



Europe

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It is estimated that more than 100 million Europeans, approximately every seventh person in Europe, belongs to a minority. Yet in spite of Europe boasting the most robust instruments and mechanisms for the protection of minority rights, minority communities continued to face discrimination, hate crimes, segregation, intolerance and other violations of their minority rights throughout Europe in 2008. Minority women also continued to face multiple forms of discrimination, on the basis of their gender and their membership of an ethnic and religious group, including in access to education, employment and health services. Violence motivated by religious intolerance continued to be reported in many countries, and a rise in racist and xenophobic violence was noted. The conflict which broke out between Georgia and Russia in the summer of 2008 provided an extreme example of a situation in which the violation of minority rights plays an important, though by no means exclusive, role in sparking conflict.

As the continent plunged into economic recession, the crisis contributed to the strengthening of the far right discourse, further marginalizing minorities and increasing their vulnerability. In Russia, migrants already facing xenophobia and violence from extremist groups have also been singled out as scapegoats by the government in reference to the global economic crisis. According to some reports, in November 2008 alone, 18 persons suffered racist violence in Russia, causing three deaths. Similarly, in Ukraine, several foreigners have been murdered because of the colour of their skin, while there has been a marked increase in attacks on members of ethnic and religious minorities. The majority of victims have been of African and Asian origin. Violence against Jews also persisted and some members of Roma communities, according to reports, have been fingerprinted and photographed by the police apparently because of their ethnic identity.

Attacks against migrant workers have also been reported in the United Kingdom. In Germany, members of Turkish communities faced harassment and violence in many parts of the country and immigrant-run businesses came under attack. Members of minorities are routinely referred to as *Ausländer* ('foreigner') regardless of their actual citizenship status. In Ireland, the most significant victims of racist violence were black African males, followed by persons of Asian origin, members of the Traveller community and migrant workers from the

new European Union (EU) member states. There are reports in Latvia of neo-Nazis attacking Roma with increasing regularity. In France, 'visible minorities' are twice as likely to be stopped by police for questioning.

Disaggregated data collection, which would enable systematic monitoring, and the articulation of effective policies to tackle discrimination, social exclusion, hate crimes and other types of violations, remains lacking. Data protection legislation is often cited as the legal barrier to collection of data about an individual's ethnic origin. Bodies such as the Advisory Committee to the Framework Convention for the Protection of National Minorities of the Council of Europe (FCNM) and the EU Agency for Fundamental Rights (FRA) have continuously warned against this deficiency. Their monitoring efforts are hampered by the fact that member states often do not have official or even unofficial data and statistics in a variety of relevant fields, and where data do exist they are not comparable because a uniform data collection methodology across member states does not exist. Likewise, the UN Committee on the Elimination of Discrimination Against Women (CEDAW) has repeatedly regretted the lack of gender disaggregated data in a range of areas, such as the prevalence of female genital mutilation on women and girls and access to health services for migrants, asylum seekers and refugee women living in Germany; access to employment, health care, education and social benefits of ethnic and religious minority women in Armenia; and the participation of migrant and minority women in political and public life, as well as in academia in Finland.

Where laws and policies are in place, often the local authorities show limited commitment to their implementation or actively obstruct it. In Austria's federal state of Carinthia, which has a right-wing government, the 2001 Constitutional Court's decision on bilingual signposting is still not implemented. Also in Carinthia a far-right party presented a draft law designed to prohibit 'unusual' buildings that fail to fit in with traditional architecture. This would make it impossible to erect mosques and minarets in Carinthia, home to some 11,000 Muslims. The law was adopted in February 2008. In Hungary, efforts of central authorities in the fields of education and housing are often hampered by the way in which local authorities put the relevant measure into practice. In Greece, gov-

ernment policies to improve the living conditions and end the segregation of Roma in certain public schools are subverted and defied by local authorities responsive to local prejudices, but their effectiveness also comes into question given the prejudicial attitudes of the officials in charge. During a meeting with the United Nations (UN) Independent Expert on Minority Issues (IEMI), one official said, 'The Greek state would like to integrate Roma fully, but they don't like that a different style of life is imposed on them.' On a positive note, however, CEDAW noted the increased supportive measures in Finland for Sami women regarding social and health services, and the implementation programme drawn up by municipalities together with the Sami council, although difficulties in accessing adequate health care persist.

The international standard of the minority right to participation benefited from its further elaboration by the Advisory Committee to the FCNM in the Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs, published in February 2008. Reliable and easily accessible data and comprehensive legislation prohibiting discrimination have been cited as essential preconditions for developing measures ensuring effective participation. As regards political participation, several developments took place. For the first time, a member of the Roma minority became a member of parliament in Croatia. Discussions were ongoing in Macedonia regarding the adoption of a new elections law which would reserve seats for smaller minorities accounting for less than 20 per cent of the population. (Ethnic Albanians do not enjoy special protection in the area of parliamentary representation because of their sheer number, which enables them to gain significant representation through regular procedures.) The proposal has met with fierce disapproval from the opposition parties as well as the ethnic Albanian political parties, who claimed that minority representatives would be subject to manipulation by majority parties. Unwilling to disrupt its long-standing effective bipartisanship, Hungary has to date failed to meet its legal obligation to secure minority political representation in parliament. In Finland, Sami politics continues to lack a gender perspective and the political representation of Sami women in their communities, as well as at the national level, remains inadequate.

In the course of the year, CEDAW examined several European states, highlighting a number of issues affecting the position of minority women. CEDAW expressed its concern about the continuing discrimination against immigrant, refugee and minority women, who suffer from multiple forms of discrimination on the basis of sex and ethnic or religious background, both in society at large and within their communities in Belgium. On the other hand, it welcomed the amendment of the Penal Code in Portugal that criminalizes female genital mutilation. Finland was encouraged to ensure that the representation of women in political and public bodies reflects the full diversity of the population and includes migrant and minority women. Stressing their particular vulnerability to poverty, CEDAW was concerned about the high rate of unemployment among immigrant women in Finland and the difficulties they face in obtaining employment commensurate with their level of education, experience and qualifications. In the UK, ethnic minority women are under-represented in all areas of the labour market, in particular in senior or decision making positions; they have higher rates of unemployment and face a greater pay gap in their hourly earnings compared to men. Women of different ethnic minority communities are also greatly under-represented in political and public life.

