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WRITTEN COMMENTS OF ROMANI CRISS

FOLLOW-UP TO THE ECRI'S THIRD REPORT ON ROMANIA

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II. International documents

1. International legal instruments

ECRI recommended in its third report that the Romanian Government ratifies the Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems.

The Additional Protocol has been ratified, through Law no 105/2009, with the following specificity: “Romania reserves its right not to apply the dispositions of paragraph 1 art 5 of the Protocol, regarding the insult on racist and xenophobic ground”.

From our point of view, this reserve is not justified, taking into account that insult/offend is a crime in the Romanian legislation. The practice indicates that insult on racist and xenophobic ground is very frequently met on blogs, social websites, etc. The social threat is very serious – besides affecting the human dignity, insult on such grounds easily may encourage other internet users to have similar behavior, and may lead easily into incitement.

According to the protocol, legislative measures had to be adopted by the parties in order to incriminate distribution of racist materials through internet, threat based on racist ground and denying genocide and crimes against humanity. Committing any type of crime based on grounds such as ethnicity, race, religion, sexual orientation, etc. has become aggravating circumstance, according to the modifications of the Criminal Code, included through Law no 278/2006.

Cases documented by Romani CRISS

1. “Vis urat” blog – discriminatory and inciting to hatred posts

The blog www.visurat.ro includes many posts referring to Roma.

When referring to police representatives and special forces, who can organize interventions in the Roma communities, the author of the blog says:

“You are afraid of the Gypsies, you idiots? You have hoods. Nobody knows when you break in and break their bones, so nobody can come to your door and butcher your family. Why don’t you send the >hoods< to them, so they are shut?”

“When will some people wake up (among civilians, army or police) and be fed up with them so much so that, with hoods, put their minds back to their senses periodically? Then, a policeman should come, ascertain the aggression, write on the file >unknown author< and move on”

“Am I inciting to violence? YES! I am inciting to violence! I want Romanian to be reminded about the times when their ancestors were not bending in front of Turks, Hungarians, Huns, or any other

people who wanted to put their hands on this country. Why should we leave it now to thieves and Gypsies?”

When deciding the intervention of Romani CRISS, the posts were divided into discriminatory post, affecting the human dignity of Roma, and posts inciting to hatred. Consequently, one complaint was filed in front of the National Council for Combating Discrimination and one penal complaint in front of the Prosecutor’s Office.

The prosecutor decided no to start the criminal investigation. The resolution was appealed by Romani CRISS.

2. Noua Dreapta – extremist organization

In 2005, Romani CRISS has lodged a penal complaint against the initiators of the racist and fascist organization Noua Dreapta, taking into account a website containing racist and fascist instigator statements.

After all the domestic remedies were exhausted, since no sanction was applied by the Romanian legal courts to the initiators of Noua Dreapta, a complaint was lodged in front of the European Court of Human Rights.

3. Romani CRISS and IPP – The Institute for Public Policies have monitored the discriminatory attitudes in the Romanian online environment. The study is available at

<http://www.romanicriss.org/Raport%20monitorizare%20online%20IPP%20si%20CRISS.pdf>

ECRI recommended that the Romanian Government ratifies the European Charter for Regional or Minority Languages

The Charter was ratified through Law no 282/2007. As most of the legislation adopted by the Romanian state, the adoption of the European Charter for the Regional or Minority Languages was not followed by a raising awareness campaign or promotion of the Charter and of the linguistic rights.

With regard to the media in minority languages, there are very few publications or TV shows in Romani language. According to the Department for Interethnic Relations¹, there is only one publication in Romani language.

With regard to the minority languages in schools, further efforts need to be taken to assure Romani languages is taught within all pre-university levels: preschool, primary, secondary, high school, professional, post-high school. Qualified human resources need to be available for this measure to be properly put into practice.

A group of non-governmental organizations have made recommendations to the Governmental Strategy for Inclusion of the Romanian Citizens of Roma ethnicity². Most of the recommendations

¹ http://www.dri.gov.ro/index.html?page=cultura_publicatii

were not included in the Strategy which was adopted by the Government. Valuable **recommendations** were made for the culture component of the Strategy, having regard to the European Charter for the Regional or Minority Languages, such as:

- Promoting and developing the Roma cultural identity, through sustaining cultural production in Romani language: written culture, audio-video and means of mass communication;
- Organizing courses in Romani language on Roma issues and topics for young people and children;
- Organizing courses/summer schools in Romani language/on Roma issues and topics for the public workers working with and for the Roma minority in public administration, social work, health, police, education;
- Organizing events, at central and local level, for promoting Roma culture (e.g. annual conference of Romani language);
- Producing a bilingual weekly radio/TV show, within the national stations;
- Supporting a bilingual radio/TV station with national coverage

ECRI recommended that the Romanian Government ratifies Protocol No. 12 to the European Convention on Human Rights

The Protocol was ratified by the Law no. 103/2006 and started being applied since May 2 2006. Taking into account its relatively recent ratification, there is no ECHR jurisprudence against the Romanian Government on the application of Protocol No. 12. Romani CRISS has invoked the breach of provisions of Protocol No. 12 in its recent applications to the European Court of Human Rights.

2. Constitutional provisions and other basic provisions

Since ECRI third report was released, there was no revision of the Romanian Constitution. Therefore, ECRI's recommendation, on including in the Constitution a provision providing for the restriction of freedom of expression, assembly and association with a view to combating racism, wasn't applied yet.

The issue of freedom of expression vs. right to human dignity remains an issue. Romani CRISS has documented 23 cases of violation of human dignity of Romanian citizens of Roma ethnicity since 2005, through publication of offensive and discriminatory press articles, or discriminatory speeches of public figures (mostly politicians).

Cases documented by Romani CRISS

1. Traian Basescu case, 2007

² [http://www.romanicriss.org/PDF/Comentarii_Strategie_ONG-uri_FINAL\(1\).pdf](http://www.romanicriss.org/PDF/Comentarii_Strategie_ONG-uri_FINAL(1).pdf)

On May 19th, 2007, Mr. Traian Basescu, President of Romania, addressed to journalist Andreea Pana: “You, pussy, don’t you have anything to do today?” and then said about her in private: “How aggressive that stinky Gypsy was”.

