but also based on sex, gender, sexual orientation, gender identity, age, disability, nationality (or lack thereof), residence status or religion;

Considering that this recommendation is intended to improve, especially with regard to the most vulnerable Roma and Travellers, existing legal-advice and legal-aid systems, and therefore to complement existing machinery with regard to the other categories of people for which the systems were designed;

Aware that people from disadvantaged communities such as Roma and Travellers are more vulnerable to violence, discrimination and exclusion, contrary to their legal rights, and that it is therefore important to take all necessary steps with a view to eliminating discriminatory obstacles to legal proceedings, particularly anti-Gypsyism, and that the existence of appropriate systems of legal aid will contribute to the achievement of this aim;

Recognising that many Roma and Travellers are motivated to contribute to the improvement of their own situations and those of their communities by ensuring remedies for violations of their rights;

Considering the case law of the Court and of other relevant international bodies, which have contributed to the improvement of the protection of the rights of Roma and Travellers;

Having further regard to the Strasbourg Declaration on Roma, adopted by the Committee of Ministers (CM(2010)133-final) on 20 October 2010, in which the member States of the Council of Europe agreed to adopt and effectively implement anti-discrimination legislation, including in the field of employment, access to justice, the provision of goods and services, such as access to housing and key public services, such as health care and education;

Considering the Thematic Action Plan on the Inclusion of Roma and Travellers (2016-2019), approved by the Committee of Ministers on 4 March 2016 (Del/Dec (2016)1249/6.5) to implement the Strasbourg Declaration on Roma;

Taking into account the Framework Convention for the Protection of National Minorities (ETS No. 157), the (revised) European Social Charter (ETS No. 163), and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence;

Bearing in mind the Declaration of the Committee of Ministers on the Rise of Anti-Gypsyism and Racist Violence against Roma in Europe, adopted on 1 February 2012;

Acknowledging the 2003 Action Plan on Improving the Situation of Roma and Sinti within the Organization for Security and Co-operation in Europe (OSCE) Area, the European Union Framework on National Roma Integration Strategies, the Council of Europe Strategy on the Advancement of Romani Women and Girls 2014-2020, and the joint Council of Europe-European Commission programme Access of Roma and Traveller Women to Justice (JUSTROM);

Considering the work of the European Commission for the Efficiency of Justice (CEPEJ) to improve the efficiency and functioning of justice in the member States and to develop the implementation of the instruments adopted by the Council of Europe to this end;

Bearing in mind the work of the Council of Europe, particularly through the HELP Programme to enhance the capacity of judges, lawyers and prosecutors in all 47 member States to apply the European Convention on Human Rights in their daily practice at national level;

Bearing in mind that national law and practice in the member States of the Council of Europe require different approaches to the collection of data disaggregated by race and ethnicity, and that it may be legally impossible or inappropriate to process such sensitive personal data,

Recommends that governments of member States, with due regard for their constitutional systems and, where appropriate, to their respective national, regional, and local circumstances:

1. ensure that when taking all the steps necessary to facilitate equal access to justice for Roma and Travellers, including those set out below, particular attention is paid to the situation of women and girls, young people, people with disabilities, and Roma and Travellers who might be vulnerable to intersectional forms of violence and discrimination, and at risk of poverty or social exclusion, including by having due regard to the impact of all practices, policies, and rules concerning access to justice for these groups;
2. facilitate equal access to legal aid or other free legal services for Roma and Travellers by:
 - a. considering whether and how to assess the use of legal aid by Roma and Travellers by collecting data, to the extent possible under national law and practice, disaggregated by sex and by ethnicity or, if collection of data disaggregated by ethnicity is not compatible with the State's approach to combating discrimination, by collecting data based on the civil status information available in that State (such as age, sex place of birth, nationality, occupation, income), and publishing that data, while at all times ensuring adherence to data-protection requirements;
 - b. conducting an analysis of the legal issues likely to most significantly affect Roma and Travellers, and of the material scope of their legal aid systems, and considering whether to enlarge the material scope of legal aid to cover such matters so as to avoid indirect discrimination, including intersectional discrimination, against Roma and Travellers;
 - c. assessing the impact of eligibility criteria for access to legal aid and how they are applied in practice to Roma and Travellers, to determine whether they result in a disproportionate refusal of legal aid to Roma and Travellers, and to determine whether the criteria concerned are justified or need to be revised;
 - d. reviewing the criteria for refusing legal aid with regard to cases dealing with problems that often affect, or are likely to affect, Roma and Travellers, on the basis of publicly available information, and reviewing how those criteria are applied in practice, to ensure that they do not result in a disproportionate refusal of legal aid to Roma and Travellers, including women and girls, and determining whether those criteria and their application are justified, to guarantee the inclusion of Roma and Travellers who are exposed to multiple and intersecting forms of discrimination;
 - e. ensuring that those administering the legal aid system are aware of the nature and scale of anti-Gypsyism and the situation of Roma and Travellers, and are conscious of their duty to ensure justice for all, including Roma and Travellers;
 - f. ensuring that information on legal aid is available in an accessible format, and promoting awareness of the legal aid system and how to access it in a way that is designed to ensure that Roma and Travellers are aware of the possibility of obtaining legal aid;
 - g. ensuring that free or reduced-cost legal advice services are accessible to Roma and Travellers in the light of their particular needs and social and economic circumstances;
 - h. promoting the setting up of legal advice centres so as to ensure that Roma and Travellers have easy access to them and that staff at such centres are trained on gender equality, gender-based violence and anti-discrimination legislation;