The European Court of Human Rights (ECtHR) appears to have started to develop a better understanding of discrimination, in particular as regards racial discrimination (see Box, p. 188). However, unlike the ECtHR, the enforcement of whose judgments remains highly problematic, the European Court of Justice (ECJ) made a significant contribution to the interpretation of what constitutes direct discrimination on racial grounds and the shifting of the burden of proof in the Belgian case *Centrum voor Gelijkheid van Kansen en voor Racismebestrijding v. Firma Feryn*. The ECJ ruled in July 2008 that the fact that an employer states publicly that it will not recruit people of a certain ethnic or racial origin constitutes direct discrimination, as this is likely to dissuade certain candidates from applying for certain jobs, and thus hinder their access to the labour market. The ECJ held, moreover, that such statements are sufficient for a presumption of the existence of a recruitment policy which is directly discriminatory, in which case the burden of proof shifts to the employer to prove that there was no breach of the

principle of equal treatment.

The ruling in *Firma Feryn* was made possible thanks to the strong articulation of the general prohibition of racial discrimination in EU law. The EU considers itself to have one of the most advanced non-discrimination legal frameworks in the world. Yet surveys show that almost two-thirds of EU citizens see discrimination on the ground of ethnic origin as being widespread. Moreover, 15 per cent said they experienced it personally in the last year and 29 per cent said they witnessed it. In the conclusions of its first Annual Report, the FRA highlighted the patchy implementation of the EU's anti-discrimination legislation and the vigour with which the legislation is applied. Recognizing the gap in the legal framework, the European Commission presented a proposal for a directive prohibiting discrimination on grounds of age, disability, sexual orientation and religion or belief outside the employment sphere. This proposal is currently pending before the Council of the EU and the European Parliament. In line with the Council Regulation establishing the FRA, which recognized the importance of engagement with civil society, the FRA facilitated the creation of the Fundamental Rights Platform, the main channel of communication between the FRA and civil society. Regrettably, minority rights organizations are virtually absent from the Platform.

With the exception of the prohibition of discrimination, EU law does not protect minority rights. As proponents of the view that minority rights fall exclusively within the domain of domestic law and policy point out, the EU lacks competence in areas important for the protection of a community's identity: mother tongue education; use of minority language in public; culture and media in minority languages; and participation in political, social, economic and cultural life. While this is indeed the legal reality, adopting such a position on minority rights has had a significant negative impact on the EU's standing as a global champion of human rights. The double standards the EU applies to minority protection, whereby it requires non-EU states to adopt and respect minority rights standards which it does not require of itself and its member states, are indicative of its approach. The effect has been that the EU is losing credibility in external relations, in particular with states that are candidates or potential candidates for EU membership, but also in international human rights fora. The

Right: A Roma child from the Peje/Pec region shows off a drawing he made to mark International Roma Day, part of an event organized by the OSCE Mission in Kosovo, April 2008. *Hasan Sopa/OSCE.*

Lisbon Treaty gives some indication that this tide is turning: Article 2 states that respect for human rights, including the rights of persons belonging to minorities, is one of the values on which the EU is founded. The EU's Charter of Fundamental Rights prohibits discrimination on the ground of membership of a national minority, among others, and obliges the EU to respect cultural, religious and linguistic diversity. Upon ratification of the Lisbon Treaty, the Charter will become legally binding. The ratification process, however, was not completed by the expected deadline of January 2009 as it was rejected in the Irish referendum; it is not clear at this time what its fate will be. Nevertheless, the impact of the references to minorities in the Treaty and Charter are not expected to bring about any significant improvements in minority protection in EU law as the EU continues to lack the required competence to develop legal instruments in areas significant for minorities.

Europe's premier minority rights treaty, the FCNM of the Council of Europe, the only legally binding instrument for the protection of minority rights, celebrated the 10th anniversary of its entry into force with a review of its impact on minority protection. Non-governmental organizations (NGOs) working on minority protection throughout the Council of Europe area articulated their views on the effectiveness of the FCNM in an NGO Declaration: the FCNM contributed to awareness-raising and internal discussions of the international standards for minority rights protection, and in some cases it was also successful in ensuring change in state minority policy and practice. Yet in eight European countries, minority populations remain excluded from the benefits of the FCNM: Andorra, Belgium, Greece, France, Iceland, Monaco, Luxembourg and Turkey have not ratified it. Nevertheless, some of the worst violations of the rights of minorities in 2008 took place in states party to the FCNM.

Roma

The Roma are generally acknowledged to be the most marginalized minority in Europe. While many countries have set objectives for the inclusion of Roma



in their national legislation and policies, in practice sufficient measures have not been taken in order to end discrimination against Roma and promote their integration. A number of countries like Denmark still refuse to recognize the Roma as a minority; in Greece they are considered a vulnerable social group. Roma communities continue to face particular difficulties and discrimination in their access to employment, education, housing, health and social services. And anti-Roma racism is pervasive: in an EU-wide survey, a quarter of respondents stated that they would feel uncomfortable if their neighbour was a Roma.

This situation came under close scrutiny of a range of international human rights instruments and mechanisms. The OSCE High Commissioner on National Minorities found that: 'The Roma in Europe have to a large extent fallen outside the new security and prosperity in Europe.' The UN Special Rapporteur on racism and the IEMI issued a joint statement urging Europe-wide action to end the violence against the Roma. The FRA commissioned a report on the violent anti-Roma incidents in Italy in May 2008 and held consultations with civil society to set out the FRA's contribution to the work on Roma. The EU organized an EU Roma

summit, a high-level meeting on Roma. In his opening speech, Commission President José Manuel Barroso acknowledged the exclusion, discrimination and racism faced by Roma communities. But when it came to taking on responsibility for bringing about change, he was very eager to qualify the role of Brussels: 'The dramatic situation of the Roma,' he said, 'cannot be solved from Brussels.' The summit concluded without any firm commitment to concrete action, but its conclusions were at least endorsed by the European Council in December, including calling on the Commission and member states to take account of the situation of the Roma when designing and implementing policy.