Subsequently, Mr. Basescu apologizes to Andreea Pana for an “underserved moral prejudice” and ads that “the used phrasing [...] doesn’t represent in any way the President’ attitude [...] towards the Roma community in our country [...]”.

Romani CRISS publicly condemns the sexist and racist statement of Romanian President who, through his personal example, feeds and legitimates the use of such language by anybody, a language that leads to increase of intolerance among Romanian citizens, especially that Romania has become a European Union member state and that 2007 is the European Year of Equal Opportunities for All.

According to the Presidency’s press release, Mr. Basescu doesn’t regret what he said, but that “an inappropriate expression [...] has become public”. There are no public apologies to the women in Romania who have been insulted by the offending language “you, pussy”, nor to the Roma community, as Mr. President doesn’t see any relation between him saying “Gypsy” and the Roma community - it is just an expression “used under a state of maximum political and media pressure”.

On May 23rd, as result of the Romani CRISS complaint to the National Council for Combating Discrimination (NCCD) in regard to the incident between the President of Romania, Traian Basescu and journalist Andreea Pana, the members of the NCCD Director College decided, unanimously, that the use of “Stinky Gypsy woman” expression constitutes an act of discrimination, as per G.D. 137/2000 on preventing and sanctioning all forms of discrimination, republished. The College decided to sanction the President with warning, based on the conclusion that “By using this phrasing, the dignity of people belonging to Roma community was affected.”

In regard to Mr. Basescu’s use of appellative “Pussy” to Mr. Pana, the Director College decided, with 6 votes for and 2 against that the fact does not trigger contravention liability. However, the language is not appropriate and sends negative messages in the public space.

Romani CRISS welcomes the NCCD decision to ascertain and sanction the act of discrimination on ethnic grounds, respectively by using the expression “stinky Gypsy woman”.

Still, we strongly believe that the term “pussy” used intentionally by Mr. Traian Basescu, the President of Romania, aimed at creating an environment of humiliation, offence and inferiority for the journalist, based on her sexual appurtenance. It is necessary to ascertain and sanction the discrimination act committed by Mr. Basescu on the criteria of gender, as he addressed to the journalist in public, in the context of professional relations, using an offending and degrading

term. In addition, the expression “pussy” holds a sexual connotation which aggravates the illegal feature of Mr. Basescu’s behaviour.

In relation to this aspect, Romani CRISS appealed the NCCD decision. All domestic remedies were exhausted and, at the moment, the case is pending in front of the European Court of Human Rights.

2. Calin Popescu Tariceanu case

On July 2nd 2007, during a meeting, the Prime Minister of Romania, Mr. Calin Popescu Tariceanu said “the Ministry of Interior and Administrative Reform in Bucharest shall send a team of five police officers to help catch and repatriate the Roma who commit felonies at Rome”, while mentioning very clearly “These Roma commit all possible crimes from violent theft, prostitution to robbery and drug trafficking”. And he continued “the role of Romanian policemen is to teach their colleagues from Italy to deal with the psychology and modus operandi of Roma who commit crimes”. Unfortunately, Mr. Tariceanu’s statement completes or continues the chain of discriminatory declarations against Roma, following the example of President Basescu or other colleagues from various parties.

Based also on the fact that ethnicity does not determine delinquency, Romani CRISS filed a complaint to the National Council for Combating Discrimination in regard to Mr. Tariceanu’s declarations, based on provisions of articles 2 and 15 of Governmental Ordinance no.137/2000, republished, on preventing and sanctioning all forms of discrimination.

The Steering Board of the NCCD decided that there was no act of discrimination committed by Mr. Tariceanu.

3. Vasile Dancu’s declaration

In addition, Romani CRISS filed complaints against the declarations of Vice President of the Social democrat Party, Mr. Vasile Dancu - “We must differentiate between being Gypsism and democracy” (18 June 2007) and also against the declaration of a member of Romanian Parliament, and also member of the Democrat Party who said: „We wanted to avoid all the Gypsism created in regard to the signatures. “

4. Ludovic Orban’s declaration

On the 8th of November 2009, the vice-president of the Liberal National Party, Ludovic Orban, has made the following press statement: “I would sum up Basescu’s electorate: alcoholics, Gypsies and prostitutes, although I doubt prostitutes will vote for Basescu, taking into account the way he looks”.

Romani CRISS and other human rights organizations have lodged a complaint in front of the National Council for Combating Discrimination. Ludovic Orban has used pejoratively the term “Gypsy”, in order to describe an ethnic minority, which, according to his opinion, is a part of the electorate of a certain candidate to the 2009 presidential elections.

The two other social categories, mentioned by Orban next to the Roma minority, represent groups perceived negatively by the Romanian society. The statement of Ludovic Orban represents a profound offense targeted against the Roma community, as well as against the two mentioned categories.

4. *Teodor Baconschi, Ministry of Foreign Affairs racist declaration*

On February 11th 2010, Mr. Teodor Baconschi, ministry of foreign affairs, during the official meeting with the French State Secretary for European Affairs, Pierre Lellouche, has associated directly the delinquency with the ethnicity. He declared that “We have some physiological, natural issues of delinquency, in some of the Romanian communities, especially around the community of Romanian citizens of Roma ethnicity”.

On February the 15th, a group of NGOs have issued a press release regarding the discriminatory content of Baconschi’s statement, signing also a protest letter.

On February 16th, the Ministry of Foreign Affairs has published on its website a press release, mentioning the protest letter signed by the NGOs. Both the institution, as well as ministry Baconschi rejects the racist interpretation of the statement mentioned above. The ministry explained that he wanted to emphasize that in each community there is a “natural” rate of delinquency. It is also mentioned that the statement criticized by the NGOs was removed from the website. In fact, the statement was still posted on the website, at the moment when the complaint was lodged in front of the NCCD, but the terms “physiological”, “natural” and “around Roma communities” had been replaced with suspension points.