- i. considering ratifying, if they have not yet done so, the European Charter for Regional or Minority Languages (ETS No. 148) and, subject to conditions stipulated in Article 9 of the Charter; considering taking measures to provide that the courts conduct proceedings in the appropriate language for Roma and Travellers through the use of interpreters and translations in criminal and civil proceedings and administrative matters, at the request of Roma and Travellers when they stand as parties in proceedings;
 - j. working with bar associations and similar professional associations of lawyers, as well as law faculties, to incentivise law students and lawyers to provide free or low-cost legal services that are accessible to Roma and Travellers in the light of their particular needs and social and economic circumstances, and providing means and facilities (for example premises, interpretation) to enable them to do so;
 3. facilitate equal access to legal services for Roma and Travellers by:
 - a. ensuring that any mediators and similar professionals working with Roma and Travellers are involved in facilitating their access to justice and are provided with training when necessary;
 - b. promoting legal training that is accessible to Roma and Travellers, so that they can serve as paralegals, or work in a similar capacity, in accordance with applicable regulations on the provision of legal services, including, where appropriate, by promoting the creation of paralegal projects in Roma and Traveller communities;
 - c. encouraging law faculties and other institutions preparing the training of people who work in the legal profession and/or justice systems to make themselves aware of the nature and scale of anti-Gypsyism and the situation of Roma and Travellers, including in relation to multiple and intersecting forms of discrimination, and to take steps to ensure that their institutions are accessible to Roma and Travellers;
 - d. addressing the negative stereotypes affecting Roma and Traveller women and girls in relation to their sex and minority status;
 - e. encouraging law faculties and other educational institutions, in co-operation with non-governmental organisations – including Roma- and Traveller-based associations and specialised women's organisations, as well as bar associations and other similar professional associations of lawyers – to include the following in their training programmes (including their continuing professional development programmes): anti-discrimination rules at national, European, and international levels; legislation on gender equality and on violence against women; the case law of the Court relating to Roma and Travellers; other areas of law that particularly affect Roma and Travellers; information about the nature and scale of anti-Gypsyism and the history and the current situation of Roma and Travellers; and the role of the legal profession in protecting the rights of minorities, including Roma and Travellers;
 - f. supporting the work of civil society organisations that provide legal advice and assistance, in particular in cases of gender-based violence and discrimination;
 4. facilitate equal access to quasi-judicial methods of conflict resolution, including alternative dispute resolution, for Roma and Travellers by:
 - a. considering whether and how to assess the use of quasi-judicial methods of conflict resolution, including alternative dispute resolution, by Roma and Travellers by collecting data, to the extent possible under national law and practice, disaggregated by sex and by ethnicity or, if collection of data disaggregated by ethnicity is not compatible with the State's approach to combating discrimination, by collecting data based on the civil status information available in that State (such as age, sex, place of birth, nationality, occupation, income), and publishing that data, while at all times ensuring adherence to data protection requirements;