In the meantime, the reality described by Barroso continues unabated. Like Italy, Hungary has seen a sharp rise in racism in public discourse, and attacks on Roma, some of which have resulted in deaths. Anti-Semitic articles are regularly published in the press and anti-Roma hate speech has become widespread. Given the high level of constitutional protection afforded to freedom of expression, the government has been legally unable and politically unwilling to address this issue. The creation and increasing visibility of one extremist right-wing

group in particular has caused great concern, not only because of the group's openly anti-Roma and anti-Semitic discourse, but also because of its paramilitary organization and uniforms. At least one act of racist violence appears to have been linked to the racist discourse of this group. The public prosecutor has taken steps to ban the group. In the Czech city of Litvinov, the right-wing extremist Workers Party organized a march in the Roma neighbourhood of Janov, presenting it as an act of self-defence of 'white Czechs'. Following the Ministry of Internal Affairs' proposal to ban the party, another demonstration was held, which resulted in riots and fights between the extremists and the police force. Subsequently, Litvinov's mayor announced that the city would relocate 'problematic' Roma from Janov to accommodation outside the city, where they would live under police supervision.

In the Czech Republic cases of coerced sterilization of Roma women continued to be registered in 2008. The country's Universal Periodic Review before the UN's Human Rights Council highlighted that the government failed to take adequate action against this practice. Courts remain inaccessible to victims for a variety of reasons – language barriers, cost and discrimination, and the expiry of statutes of limitation – so they are left without effective legal remedies. NGOs have requested that a compensation scheme based on an administrative procedure be set up, which would enable victims not to have to initiate individual court proceedings, but these alternative forms of remedy have not yet been provided. Similarly, in Slovakia, an independent commission to provide compensation and apology to victims, as proposed by the Council of Europe's Human Rights Commissioner in 2003, has still not been instituted. In Hungary, the Public Health Act was amended in 2008 to require that special information be provided to patients who were to be subjected to the sterilization procedure, to ensure informed consent. The government, however, refuses to provide compensation to victims of coerced sterilization as recommended by CEDAW in 2006.

In 2008, CEDAW expressed concern that in Slovenia Roma women and girls remain in a vulnerable situation and subject to discrimination, including with regard to education, health, housing and employment. A high unemployment rate and multiple forms of discrimination continue to be faced by Roma women in Finland.

A challenge to segregated education: three landmark cases

By Jan Fiala

Segregated education has been long recognized as one of the greatest obstacles to social integration of Roma in Europe. International and domestic bodies have criticized the practice in a number of European countries, but so far to little effect. Recently, the European Court of Human Rights has decided three landmark cases, which represent important steps in achieving access to education for Roma children.

In the case of *D.H. and Others v. the Czech Republic* (application no. 57325, judgment 13 November 2007), applicants challenged the practice of placing Roma pupils in special schools for children with mental disabilities. They argued that such placements were the results of inadequate testing methods and administrative bias. They submitted detailed statistics showing that Roma children were 27 times more likely to end up in special schools than non-Roma. The Grand Chamber of the European Court found a violation of the applicants' right to be free from discrimination under Article 14 of the European Convention on Human Rights, and expressly confirmed some important principles of indirect discrimination. The Court

considered that reliable statistics can constitute sufficient prima facie evidence of discrimination, which shifts the burden of proof to the respondent, without the need to prove discriminatory intent. The Court found that although the objective of the special school system was to meet children's special educational needs, the selection process and criteria were disadvantaging Roma. The Court placed special emphasis on adequate, culturally adapted testing methods, and found that the tests the applicants had taken were racially biased and caused even Roma children with above-average intellect to be placed in special schools. Lastly, the Court rejected the argument that placement was justified by the applicants' parents' consent, holding that it is unacceptable to waive one's right to be free from racial discrimination. The Court thus concluded that the practice of placing Roma children in special schools amounts to racial discrimination.

In the case of *Sampanis and Others v. Greece* (application no. 32526/05, judgment 5 June 2008), the applicant Roma children complained about their exclusion from the Aspropyrgos primary school. After their enrolment in 2004, local non-Roma parents protested and prevented their own children from attending school. The education authorities responded by moving the Roma children to an annex school, housed in prefabricated containers, allegedly as preparation for integrated education. The European Court found that placement in the annex school was not based on adequate testing, which also undermined its declared objective. It also emphasized that, given the vulnerable position of the Roma community, it cannot be accepted that exclusion was based on their consent. The Court concluded that the applicants were discriminated against in their right to education on the grounds of race.

The case of *Oršuš and Others v. Croatia* (application no. 15766/03, judgment 17 July 2008) concerned segregation within primary schools.

The applicant Roma children were placed into separate classes, allegedly because of their inadequate command of Croatian. However, most of them had good marks in Croatian language. Surprisingly, the European Court did not find a violation of the applicants' right to education. It accepted that the selection criteria had been language skills, not ethnicity. Although the Court was concerned about the lack of adequate tests and procedures for transfer of children, it accepted the domestic authorities' judgements as to which children were in need of special attention. It also considered that education in the separate classes was not of lower standard than in the regular classes, therefore the children were not harmed by it. The applicants decided to refer the case to the Grand Chamber of the European Court. They pointed out various factual inaccuracies of the judgment, and also argued that the judgment failed to properly apply the principles established in *D.H.* and *Sampanis*.

The three decisions have a huge potential to influence educational policies. *D.H.* declared illegal a practice that has been long condoned by European societies. It firmly established the importance of statistics; lack of intent, shifting the burden of proof; and appropriate testing methods in education discrimination. These elements make it virtually impossible for authorities to maintain special schools in their current form. However, as MRG pointed out in its submission at the *D.H.* case, segregated education can take different forms. Whether the governments respond with genuine integration, or replace special schools with other, more covert forms of discrimination, will depend on how the Grand Chamber of the European Court deals with the appeal in the *Oršuš* case. It will be up to the applicants, and their sympathizers in other European countries, to make courts and governments understand the harmful impact of segregated education on Roma, so that all of its forms are outlawed and eliminated. ■

Minorities and education

The minority right to education is enshrined in the FCNM and protected to different degrees by domestic legislation. Within the EU context,

although education is included in some treaty provisions, it is not a field of EU competence and as such does not allow for harmonizing action at EU level. Nevertheless, there exists the Council Directive

(EC Directive 77/486/EEC) on the education of the children of migrant workers, which obliges EU member states to take appropriate measures to promote teaching of the mother tongue and culture

of the country of origin for the children of migrant workers. Although the directive deals only with the education of children of migrant workers who are EU citizens, a declaration attached to the Directive includes a commitment by the Council to avoid any discrimination based on a pupil's nationality. This Directive is said to be one of the least implemented pieces of EU legislation.