The NGOs which signed the protest letter have also signed a complaint in front of the NCCD. Mr. Teodor Baconschi has explained biologically the association with criminality, explanation which characterizes the Nazi Germany for Holocaust motivation. The activity of the public institution represented by the Ministry of Foreign Affairs is subordinated to a racist thinking. The NCCD has stated the act was discriminatory, but hasn’t applied any of the legal sanctions: fine or warning – it has made a *recommendation*, which is clearly not a sanction under the national legislation, or under the EU Race Directive 2000/43. Therefore, the decision was appealed in front of the Court of Appeal.

a. Legislation on political parties and other organizations

Although a special attention was brought by ECRI’s third report on applying Emergency Order No. 31/2002 more forcefully to any organizations or political parties advocating racist ideologies, mentioning particularly one fascist organization, Noua Dreapta (The New Right)

is still active, promoting legionary ideologies. Romani CRISS has started a criminal procedure against Noua Dreapta, but the criminal investigation wasn't started. As mentioned above, the case is pending in front of the European Court of Human Rights. Noua Dreapta is annually commemorating figures of legionary movement. It is periodically having messages against Roma and homosexuals, stating on its website that one of its objectives is to "*incriminate the manifestations of homosexuals, as well as guaranteeing the security of the citizens by eradicating the mafia clans which dominate Romania*".³

Consequently, it is crucial to bring again to the attention of the Romanian authorities the necessity of applying the legislation adopted more thoroughly.

b. Draft law on the status of national minorities

The law on the status of national minorities wasn't adopted yet – it has remained a draft ever since 1995. The current draft didn't review the provisions which infringe the right of national minorities to choose their political representative at local level. Further, the Law for the election of local public administration authorities in Romania, strongly restricts the possibility of more than one grouping of persons belonging to a national minority to be represented in authorities at local level and it also blocks political competition with one and the same national minorities, in violation of the principle of pluralistic democracy. In our opinion, it is preferably not to have the current draft adopted, since there will be created the premises for a dictatorial regime.

3. Criminal law provisions

Committing any type of crime based on grounds such as ethnicity, race, religion, sexual orientation, etc. has become aggravating circumstance, according to the modifications of the Criminal Code, included through Law no 278/2006.

The New Criminal Code, which hasn't taken effect yet, kept this provision.

The main issue remains the application of the provisions of the Criminal Code regarding racist offences. These are still weakly applied, mainly due to the lack of training among law enforcement officials, judges and prosecutors.

Further, the racist/ethnic ground of crimes are not investigated in most of the cases documented by CRISS, due to the fact that the perpetrators are law enforcement officials⁴

Another issue which must be brought into the attention of the Romanian authorities is illiteracy. Despite worldwide efforts, illiteracy remains high. According to UNESCO, 16.5% of the world population over 15 years of age is illiterate. This means that more than 800 million people are at particular risk of having their fundamental rights infringed, minority groups being overrepresented.

³ <http://www.nouadreapta.org/obiective.php>

⁴ For further information, see the chapter "Conduct of law enforcement officials"

It is clear that illiterate persons are in a very different situation than literate persons, as regards criminal justice, specific action needs to be designed. A traditional approach that just limits itself to register the reasons the person can't sign or write the declaration, discriminates against illiterate persons, as similar measures are applied for persons that are in different situations. Furthermore, domestic and international legislation and case-law reflects the need to guarantee procedural rights as an integral part of human rights.

Adequate protection of fundamental rights of illiterate persons must be assured. Inter alia, such changes might provide that declarations of illiterate persons that appear before the court should only be taken in the presence of a lawyer and/or human rights NGO representative and that they be registered audio-video, regardless of the standing the person has in the proceedings.

Taking into account that victims of human rights violations find themselves, clearly and constantly, in a state of disadvantage in relation to the perpetrators (that are public officials), legal standing of human rights organizations under criminal law should be included in the Romanian legislation. In many situations, certain pressures are being exercised against the victims or against human rights defenders. Further, victims have a poor knowledge of their rights, and sometimes they are illiterate.

Reports of international organizations show that misconduct of law enforcement officials continues to occur and result in human rights violations. Such violations take the form of, but do not limit to: torture, illegal use of firearms, excessive use of force, racist abuse. International reports show that law enforcement officials feel immune to any sanctioning. Often, such violations are improperly investigated (if at all) and go unpunished, thus creating mechanisms of ensuring a state of impunity for the perpetrators.

4. Civil and administrative law provisions

ECRI recommended that the Romanian authorities adopt a provision enabling the burden of proof to be shared between a victim of discrimination and the respondent before the courts or any other authority.

The Government Order 137/2000 includes currently a provision which shifts the burden of proof.

Some aspects of the current form of the Government Order 137/2000 can still be improved / adopted. Discrimination through association, incitement to discrimination, complicity to discrimination ECRI are aspects we recommend to be introduced in the Romanian legislation.

Another issue which was not sufficiently tackled yet, is including an obligation for the authorities to promote equality and to prevent discrimination in developing their activities.

One of the conditions for providing benefits or signing contracts (by authorities) should be respecting and promoting the principle of equal treatment, as ECRI General Policy Recommendation states (par. 8 and 9).

5. Electoral law

The Coalition for Fair Election, a NGOs coalition Romani CRISS is a member of, has made a proposal for reviewing the Law on local public administration. The following proposal was made:

“Other organizations of citizens belonging to national minorities, defined according to art. 2, point 29, can candidate, if they present to the Central Election Office a membership list, which includes a number of at least 15% of the total number of citizens who declared, during the last census, they belonged to that particular minority”

The Law no 35/2008, article 9, imposes the condition of obtaining the statute for public utility to the organizations of national minorities in order to participate to the elections.

The statute of public utility is granted by the Romanian Government, after the competent administrative authority proposes it.

Currently, the Deputy Chamber debates a draft law which seeks to tighten the conditions for granting the statute of public utility, which leads to aggravating the violation of the right to elect and to be elected of the national minorities.

Art. 1, par. 4 of the Romanian Constitution indicates that *“The state is organized according to the dividing and balance of powers principle – legislative, executive and judiciary – within a constitutional democracy.”* As a result, the supreme law states this principle and doesn't allow arbitrary violations of one power into the established area of activity of another power.