- b. ensuring that alternative dispute resolution professionals (for example arbitrators, mediators), and public bodies that engage in conflict resolution (for example, bodies promoting equality, ombudspersons) are aware of the nature and scale of anti-Gypsyism and the situation of Roma and Travellers, and are taking steps to ensure that their institutions are accessible to Roma and Travellers;
 - c. promoting awareness among the Roma and Traveller community of quasi-judicial methods of conflict resolution and how to access them;
 - d. where there are existing institutions or programmes that promote access to justice and/or engage in conflict resolution for groups targeted by specific forms of discrimination (for example anti-Semitism or Islamophobia), establishing equivalent institutions or programmes for anti-Gypsyism;
 - e. assessing the competence of state bodies such as ombudspersons, equality bodies, and national human rights institutions to resolve disputes that are particularly likely to affect Roma and Travellers, and considering increasing their powers to do so, in accordance with the Paris Principles and Council of Europe standards;
 - f. ensuring complete independence and adequate resources for State bodies such as ombudspersons, equality bodies and national human rights institutions so that they are seen as safe places to report discrimination and human rights abuse and can effectively fulfil their mandate;
5. facilitate equal access to court and ensure the effectiveness of judicial remedies for Roma and Travellers by:
- a. assessing, to the extent possible, the use of courts and tribunals (focusing on the most relevant bodies) by Roma and Travellers on the basis of publicly available court documents, and encouraging academic researchers and non-governmental organisations to conduct their own studies on the subject, and publishing the resulting data;
 - b. increasing awareness of the different aspects of access to court and judicial remedies for Roma and Traveller women and girls, including issues such as judicial gender stereotyping, legal literacy, practical barriers, and the way courts address and punish gender-based discrimination and violence against Roma and Traveller women and girls;
 - c. ensuring that organisations such as associations, trade unions, bodies for the promotion of equal treatment and other legal entities which have, according to criteria laid down by national law, a legitimate interest in combating racism and racial discrimination, may engage either on behalf of or in support of Roma and Travellers, with their approval, in any judicial and/or administrative procedure provided for the enforcement of anti-discrimination provisions, or intervene in such procedures, and considering allowing such organisations to bring complaints on behalf of Roma and Travellers, including criminal complaints, even if no specific victim is referred to, without prejudice to national rules of procedure concerning representation and defence before the courts;
 - d. working with judicial training academies, human resources departments within justice ministries and others to ensure that all actors in the judicial system, including judges, prosecutors and court staff, are provided with continuous training on non-discrimination, and, in particular, are aware of the nature and scale of anti-Gypsyism and the situation of Roma and Travellers, including in relation to multiple and intersecting forms of discrimination, and that they make ongoing efforts to ensure that their institutions are accessible to Roma and Travellers;

- e. analysing legislation and case law that is likely, on the basis of publicly available information, to be of particular importance to Roma and Travellers and working with judicial academies, judges' associations and similar bodies to ensure that such legislation and case law are well known and understood;
- f. assessing, to the extent possible, the effectiveness, proportionality, and dissuasiveness of remedies applied by courts in cases involving discrimination, particularly discrimination on grounds of Roma or Traveller identity, on the basis of publicly available information, and publishing the results of those assessments, including sex-disaggregated data;
- g. analysing the systems in place to provide individual support for litigants and others participating in legal proceedings to ensure that they are inclusive of Roma and Travellers, and taking measures to improve them where needed;
- h. adopting measures to encourage victims of hate crimes and discrimination, including Roma and Travellers, to report such incidents to the appropriate authorities and providing opportunities for third parties to report these incidents on their behalf;
- i. protecting litigants and witnesses, including Roma and Travellers, from threats, harassment, and other forms of prejudice before, during and after legal proceedings, and, where necessary, examining the effectiveness of such systems;
- j. considering whether and how to assess if procedural formalities for accessing court, including court fees and administrative procedures, affect Roma and Travellers, and, if necessary, taking steps to change those formalities to make courts more accessible to Roma and Travellers, including economically dependent women and girl applicants;
- k. ensuring co-operation with non-governmental organisations, including Roma and Traveller organisations and specialised women's organisations, in developing support mechanisms, outreach and awareness-raising programmes to facilitate access to justice;
- l. ensuring that where legislative texts refer to other specific forms of discrimination targeting particular groups (for example, anti-Semitism, Islamophobia, Christianophobia, gender-based discrimination), those texts refer to anti-Gypsyism on an equal footing;
- m. considering ratifying Protocol No. 12 to the European Convention on Human Rights (ETS No. 177), and the Framework Convention for the Protection of National Minorities, if they have not yet done so;
- n. consider ratifying, if they have not yet done so, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, and taking necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes in relation to all forms of violence against Roma and Traveller women and girls covered by the scope of that convention;
- o. adopting comprehensive legislation against racism and racial discrimination, if such legislation does not already exist or is incomplete, with a view to combating discrimination against Roma and Travellers;
- p. ensuring that all Roma and Travellers are registered at birth and have any necessary identity documents so that their access to justice is not hindered by lack of these documents according to the criteria laid down by national law;
- q. promoting the dissemination and exchange of promising practices in access to justice for Roma and Travellers;
- r. assessing the effectiveness of the systems in place for disciplining judges, lawyers, and court personnel who discriminate against or otherwise act inappropriately towards Roma and Travellers, and working with the bodies responsible for administering those systems to improve them if necessary.