A number of issues in the education of minorities arose in the course of the year, the most pervasive being the discrimination against the Roma in education. In the words of the Council of Europe Human Rights Commissioner:

'A significant number of Roma children do not have access to education of a similar standard enjoyed by other children. This not only prevents the Roma from participating effectively in the social and political life of their home country but also negatively affects the future of the latter's society.'

He sees the deeply ingrained prejudices against the Roma, at all levels of societies, as one of the major causes of inequality in the sphere of education. As outlined in the box (p. 188), the practice of segregation in education is of particular concern. Segregation may take various forms, such as the establishment of segregated schools in segregated settlements, or a clear, unjustified over-representation of Roma children in classes for children with special needs. The system of financial incentives in a number of countries has been highlighted as one of the causes of the problem, since the per capita allowances for children placed in special education can be double the regular allowances. As a result, a growing number of 'special classes' in ordinary primary schools have been set up, which constitutes discrimination. Hungary has attempted to tackle this problem and remove the financial incentive for segregation by introducing financial incentives for regular primary schools which enrol children from what are described as 'disadvantaged backgrounds', which is often a reference to the Roma.

In Macedonia, disproportionate placement of Roma in special schools continues. Although Roma account for only 2.6 per cent of the population in Macedonia, in 27 special schools 30–70 per cent of students are Roma. During his visit to Macedonia the OSCE High Commissioner on National

Minorities warned of the negative consequences that increasingly segregated education will have on the society. Another problem, faced often by Egyptian (as in Roma, Ashkali and Egyptian – RAE) children is their poor school attendance due primarily to extreme levels of poverty, which forces children to seek work instead of attending school. The government's response has been to impose high penalties on parents, which is highly counterproductive and has discriminatory effects.

Unavailability of mother tongue education in Roma language poses another obstacle to the education of Roma children and runs counter to the international human rights obligations of European states. For example, in Denmark, mother tongue education, previously supported by the government has been relegated to the local authorities, which has resulted in cuts and lack of instruction in Roma language.

Minorities in other countries were also faced with a variety of problems. The quality of teaching in Turkish-language schools remains a concern for the Turks in the Western Thrace region of Greece. In Norway, in spite of some positive developments resulting in the establishment of the Kven language council, which is working on the standardization of Kvenish and making available a Kven language and culture course at the University of Tromsø, there exists no structured policy for the protection and promotion of the Kven language and teaching materials for all levels of education are lacking. In Slovakia, the issue of textbooks in the language of the Hungarian minority made headlines in 2008. Newly published geography textbooks in the Hungarian language included toponyms in Slovak language, instead of Hungarian. In spite of vocal protests, the ministry refused to change the textbooks. Resolution seemed in sight following the proposal by the Party of the Hungarian Coalition of a legislative amendment which would allow for the use of toponyms in the minority language in minority-language textbooks. Although the amended version of the proposal also gained the support of the ruling party, the president's refusal to sign the law and subsequent hurdles make it unclear how the issue will be resolved.

In Hungary, children of refugees and asylum seekers, while entitled in theory to benefit from the same rights to compulsory education as Hungarian children, in practice have difficulty exercising their

rights as they are met with the resistance from schools to accepting them. Even if they are accepted, frequently they do not have access to adequate assistance in learning the Hungarian language. The absence of a national integration strategy to assist them in participating fully in society further exacerbates their situation.

As the Advisory Committee to the FCNM pointed out, in Sweden the authorities have undertaken commendable reviews of textbooks and launched web-based initiatives devoted to minority languages. However, the availability of minority-language teaching remained too limited in the public education system, and there is a need for the authorities to strengthen the pertinent regulations and bolster support for bilingual education. Similarly, in Switzerland there have been commendable efforts to move towards a coordinated inter-cantonal development of language teaching in compulsory education. However the overall situation of Italian- and Romanche-speakers who live outside their traditional areas of settlement has not significantly improved with regard to access to language teaching and opportunities to enjoy cultural and linguistic support.

The ban on headscarves in schools, in the view of CEDAW, may increase the discrimination faced by girls from ethnic and religious minorities and may impede equal access to education. CEDAW recommended that Belgium promote a genuine dialogue with and within ethnic and religious communities aimed at the formulation of a common approach to the ban of headscarves in schools. The low level of Roma women's formal education and the school drop-out rates remained a concern in Slovenia, according to CEDAW. Girls of foreign origin continued to face unequal access to quality education at all levels in Luxembourg.

Islamophobia

The extent of anti-Muslim sentiments in Europe continue to be a cause of concern. In France, Poland, Spain and the UK, attitudes towards Muslims are said to be notably more negative in comparison to 2005, though in Spain and Germany, the two EU countries with the most negative perspectives, unfavourable views have declined since 2006. France and the UK, on the other hand, have seen a steady increase in unfavourable opinions of Muslims.

Discrimination against Muslims persists in the

fields of employment, education, as regards the right to profess and manifest one's religion, as well as in hate speech. In the Netherlands, a Christian comprehensive school was found guilty of religious discrimination by the Equal Treatment Commission for rejecting an applicant for the temporary position of mathematics teacher because of his Muslim background. Plans to build mosques or their opening have met with public demonstrations against what the protesters called the 'Islamization of Europe' in Austria, Belgium, Germany and Switzerland. In Italy, Muslim prayer in public during a protest march against the Israeli offensive in Gaza was openly condemned by right-wing politicians, who regarded this as 'threatening and intimidating acts towards the Italian people'.