Having the statute of public utility as a mandatory condition is exactly this kind of violation, since the Government can censure the participation of a political body to the elections for the Chamber of Deputies and Senate. Indeed, electing the members of the Chamber of Deputies and Senate is an aspect connected to the exclusive competence of the Parliament, as the Constitution indicates, which establishes that only the legislative can decide and only through organic law, those aspects which are linked to the electoral system (see art. 73, par. 3a).

In its report on the Russian presidential elections, the OSCE criticized in clear terms *“the too restrictive registration terms to even be able to speak about a real competition”*⁵.

Even if there were 5 candidates registered for the presidential elections, the OSCE has concluded there was no real competition and that one of the candidates was favored, in practice.

The Romanian legislation has established the conditions for participation of the national minorities' organizations similarly to the procedures in the Russian legislation, criticized in the OSCE report. Even worse, in Romania one of the political parties is, by law, favored compared to the others – the condition for obtaining public utility statute is requested only from the bodies which are not already represented in the Parliament.

⁵ See OSCE Preliminary report on the Russian presidential elections, page 1, available at <http://www.osce.org/odihr/88667>

The provision violates art. 11 of the European Convention of Human Rights, of art. 1, 8 and 40 of the Romanian Constitution, as well as the political and juridical obligations assumed internationally by the Romanian state, in the field of human rights, and more specifically, in the field of free and fair elections organization.

As a result, we consider that Art. 9, par. 3 from Law no 35/2008 needs to be revised, as to eliminate the condition of obtaining the public utility statute.

6. Administration of justice

ECRI recommended that the Romanian authorities continue to provide for training courses on discrimination issues.

Romani CRISS has organized, in partnership with the National Institute for Magistracy, 3 training courses for judges and prosecutors in the field of combating racism through legal mechanisms in 2011-2012.

Taking into account the dynamics of the judiciary personnel, these efforts, both from the civil society, but primarily from the state, need to be continued.

7. Specialized bodies and other institutions

National Council for Combating Discrimination

Although it was the sole institution committing to actively combat discrimination, including against Roma people, few remarks need to be marked down.

There were a high number of NCCD decisions, in the field of employment, education, access to services and public places, which ascertained acts of discrimination against Roma. On the other hand, the NCCD is not using the mechanism to monitor its decisions, as provided by law, in order to make an evaluation of the impact of different measures (warnings, recommendations, fines), nor the way this decision are implemented or if the fines are being paid.

The relative large percentage of NCCD complaints involving discrimination based on ethnicity is not an indicator of an increased awareness of the Roma population on available remedies and protection against forms of discrimination. As the NCCD reports indicate, most of the complaints regarding Roma were submitted by non-governmental organizations or by Roma persons hired in institutions, facing discrimination in the field of employment. Both specialized NGOs and Roma human resources are aware of the forms of protection against discrimination due to their specialized activity. Random members of Roma communities are not fully aware of the existence of the National Council for Combating Discrimination, or of the legal options if they face discrimination.

As a result of the Constitutional Court Decision in 2008, the mandate of the NCCD was limited: at the moment, the NCCD is able only to ascertain discriminatory normative acts and drafting recommendations, without mandatory decisions which could stop the juridical effects of such acts. This means that discriminatory normative acts are not changed, but continue to produce their legal effects, in spite of their discriminatory content. This practice is against community law, violating the provisions of 2000/43/EC and 2000/78/EC.

There are also certain procedural issues regarding the functioning of NCCD. There is lack of transparency and predictability of the decisional process, regarding the complaints addressed to the NCCD. Moreover, in most of the cases instrumented by Romani CRISS, there were significant delays in making decisions for the complaints lodged.

The quality of the expected expertise the NCCD's Steering Board decreased and the activity of the whole institution have started to be influenced by different political parties due to the nomination procedure of the members of the Steering Board.

For example, in the past years the public discourse of politicians, members of different parties included racist comments targeting Roma. It is hard to believe that the decisions of the NCCD solving the complaints against politicians won't be influenced by the political membership of the Steering Board members.

A recent study conducted by Romani CRISS indicates the National Council for Combating Discrimination is not known very well among Roma people⁶. The Roma respondents who heard about the activity of the National Council for Combating Discrimination claim very low level of trust in this institution.

As a result of the low level of anti-discrimination expertise, lately, the decisions of the National Council for Combating Discrimination are not motivated – legislation and jurisprudence is strictly enumerated on several pages, but there is no actual motivation of the solutions of this body. The interpretation of the law is frequently retrograde: for example, the territorial competence was interpreted in a manner characteristic to the doctrine before World War II. Further, the National Council for Combating Discrimination has recently stated, in a decision, the anti-discrimination law doesn't apply to legal entities, which is clearly against the provisions of EC Directive 2000/43.

Ombudsman

The purpose of the Romanian Ombudsman is to mediate the conflicts between citizens and public authorities. Besides failing to address any of the cases brought into its attention by Romani CRISS, the Ombudsman hasn't even succeeded in expressing an official point of view regarding cases such as Sanmartin interethnic conflict.

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<http://www.romanicriss.org/PDF/Stereotipuri,%20prejudecati%20%20perspectiva%20romilor%20cercetare%202011.pdf>

Recently, the Institution of the Ombudsman changed its leadership. According to the media, the Ombudsman has been more present and active on issues falling under his mandate. Romani CRISS has informed the Ombudsman about situations of violation of human rights.

Department for Interethnic Relations

The Department for Interethnic Relations finance policy is criticisable, which should be revised. The finance contract, signed with the grantees, includes a provision which establishes a term for reporting and receiving a set of documents from the grantees. Another clause of the contract establishes that if the term and conditions are not respected, the obligations of the contract are considered not to be accomplished, and the Department for Interethnic Relations may annul the finance.

We consider these terms are characteristic to corporations which aim to obtain profit, and not to a public institution of such mandate.

Further, in 2010 Romani CRISS had a faulty communication with employees of the institution, who had a discriminatory and biased behavior with the organization. A complaint letter was sent to the head of the institutions, who hasn't provided an answer until present.

8. Education and awareness-raising

The recommendations and proposals made on the draft for the Strategy for Inclusion of the Romanian Citizens of Roma ethnicity included specific priorities on education, such as:

- promoting ethno-educational inclusion and intercultural education in the education system at all levels;
- Including in the initial and continuous training of the teachers mandatory disciplines such as intercultural education, promoting diversity in schools and in the society, preventing and combating discrimination.

The Romanian authorities need to be urged to take concrete action into putting into practice the policies assumed.

9. Conduct of law enforcement officials

Although ECRI noted a decrease in the level of police violence against members of the Roma community, in its latest report, unfortunately, these incidents are very frequent – Romani CRISS has documented 46 such cases in the period 2005-2012.

We recommend the Ministry of Justice and the Ministry of Interior to establish an office responsible for prosecuting cases of police abuse. Independent prosecutors need to be responsible for this type of cases, taking into account the prosecutors' reluctance to start criminal investigation against law enforcement officials' representatives.

Further, the collected data on the police misconduct is very poor. The data collected by the state on this particular matter lacks completely. As a result, we recommend the Ministry of Interior to periodically collect data on police abuse and misconduct. The Group created within the Institute for Research and Preventing Crimes should be reactivated. Internal ruling should be adopted, which should establish responsibility for this particular data collection.

The methodology for intervention in the multiethnic communities should be revised. NGOs which document cases of law enforcement officials' abuse should be consulted on this matter. Cultural specificities, as well as international standards for protecting human rights should be taken into account when revising the methodology.

The police training should be refined, as to use the least force possible.

Cases documented by Romani CRISS

1. Police abuse against Roma, Reghin - 2006

On the 7th of September 2006, as a result of the Police and Special Forces intervention in Apalina neighborhood (Mures County, Reghin), 37 victims were identified, including 20 men and 17 women, 32 adults and 5 minors, 22 shot and 15 hit or gun threatened, 36 Roma and 1 Romanian. Most of them were beaten up, shot with rubber bullets or sprayed with tear gas. One Roma woman was shot with a metal bullet – she passed away in 2008, due to medical complications. Romani CRISS has documented the case, has contracted a lawyer and initiated a penal complaint. All domestic remedies were exhausted and the case is currently pending in front of the European Court of Human Rights.

2. Police abuse against Roma, Dolhasca – 2008

As a general context, in 2001 a police abuse against a Roma minor boy occurred. Romani CRISS has interfered, back then, in the case. In 2008, the European Court of Human Rights has sanctioned Romania in the case Stoica v. Romania and held that there has been a violation of article 3, both under its substantive and procedural limbs, as well as a violation of article 14 in conjunction with article 3 of the Convention.

In April 2008, Romani CRISS has organized a round table with local authorities from Suceava, including police representatives, for discussing the ECHR decision and proposing measures for increasing the trust between police and the Roma communities.

On the 23rd of July 2008, around 5.30-6.00 a.m., representatives of Dolhasca police precinct as well as of the County police have had an intervention in two houses of two Roma families from Gulia. In one of the houses the warrant for house search was presented to the Roma family, in the other house it wasn't, although the Roma family has specifically asked for it. In one of the houses,

4 persons were assaulted by the police representatives- one of them is minor, one of suffered from a mental disability. The police representatives searched the house for a cell phone, which allegedly was stolen during a robbery at the gas station.

Few persons were taken to the police precinct. One of the Roma was hit by a police representative, and he had a seizure. The other Roma who were waiting in front of the police precinct were offended by police representatives and also threatened: "I will not give up until I kill 2-3 Gypsies!"

All domestic remedies were exhausted – there was no criminal investigation started against the police representatives. The application submitted to the European Court of Human Rights was inadmissible.

3. Police abuse against Roma, Clejani-2008

In Clejani, Giurgiu county, an incident involving a Roma family and the local police occurred.

A 16 year-old was having a relationship with a girl. After few months, she decided to move in with her boyfriend, in his family's home. The father of the girl complained to police that the girl was being retained against her will by the Roma family. The family went to the police, accompanied by the minor girl, where everyone, including the girl, declared the facts: that it was the girl's decision to live in the Roma family's home.

In spite of the facts mentioned above, after two days, around 1.00 p.m. representatives of special forces came into B. family's house. Mr. B.I. asked if they had a warrant, and their answer was, according to B.I.: "the warrant is the fist and the gun!" Afterwards, B.I. was hit in the face, while the representatives of the special forces were shooting around with rubber bullets and using pepper spray. B.I.'s 14 year-old son was shot in the buttock. The girl allegedly kidnapped was screaming, because she wanted to stay there, but the special forces' representatives grabbed her and took her away from there.

The case is currently pending in front of the European Court of Human Rights.

3. Police abuse against Roma, Acas – 2008

On the 4th of July, 2008, F.Z. was listening to music in his yard, when four police representatives showed-up and asked him to accompany them to the police precinct. Because F.Z. didn't know the reason why he was being called to the police precinct, he refused to accompany the four police representatives. Afterwards, F.Z. was threatened by the police men that he would be shot. Meanwhile, a neighbor and his son came up and started beating up F.Z. Although the police representatives were right there, seeing what was happening, they didn't interfere.

F.Z. was taken to the hospital by his family, because he had lost his conscience. The doctor treated him badly and told him to wait outside for the ambulance. Instead of an ambulance, a

police car came, handcuffed F.Z., beat him up and took him by car to the police precinct. His wife, his 51 year-old father-in-law and his 13 year-old daughter were beaten up and taken to the police precinct also.

At the police precinct, F.Z., his wife and daughter were all beaten up by police representative for about an hour. F.Z. obtained a medico-legal certificate, which recommends 40-50 days necessary for recovery, after the injuries suffered.

Moreover, his wife, F.S., overheard the doctor who consulted her after the police abuse, saying that she was pregnant and lost the baby, as a result of the physical injuries.