In the Czech Republic, the TV Nova television station was fined by the Council for Radio and Television for having broadcast xenophobic and Islamophobic content in a report which stated that Sharia law allows a husband to kill an unfaithful wife.

The debate on whether Muslim women and girls should be allowed to wear a headscarf while on duty in a government job or in schools continued, and hijabs are banned in a number of countries. Various arguments are put forward in favour of the ban, however the women most likely to be affected by the decisions are rarely consulted. The German state bans religious symbols and clothing for teachers and other civil servants. In Ireland, where there is no state-wide regulation, the government leaves the decision to individual schools. In Norway, the Ministry of Justice first decided to put forward a proposal to permit Muslim women to wear the hijab as part of the Norwegian police uniform, but then withdrew it. The move, if implemented, would have allowed a broader recruitment to the police. In France, the government's anti-discrimination agency ruled that it was acceptable to ban women wearing the burqa and niqab, clothes that cover the body and face, from state-sponsored French language classes for immigrants. The Danish government introduced a proposal to ban judges from wearing headscarves and other religious apparel.

France

Throughout 2008, allegations of French police ill-treatment of minorities were made by civil society.

Improving access to education for Roma children in Romania

By *Eugen Crai*

Romania has the largest Roma minority in Europe, estimated at between 1.8 million and 2.5 million (with almost 50 per cent of this population being under the age of 19). The first steps towards improving access to quality education for Roma children date back to 1990 when the Romanian Ministry of Education established a position of General Inspector for Romany Language Education. Then in 1992 there were established special and additional places for Roma students in the Faculty of Sociology of Bucharest State University.

Major efforts were launched in 2001, after the adoption of the Governmental Strategy for the Improvement of the Roma Situation in Romania, but the challenges are still present. Unfortunately there is no baseline data regarding the current participation in education of Roma children at national level, partly because of reluctance of the authorities to collect data disaggregated by ethnicity.

Based on the most recent survey conducted by the Open Society Foundation in Romania, in 2007 almost 21 per cent of the Roma population below the age of 40 have not accessed any level of education (as compared to 0.8 per cent of the non-Roma population). Another 23 per

cent had access only to primary education, 38 per cent have graduated from lower secondary education (grade 8), while only 4.3 per cent have graduated from upper secondary education (grade 12), as compared to 42.4 per cent of the non-Roma population. These gaps between the Roma and non-Roma population actually widened during the last 20 years of transition.

Anti-segregation policies in the education system have been adopted starting in 2005. However, based on a survey conducted by UNICEF Romania and Romani CRISS (a Roma NGO), in 2008 in schools in nine counties and Bucharest Municipality, in 63 per cent of the investigated schools segregation was present in some form. Indicators of the quality of education indicators (including infrastructure, facilities and qualifications of teachers) are worse or much worse in the schools displaying segregation as compared to the other schools.

While the percentage of Roma without birth certificates seems to be decreasing, almost 11 per cent of the Roma population above 14 years of age did not have an ID card in 2002. In a limited 2004 survey covering vulnerable Roma families in Bucharest it was found that as many as 26 per cent did not have an ID card. The lack of a legal identity thus excludes tens of thousands of Roma from every right that citizenship entails, including social assistance, social security, formal employment and the minimum income guarantee scheme.

Among the majority Romanian population, the Roma are sometimes perceived as skilful at certain jobs, but this rouses fears based on ethnic stereotypes. In 2003 the Committee on the Rights of the Child expressed concern over the negative attitudes and prejudices among the general public, in political discourse and the media.

The education of Roma girls is also obstructed by early marriage and early pregnancy. Several surveys concur in finding more than 70 per cent of Roma women marry before the age of 18 (approximately 35 per cent being married before

the age of 16). Early marriage entails girls dropping out of school in the vast majority of cases. In 2008 Romania adopted legislation prohibiting marriage of girls before the age of 18 (such prohibition existed in past legislation for boys).

Within the education system a range of measures has now been introduced to enhance access to quality education. A system of County School Inspectors for Roma children's education was introduced. Starting in 2001 the system of Roma School Mediators was gradually introduced in Roma communities. A strategy for the training of Roma unqualified teachers has also been launched and implemented with UNICEF support. Early education programmes in Roma communities were introduced with UNICEF support such as the 'Summer Kindergarten' or 'Bilingual Kindergarten in Roma Communities'.

Different safety nets (such as the Education Priority Areas model, and Second Chance Education programmes) have been tested and introduced gradually into the system. Intercultural education programmes have been scaled up at national level. Early marriage and early pregnancy in Roma communities were tackled through community-based campaigns with formal and informal leaders and with school authorities.

As Romania has a historically established system of education in the languages of national minorities, efforts have been made since the early 1990s for the introduction of Romany language education and currently approximately 260,000 Roma students are taught Romany in schools throughout the country (although there exists only one school with Romany as the language of instruction for grades 1–4). Educational materials in Romany or bilingual materials have also been developed. ■

minorities or foreign nationals.

A major grievance during the 2005 riots in the Paris suburbs was discrimination against young people of Arab and African origin in employment.



Above: An African family on their balcony in a back street of the La Chapelle district in the 18th arrondissement, Paris. They are watching a parade of Hindu gods during the annual Ganesh festival. *Mark Henley/Panos.*

The government was keen to point out that the situation has improved and that French companies are hiring more people from deprived neighbourhoods. Others, in particular the residents of such neighbourhoods, said little had changed. In particular, Muslim women who wear headscarves are less likely to get jobs in spite of the degrees they may hold. France has the largest Muslim community in Europe. A significant segment of the population, moreover, is of African and Caribbean origin.

In December 2008, Yazid Sabeg, of Algerian origin, was nominated as the government's diversity and equal opportunities commissioner. One of his main objectives is to find the appropriate way of collecting information on diversity and disaggregated statistics. Since 1978, legal barriers have been put in place banning the collection of data referring to racial or ethnic origin. President Nicolas Sarkozy recognized publicly that the lack of data on ethnic minorities was hampering the ability to measure inequality and deal with it (see chapter by Zoë Gray).