Furthermore, the brother of F.Z., F.I., was also taken to the police precinct. The police representatives claimed that some neighbors pressed charges against him. F.I. was beaten up by police representatives for about two hour, and threatened to confess that he was guilty. Because F.I. refused to confess something he claimed he hadn't done, he was released.

The case is currently pending in front of the European Court of Human Rights – in Romania no criminal investigation was started against the police representatives.

4. Police abuse against Roma, Racos – 2012

According to the census conducted in 2002, Racos locality has 3178 inhabitants – 1822 are Hungarian ethnics, 693 Romanians and 659 Roma. According to the estimations of the Roma people, there are around 1000 Roma in the locality.

The relation of the Roma community with the mayor has been sensitive since many years ago. The mayor was arrested in the past for beating up Roma people. In 2011, a collective violence incident occurred. After a fight between a Roma family and the mayor's family, the non-Roma in the locality were incited to start violence against the entire Roma community.

Last year, the Mayor's Office from Racos has hired a private security firm – in the documentation arguing the necessity for hiring such firm, the Mayor's Office has stated clearly that such security firm needs to deal with the Roma community, whose members commit crimes. Basically, the Racos Mayor's Office is paying, out of public funds, a private company to put into practice repressive measures against the members of a local community, and applies these measures based on the ethnic appurtenance of the citizens.

In April 2012, Romani CRISS has documented three cases of abuse against Roma in Racos, committed either by police representatives, either by employees of the private security firm, contracted by the Mayor's Office. Minors were also threatened and hit by the employees of the private security firm.

III. Specific issues

1. Strategy for Improving the Situation of the Roma

ECRI urged the Romanian authorities in the latest report to allocate the necessary funds to the bodies and programs responsible for implementing the Strategy for Improving the Situation of the Roma. ECRI also recommended to the authorities to conduct an appraisal of the Strategy in order to establish the results of the Strategy and redefine its parameters where necessary. ECRI recommended the appraisal to be made public and sent to NGOs concerned so that they may contribute to redesigning of the Strategy.

Observations on how the Strategy 2001-2010 was implemented

- ✓ The participation and involvement of the Roma civil society

The cooperation between the Government and the Roma NGOs, on the Strategy implementation, was seriously diminished, especially after the review in 2006, since the Roma NGOs couldn't be involved anymore in the Ministry Commissions or in the Working group on Roma public policies. One of the main principles of the Strategy, active participation, was not respected.

The concept of preventing and combating discrimination wasn't linked with the areas of action included in the reviewed Strategy.

- ✓ Implementation

The political will of the Governments on the Roma issue lacked. In the past 8 years there was no meeting of the Romanian Government which targeted debating on the Roma issue. A direct consequence was lack of political support for the activity of the National Office for Roma. This political abandon led to a decreased efficiency of the measures for Roma inclusion.⁷

It is difficult to measure the progress made in the Strategy's implementation, taking into account the insufficient orientation towards results and measurable objectives: it is difficult to measure the resources allocated for the implementation of some measures and which was the impact on the Roma population.⁸

Despite of the fact that, both nationally and internationally, a report on the implementation of the Strategy, its public presentation and the consultation of non-governmental organizations, was requested, such analysis wasn't carried out.

⁷ Romani CRISS, Legal Protection against Discrimination and Public Policies for Roma

⁸ Centre for Ethno cultural Diversity, Policies for Integration of the National Minorities in Romania, 2008

Strategy of the Romanian Government for Inclusion of the Romanian citizens belonging to the Roma minority

On March 9th, 2011 the Romanian Government announced that the Memorandum for the Guidelines on Roma Inclusion 2011-2020 period was approved. Furthermore, the Government had set a deadline for the National Agency for Roma, which was tasked to finalize the National Strategy and the plans of actions within 30 days after the official approval of the Memorandum. However the first meeting of the Inter-ministerial Group took place on March 29th, according to Mr. Ilie Dinca, President of the National Agency for Roma statement and the Strategy was to be finalized by April 15th, 2011. Romani CRISS has protested against this process of accelerating the adoption of this public policy of such importance and against the violation the provisions on the transparency in public administration decision-making. The draft on the Strategy was launched for public consultation in August 2011. NGOs, both Roma and non-Roma have involved in the process of consultation, by submitting comments on the documents in consultation and asking for the additional ones to be put into consultation – the plans of actions on each area of intervention weren't initially open to public consultation. After requests of the civil society, the Government published the plans as well, and extended the deadline for consultation.

Most of the comments and proposals made by the group of NGOs weren't included in the adopted strategy⁹.

2. National Office for the Roma

The European Commission has emphasized on various occasions that the institutions dealing with the Roma issue doesn't have the capacity of initiating and coordinating actions at the level of different ministries with mandate in the areas covered by the Strategy. The Commission pointed out that capacity of the staff needed to be strengthened.

Reorganizations, transfers and repeated changes at the level of the Government had a major negative impact on the institution responsible for the Roma issue and for the implementation of the Strategy.

The institutional functioning of the National Office for Roma was problematic and it negatively affected the coordination and monitoring of the Strategy.

The only evaluation of how the National Office for Roma functioned, the one carried out by Focus Consultancy, "*Assessment of the Roma Strategy Implementation*", criticizes the President of the National Office for the Roma, who was Mr. Ilie Dinca, at that time.¹⁰ In spite of that, the Romanian Government named again Mr. Ilie Dinca as head of the National Office for Roma in

⁹ [http://www.romanicriss.org/PDF/Comentarii_Strategie_ONG-uri_FINAL\(1\).pdf](http://www.romanicriss.org/PDF/Comentarii_Strategie_ONG-uri_FINAL(1).pdf)

¹⁰ http://www.anr.gov.ro/docs/rapoarte/Focus_Final_Evaluation_Report_181.pdf

2009. The activity of National Office for Roma is dictated by the political environment and this led to a very dysfunctional management of the institution.