In December 2008, the ECtHR ruled that the French school ban on headscarves was not a violation of the ECHR. In the cases of *Dogru v. France* and *Kervanci v. France*, the ECtHR unanimously held that there had been no violation of Article 9, which protects the freedom of thought, conscience and religion. The applicants were expelled from school for wearing headscarves during physical

A 2009 Amnesty International report said that unlawful killings, beatings, racial abuse and excessive use of force by law enforcement officials are rarely investigated effectively and those responsible seldom

brought to justice. Although the victims of ill-treatment and other human rights violations include men and women of all age groups, the vast majority of complaints concern French citizens from ethnic

education classes. In the ECtHR's opinion, the purpose of the restriction on the applicants' right to manifest their religious convictions was to adhere to the requirements of secularism in state schools.

Georgia

In August 2008, conflict broke out between the Georgian military and the breakaway South Ossetian forces aided by the Russian military. The origin of the conflict is attributed to one of myriad minority-majority disputes that accompanied the break-up of the Soviet Union. As nationalist leaders gained power throughout the successor state, claims for autonomy and, ultimately, independence followed. Clashes between the Georgians and Ossetians in 1989 erupted into war from 1990 to 1992, in the midst of which Georgia declared its independence from the Soviet Union. Ossetia, in turn, declared its own independence and the conflict remained frozen. August 2008 saw a series of shooting incidents in the South Ossetian conflict zone.

Georgian President Mikhail Saakashvili declared his intention to offer unlimited autonomy to the region, but ultimately he launched a massive artillery attack on Tskhinvali, the regional capital. Russian forces occupied sections of Georgia proper by 12 August and took control of access to the west of Georgia, Gori and other areas. Within a day of the conflict breaking out, separatist forces in Abkhazia launched an offensive against Georgian troops in the Kodori gorge area, the only part of their territory remaining under Georgian control, with Russian support. Human rights activists reported that Georgian villages were looted and burnt. As a result of the offensive the Georgian troops left the territory and some 3,000 ethnic Georgians were forced to leave their homes, some of them for the second time. The conflict caused much suffering for the civilian population in South Ossetia, home to both ethnic Ossetians and Georgians, numbering some 75,000 inhabitants, about one-third of the population. It caused a significant displacement of civilians, ethnic Georgians as well as minorities. A number of ethnic Armenians sought refuge in Armenia. Several thousand Georgians who fled from the Kodori gorge have not been able to return home. The inhabitants of the area are almost exclusively Svans, a Georgian ethnic sub-group with their own distinctive language.

In a move strongly condemned by EU leaders as contrary to international law, Russia recognized the

Right: A memorial to the two young Roma sisters, 11-year-old Violeta and 13-year-old Cristina, who drowned at Torregaveta beach in Naples in July 2008. Their bodies lay on the beach for three hours while holidaymakers continued to sunbathe.

Robin Hammond/Panos.

breakaway republics of South Ossetia and Abkhazia. Proponents of their independence cited the precedent of Kosovo. In the words of the Abkhaz Deputy Foreign Minister Maxim Gunjia: 'We use the same arguments as those used by the West with regard to Kosovo: All other possible means were exhausted.'

Greece

Greece has been an EU member state since 1981, but has not ratified the FCNM and does not recognize the existence of ethnic minorities on its territory. Only a 'Muslim minority' in Western Thrace, protected by the terms of the 1923 Treaty of Lausanne concluded with Turkey is officially recognized as a religious minority, but its predominantly ethnic Turkish members are denied recognition as an ethnic minority. The non-recognition of the ethnic Turkish and Macedonian minorities has profound ramifications for the ability of these minority communities to exercise their rights. The persistent refusal of Greek courts to register minority associations has constituted a violation of their right to freedom of association, as the ECtHR has found in four separate cases – to no avail, as the courts still refuse to grant registration to all of them. It has also been detrimental to the protection of minority identities, making it impossible to institute adequate arrangements in areas such as minority language use or education.

The state of minorities in Greece prompted both the High Commissioner for Human Rights of the Council of Europe and the IEMI to undertake country visits in 2008. The High Commissioner was primarily concerned with minorities and the right to freedom of association, the denial of citizenship to some members of minorities under former legislation, and issues affecting the religious freedom in particular of the Turks in Western Thrace as government-appointed Muftis have been reported to apply Sharia law in family and inheritance matters, in contravention of international human rights standards. The IEMI raised a variety of issues, including the protection of minority identity, minority religions and discrimination against the



Roma in housing and employment, education and denial of justice.

However, the Greek state reaffirmed its position that 'any recommendation by UN treaty bodies and by other monitoring mechanisms, on the protection of rights of persons claiming to belong to a minority cannot determine the existence of a minority group or impose on States an obligation to officially recognize a group as a minority', as articulated in the government's reply to the report of the High Commissioner for Human Rights. There was a similar reaction to the report of the IEMI.

The National Commission for Human Rights (NCHR) reviewed the results of the implementation of the 'Integrated Action Plan for the Social Integration of Greek Gypsies 2002–2008'. The report, co-signed by the Deputy Ombudsman for Human Rights, assessed the housing initiatives as 'rather modest'. It emphasized the negative attitude of local authorities and communities towards such programmes: 'The municipalities are very reluctant to attempt any form of registering the Roma residing in and/or passing through their areas; they invoke the fact that any record based on "racial" criteria is prohibited by law', the report stated. The NCHR and the Deputy Ombudsman urged the Greek state to change the way it responds to the rec-

ommendations of domestic and international bodies dealing with Roma. 'Execution of the judgments of the European Court for Human Rights and compliance with the observations of other jurisdictional organs,' they stressed, 'is an obligation and not an option.'

Finally, concerning minority religions, the IEMI noted the considerable influence of the Greek Orthodox Church in Greek society and political life, and that the Church receives state funding; that there is no specific domestic law to protect freedom of religion; and that members of other religions face verbal and sometimes physical aggression, as well as restrictions on places of worship and burial sites. In addition, in 2008, the ECtHR in the *Alexandridis v. Greece* judgment ruled that the fact that the applicant had had to reveal that he was not an Orthodox Christian while taking an oath of office before a Greek court in order to take a non-religious affirmation had interfered with his freedom not to have to manifest his religious beliefs and therefore constituted a violation of Article 9 of the European Convention.