It is also unacceptable, in our opinion, that members of NAR have discriminatory statements targeting Roma, on various occasions. The National Council for Combating Discrimination has sanctioned through a warning Mr. Dan Oprescu Zenda for his statements during an interview, carried out by a representative of Centre for Legal Resources. The question of the interviewer was if Mr. Oprescu considered the National Office for Roma had enough resources – financial and human – to accomplish its mandate. The answer of Mr. Oprescu, considered by the plaintiffs (Centre for Legal Resources, Romani CRISS and Roma Civic Alliance), as well as by the National Council for Combating Discrimination discriminatory was: *“Yes, the answer is a definite yes...So, taking into account we are not the Ministry of the Roma, to build big houses for each darker person, my colleague in Gorj should pardon me ... I guess these are also in Dolj ... these darker ones. So no, we don't chase on the streets darker persons to give them houses, ok?”*

Further, there have been complaints of former employees of this institution for abusive dismissals, based on political affiliation criteria.

3. Situation of the Roma in the area of education

ECRI urged the Romanian authorities to make Notification No. 29323/20.04.2004 legally binding

In 2006, the Ministry of Education, OSCE and a group of NGOs, including Romani CRISS, have signed a Memorandum, which established, among others, a legislative measure, legally binding, will be taken to combat and prohibit school segregation of Roma children. A working group was formed, which drafted an Order which was adopted in 2007, by the Ministry of Education (Order No 1540/2007).

Further, the Ministry of Education has implemented PHARE programs on the Access to education of disadvantaged groups, with a focus on Roma. The programs didn't have clear results towards creation of desegregation models. On the contrary, there were cases where European funds were used to renovate buildings which were planned to serve as segregated schools.

During school year 2007-2008, Romani CRISS has monitored the application of the desegregation Order. The results indicated teachers didn't know about its existence; not even all interviewed school managers knew about it. Roma parents didn't know that school segregation was prohibited by law, either. Although the Order established no segregated classes were to be formed at the level of 1st and 5th grade, this continued to be the case.

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In 2009, actors of the civil society have taken steps to found a commission within the Ministry of Education, which was supposed, among others, to monitor the application of the legislation against segregation.

Art. 14 of Annex no I of the 1540/2007 Order, mentions that a permanent working group should have been founded, which should have analyze the reports and elaborate methodologies and comprehensive programs to eradicate scholar segregation and its effects on a long term. This provision wasn't put into practice, and this is why Romani CRISS has proposed the already functional model of the Commission for Roma within the Ministry of Health, in order to found a commission within the Ministry of Education.

The commission would elaborate proposals for planning, organizing, coordinating and monitoring the implementation of the Ministry of Education's strategy in the field of improving the quality of education for Roma, as well as analyzing the discrimination situations in schools, scholar segregation cases, in order to assure the principle of non-discrimination is applied in the Romanian educational system.

The Commission wasn't founded in 2009 as a result of bureaucratic issues, as well as because of political replacement within the Ministry of Education. The whole lobby process had to be restarted; up until now, there was no political will to establish this commission.

In spite of the existent domestic legislation, the practice of segregation is still a urgent matter to address.

Cases documented by Romani CRISS

In the period 2005-2012, 16 cases of school segregation were documented by Romani CRISS.

School no 17, Craiova

In school no 17, from Craiova, out of 1187 students, 217 are Roma. The school secretary has released a document indicating segregation of Roma students in 3rd, 4th and 6th year of study. The school director mentioned that this separation occurred because Roma parents enroll their children to school too late.

The Roma parents' statements indicate that their children are physically abused by the teachers, due to the fact that they don't bring different amounts of money to school, necessary to buy furniture or curtains. The quality of the education that Roma children receive is poor, because the teachers do not show any interest, assert the Roma parents.

On 7th of February 2007, Romani CRISS has made a complaint at the National Council for Combating Discrimination, concerning the situation of discrimination from the I-XII grade Scholar Auto Group, Craiova, Dolj County, caused by different treatment applied to Roma students from 3rd, 4th and 6th grade, by separating them from the other students.

The National Council for Combating Discrimination has considered the fact to be discrimination, and has recommended to the Scholar Auto Group and to the Scholar Inspectorate of Dolj County to adopt the necessary measures so that the process of desegregation to be started as soon as possible.

School Atid, Harghita

In March 2007, Romani CRISS has carried out a field visit at the General School I-VIII, Josika Miklos, from Atid, no 393, Harghita County. After the case documentation, it was noticed that the Roma second graders were segregated from the other students. Romani CRISS has made a complaint to the National Council for Combating Discrimination, concerning the separation of the Roma students from the second year of study.

The NCCD has ascertained the segregation in Atid school, recommending to the school to take all the necessary measures in order to eliminate the segregation situation.

School no 3, Roman, Neamt County

Romani CRISS has made a field visit to the Neamt county Scholar Inspectorate, in order to gather evidence concerning a case of segregation of the 2nd, 3rd and 4th Roma graders, in School no. 3 from Roman. For this purpose, Romani CRISS has discussed with the school inspector for Roma, with school representatives, as well as with the members of the community.

It emerged the fact that, in 2003-2004 school year, the Neamt county School Inspectorate has set up a class where only Roma pupils were studying, managed by the Special School. Setting up this type continuously, in 2005-2006 it has been reached the number of 75 children who were studying in this kind of classes.

Romani CRISS has informed, on the 16th of March 2007, the National Council for Combating Discrimination, about the segregation of the 2nd, 3rd and 4th Roma graders, as to sanction the responsible persons.

It was decided by the NCCD that the facts presented were a discrimination act and it was recommended to the school, as well as to the County School Inspectorate, to take all the necessary measures to prevent and eliminate the scholar segregation.

Special School Dumbraveni, Sibiu

Romani CRISS carried out a field visit on 7-8 November 2006 in Dumbraveni, Sibiu County, in order to document a case where Roma children are being moved from Theoretical High school (grades I-XII) to the local special school and collect evidence necessary to mark out the differential treatment applied to the Roma pupils.

On November 8th 2006, Romani CRISS has the first meeting with the principal of the special school. In the meeting, they discussed about the methods and reasons of moving the Roma children

from high school to the special school. The team from Romani CRISS also visited the classrooms where Roma children transferred from high school were learning. The discussions with the school principal revealed that children who failed to graduate the same class for 2-3 years in a row were tested by the commission set up by the Sibiu County School Inspectorate. Following the testing, the Commission decided whether the students have mental health problems and also whether to transfer the children to a special school, by issuing certificates showing they were children with special educational needs.

As result of the policy led by the local authorities, today at least over 90% of the people attending the special school are Roma and end up attending this school because they failed to graduate a class, not because they are students with special needs.

Considering the opinions of the Roma parents, as well as the statement of the special school management from Dumbraveni locality, Sibiu County, Romani CRISS requested the National Council for Combating Discrimination to start an investigation of this case to ascertain discrimination and sanction the responsible persons. The NCCD has stated the Roma students in Dumbraveni school are treated differently than the non-Roma ones, by separating them and placing these in the back of the class room, by causing them to repeat the school year for 2-3 times, and by moving them from the Dumbraveni high school to the Special school in the locality, not for a special need, but because of their social needs.

4. Other forms of discrimination against the Roma

1. Human rights defenders

On the 15th of September 2011, Romani CRISS was contacted by a representative of a French NGO, who informed CRISS representative about a project. Basically, an invitation to a partnership was launched, while information on the first step of this partnership was provided: the French-Romanian Colloquy, scheduled on November 24 2011, to take place in Lille, France. After the invitation was accepted by CRISS representative, further information was requested.

Taking into account that one of the main actions of the organization is strategic litigation of cases of human rights violation, and also the fact that most of the times Romani CRISS has to fight public authorities against discrimination and abuse targeting Roma, our organization has involved in a case against the Municipality of Baia Mare, in the field of violation of the right to adequate housing and discrimination. In June 2011, the mayor of Baia Mare announced the municipality's intention to build a wall to separate a building inhabited almost exclusively by Roma from the other rest of the community. Romani CRISS, jointly with Sanse Egale Association and Amnesty International, have publicly condemned this illegal intention. Further, on the September 23 2011, CRISS has sent a letter to the National Council for Combating Discrimination, claiming the discriminatory behavior of the Baia Mare municipality.

On the September 28 2011, the representative of the partner NGO has announced the representative of Romani CRISS, that the organization no longer can join the colloquy, due to the pressure of Baia Mare municipality, which decided to withdraw from the project, because Romani CRISS was invited to join the colloquy and the project.

We consider the action of Baia Mare municipality to represent victimisation and an abuse of power, as framed by national and international legislation.

2. Access to health care services

The right to health, without discrimination, is strongly connected with the right to life and acknowledged in a host of international human rights documents. Refusal to provide medical treatment to Roma, negligence of the medical staff towards the Roma patients, ethnic segregation in hospitals, and inappropriate/abusive recoding of Roma ethnicity in medical or identification documents not only violate rights of Roma individuals but also have a negative impact on the health status of the Roma population as a whole, and undermine their human dignity and self-esteem. Discrimination and denial of the right to health and adequate healthcare contravenes the legal obligations of the Romanian state assumed by signing and ratifying the international treaties. Romani CRISS has dealt with the right to health in more depth since 2007-2008. Starting with 2007, Romani CRISS has documented a number of 12 cases of unequal access to health care services of members of Roma community, due to their ethnic background.

While for other areas legislation is adopted – even if its implementation is weak – the Ministry of Health hasn't tackled the discrimination issue in depth.

We recommend the in the Ministry of Health to adopt an Order to forbid different types of discrimination (example: segregation, the refuse to enroll patients on the beneficiaries' list).

We recommend the National Council for Combating Discrimination to adopt an instruction to prevent and combat any type of discrimination in access to health.

3. Right to human dignity

Charter of European Parties for a non-racist Society

As indicated above¹¹, many Romanian politicians had profound discriminatory statements against Roma. This is very serious, since Romanian policy makers consider the Roma delinquents, as for instance the Ministry of External Affairs declared in 2010 that :”We have some physiological, natural, issues of criminality within some of the Romanian communities, especially within the communities of the Romanian citizens of Roma ethnicity. The politicians are public figures and opinion makers. Therefore, the perception of the entire society is influenced by their statements and

¹¹ See chapter *Constitutional provisions and other basic provisions*

opinions. Many members of Roma communities (three out of ten)¹² consider that Romanians' attitude towards the Roma was influenced by this kind of declarations by public persons and the opinion polls point out that 72.4% of the Romanian citizens consider that Roma people break the law.

In Romania, only one political party has signed the Charter of European Parties for a non-racist society. Taking into account that discriminatory speech against Roma, and also other groups, has been promoted by representatives of different political parties in Romania, we consider having the Charter signed by all Romanian political parties would represent a step forward for a democratic society.

Anti-Gypsyism / Anti-Tziganism / Romaphobia: Use of terms

Gypsy (Tigan, in Romanian) is the pejorative naming of the Roma minority. In Romani language, there is no such naming as Gypsy/Tigan, but Roma is the one used for centuries.

In Romania, there has been a long debate and many initiatives promoted by different actors regarding the naming of the Roma minority: *rom* or *tigan*. In 1995, the Romanian Ministry of Foreign Affairs has adopted a Memorandum, asking the Romanian authorities to use the term *tigan*. This Memorandum was annulled by the Ministry of Foreign Affairs in 2000.

In 2007, three members of the Parliament have proposed a law to change officially the naming of the Roma into *tigani*. Par. 92; A national newspaper has initiated a campaign for collecting signatures for the same purpose in 2007, campaign which failed. Another legislative initiative was brought in front of the Parliament in 2010, which failed as well.

The Romanian Constitution, as well as the international legislation indicates no institution can impose to a minority how to name itself.

Even if the terms "Anti – Gypsyism / Anti- Tziganism" designate the racism and hatred against Roma, in our opinion it is not appropriate use of terms. It is not advisable to use the pejorative term, even in this context. "Gypsy" has a negative connotation, and translated into Romanian (and other languages) it is even worse. *Atinganoi*, in Greek, means "untouchable".

Therefore, we recommend to EU and national institutions to use the term Romaphobia, instead of Anti-Gypsyism / Anti-Tziganism.

¹² Romani CRISS, "Stereotypes, Prejudice, and Ethnic Discrimination: The Roma perspective", 2011