Italy

Events of 2008 mean that the focus of this section must overwhelmingly consider the plight of the

Roma in Italy. Expressions of racism and xenophobia against that community increased dramatically over the year. An EU-wide survey revealed that Italy is the most intolerant towards Roma of all the 27 member states: almost half the respondents in Italy would feel uncomfortable having Roma neighbours, twice the EU average, while only 5 per cent of them had Roma friends, a third of the EU average. Mainstream politicians at local and central level became the champions of hate speech and intolerance. Crimes perpetrated against the Roma went unpunished: perpetrators have yet to be held legally accountable for at least eight incidents of anti-Roma pogroms, leading to the razing of Roma camps with Molotov cocktails. Research from a coalition of organizations – including the Open Society Institute, the Center on Housing Rights and Evictions, the European Roma Rights Centre, Romani CRISS and the Roma Civic Alliance in Romania – reported that as a result of statements from high-ranking Italian politicians fuelling anti-Roma sentiment, instances of physical and verbal abuse of Roma in Italy have increased disproportionately in frequency and seriousness since April 2008, when the new government was elected.

The election campaign was dominated by the issues of security and migration. Roma were often portrayed by politicians as irregular migrants or criminals, suggesting that their mere presence was a security threat. The Council of Europe Human Rights Commissioner criticized Italy's criminalizing of immigrants, hate speech by public figures and the media, where racist attacks against Roma have become a standing feature of the public discourse. Italy's Court of Cassation, the highest court of appeal, overturned the conviction of the mayor of Verona and four other members of his Northern League party for racially discriminatory propaganda. The mayor had stated publicly that wherever Roma arrived, there were thefts. The court held that 'discrimination based on diversity is different from discrimination based on somebody's criminality', effectively ruling that to imply all Roma were criminals is acceptable discrimination. The case was returned to the lower court, however, which in its October 2008 decision confirmed the conviction.

The new government instituted a series of measures aiming to remedy the security issues identified in the campaign, including the declaration of a state of emergency in the regions of Campania, Lazio and

Right: Crowds in Silvan, Turkey, during a Newroz celebration in March 2008. Newroz is celebrated by Kurds throughout the country and is the celebration of the coming of spring. *Aytunc Akad/Panos.*

Lombardia. The most controversial measure was a census operation conducted in a number of municipalities in June 2008, which involved various measures for the identification of Roma, including fingerprinting. Following an international outcry, the census operations were modified to include certain safeguards and were extended to the entire population in Italy in order to avoid allegations of discrimination. Moreover, on some issues the government has been forced to back down under pressure from the EU. These include a provision for the expulsion of EU citizens that was devised for Romanian Roma and judged to clash with European rules on free movement. The provision was withdrawn after the European Commission threatened to start infringement proceedings.

Kosovo

On 17 February 2008, Kosovo declared its independence from Serbia, a move immediately recognized by a number of EU member states and the United States but vehemently opposed by Russia. By the end of the year, the number of recognitions reached 53. The EU has failed to reach unanimity on the issue as Cyprus, Greece, Romania, Slovakia and Spain have not recognized its independence. Kosovo's Constitution, which according to the EU is in line with international standards guaranteeing full respect of individual and community rights, came into effect on 15 June.

The declaration of independence was legally challenged by Serbia, which requested that the matter be sent to the International Court of Justice. In March, violence erupted in Mitrovica, leaving at least 80 Serb civilians and 63 members of the international security forces injured.

In spite of Prime Minister Hashim Thaci's promises of a democracy that respected the rights of all ethnic communities, minorities in Kosovo are left very much on the margins. Human rights advocates point out that neither the Constitution nor the new laws provide adequate protection for the small minorities in Kosovo (Bosniaks, Croats, Gorani, Montenegrins, Roma, Ashkali and Egyptians, and Turks among others) and, in some cases, have



served to worsen their situation. A number of laws adopted in the course of 2008 have been problematic for minorities. The new law on local self-government lacks the provision ensuring proportional representation in the civil service that had existed previously. Likewise, the new law on local elections does not provide for guaranteed political participation of ethnic communities.

The problem of the lead-contaminated camps in which Roma internally displaced persons have been accommodated since 1999 has still not been resolved. Forced repatriations of Roma, Ashkalia and Egyptian refugees, who were granted protection in several countries of western Europe, continues in 2008. Families are returned even though no housing, welfare support or employment opportunities are provided for them. The returns have a particularly negative impact on children who have grown up in the countries of asylum, were integrated into

their schooling systems and have no knowledge of the Albanian language. The Kosovo school system offers no mechanisms to accommodate their needs, in particular as regards language instruction.

Turkey

Contributed by Nurcan Kaya

The performance of the ruling Justice and Development Party (AKP) in 2008 has failed to meet the expectations of minorities, as well as academics, human rights activists and the EU. Instead of focusing on the EU accession process and further democratization as promised, 'combating terrorism' occupied the government's agenda after the AKP came into power and during the local elections of March 2009. Moreover, civil society has not yet been able to have any input into the draft revised constitution the government has been preparing.

Turkey's policy on minority rights and the legal

No dreams for Dilan

By Nurcan Kaya

Dilan Kılıçaslan was displaced in south-east Turkey during the armed conflict between the Kurdistan Workers' Party (PKK) and the Turkish army in 1993. She wanted to become a doctor, but displacement and discrimination mean her dreams have been put on hold for more than 20 years.

Dilan's ID calls her 'Sibel'; the authorities won't let her be known by her Kurdish name. And though 'Dilan' means 'festival' in Kurdish, her life has been far from happy.

Her mother was the first wife of a violent man, and Dilan was the youngest of 14 children. She also has six step-siblings. Studying in primary school in her village, Dilan said she wanted to become a doctor, work, take her mother and start a new life, where they would be free and would not face any humiliation.

But her village was set on fire by the Turkish security forces in 1993. She says that the whole house, including their goods, animals, farm and memories, were burned down. The family spent the night in the neighbouring village. The following day they went to the town of Tatvan, and the day after to Istanbul. They stayed with a relative in Bağcılar, a quarter in Istanbul which was home to a large number of displaced Kurds.

The day after they arrived in Istanbul, Dilan started to work as an apprentice at a small textile factory. She worked from 08.30 to 19.00. She was still just nine years old. Her Turkish was not good and she was frequently harassed for that in Istanbul. She was never enrolled at a school in Istanbul, as she had to work and contribute to the family income, and she did not even have an ID card to register at a school. The whole family was too scared to have any contact with the officials. All they wanted was to survive. Like other displaced families, they never received any financial or other sort of support from the state.

Dilan dreamed of enrolling at a school in Istanbul for many years. After getting an ID some years later, when the family decided to enrol her, security forces raided their flat and detained some family members for aiding the PKK. Neither Dilan, nor any other children of the family ever went to school in Istanbul.

Dilan is 25 years old now. She still lives with some family members in Bağcılar and still works in a textile factory, now as an adept-expert. She earns very little money and works without having any insurance. Dilan says that if she had not been displaced, or if she had ever been assisted by the state to continue her education, probably she would be in her fourth year at university today.

As she tells her story, Dilan bursts into tears. She says this is not the life she wanted. She hopes that one day the state might offer her a different option, such as vocational training or a different job. If that happened, she says, she would feel better and make a new start. ■

human rights activist Hrant Dink and the Christian staff of the Zirve Publishing House in Malatya are still pending, and the lawyers representing the families of the victims and many human rights organizations, including Amnesty International, argue that investigation is not being carried out effectively. The public officers who were accused of negligence for failing to take protection measures for Dink, despite having received intelligence information on the murder plan, remained in their posts and no case was brought against them. Dink's family and the lawyers representing them are still subject to harassment and threats by the perpetrators and their lawyers.

In December 2008 some intellectuals organized a petition for an apology to the Armenians for their massacre in 1915; it was supported by thousands. However, in January 2009, the Federation of the Osmangazi Culture Associations in Eskişehir organized a press conference to condemn the campaign. Members of the Federation carried placards stating 'Dogs can enter but not Armenians and Jews'. A criminal investigation has been brought against the president of the Federation.

However some positive steps were taken by the government in 2008 and as a result, TRT 6, a new public channel broadcasting around the clock in Kurdish (Zaza and Kurmanci dialects) was launched in January 2009. Turkey's Prime Minister Recep Tayyip Erdoğan congratulated Kurds in Kurdish for the opening of this new channel. Although the channel was welcomed as a groundbreaking step by a large proportion of civil society, including Kurds, the government was criticized for not lifting the restrictions on private broadcasters. While TRT 6 has been allowed unlimited broadcasting in Kurdish, private national and regional broadcasters are still subject to restrictions which make it almost impossible to broadcast in Kurdish or other local languages. Moreover, using Kurdish is still prohibited in some areas. Article 81/c of the Law on Political Parties prohibits election campaigning in languages other than Turkish. In January 2009, six members of the pro-Kurdish Democratic Society Party (DTP) were charged under this provision for issuing posters in Kurdish in May 2008. When Ahmet Türk, the president of the DTP gave a speech in Kurdish at the DTP group meeting at the parliament in February 2009, TRT 3, the parliament broadcasting channel, cut its broadcast after a few minutes, although there

is no clear legal prohibition against giving such talks in languages other than Turkish.

The property rights of minorities are still not adequately addressed. The Law on Foundations (Law no. 5555), adopted by parliament in November 2006 and vetoed by then-President Ahmet Necdet Sezer, was adopted again by parliament on 20 February 2008. The new law allows non-Muslim Foundations to apply to recover their properties seized by the state in the 1970s, but only if they are still in the hands of the state. It does not guarantee return or compensation for the properties of non-Muslim foundations that were seized and sold to third parties. The European Court of Human Rights (ECtHR) found a violation of Article 1 of Protocol No. 1 to the European Convention on Human Rights in the case *Fener Rum Patrikliği (Ecumenical Patriarchate) v. Turkey* (July 2008) on the basis that Turkish authorities had deprived the owner of the property without providing for appropriate compensation. The Law on Compensation for Losses Arising from Terrorism and the Fight against Terrorism (Law no. 5233) ensured compensation for the properties of displaced people; however, the compensation was usually far from meeting 'just satisfaction' criteria. Return of displaced people and their integration in the places where they have settled remained crucial issues to be addressed in 2008.

The education rights of minorities is one of the areas in which the government is most reluctant to progress. Issues including lack of ethnic data for the most disadvantaged groups, including child seasonal workers (see Box, p. 198), regional disparities in literacy rates that reveal inequality along ethnic and gender lines, and problems in registration, that particularly affect the Roma, are explored in greater depth in MRG's 2009 report: *Forgotten or Assimilated? Minorities in the Education System of Turkey*. The report also looks at the importance of mother tongue education, which is guaranteed to Lausanne minorities only, and the difficulties and restrictions communities face in setting up their own schools. Discrimination exists in the system; the government has done little to reform the contents of the mandatory religion class, which focuses on Sunni Islam, despite a ruling by the ECtHR that the class is in violation of the right to education under Article 2 of the 1st Protocol to the Convention (See *Hasan and Eylem Zengin v. Turkey*.) ■

framework has not changed. The only instrument Turkey will refer to when it comes to protection of minorities is the Treaty of Lausanne, which was signed between the new Republic of Turkey and the allies of the First World War in 1923. It guarantees specific rights only to non-Muslim minorities. Turkey, moreover, has been and still is violating the Lausanne Treaty by applying it only to Armenians, Rums (Greek Orthodox) and Jews, leaving other non-Muslim groups, such as Assyrians, Baha'is, Chaldeans, Protestants and

Yezidis out of Lausanne's protection. Furthermore, Turkey has limited the property and education rights of Armenians and Rums, in violation of the Lausanne Treaty. Other ethnic minorities, including Caucasians, Kurds, Laz and Roma, are not recognized as minorities and are therefore not fully guaranteed a number of rights, *inter alia* broadcasting and education in mother tongue.

In 2008, racist propaganda and attacks were on the rise. The cases brought against the perpetrators of the racist murders of the Armenian journalist and