

Undersigned Roma associations in Romania

**General Policy Recommendation
regarding anti-discrimination
legislation and policies for combating
discrimination against Roma in
Romania**

„General policy Recommendation regarding anti-discrimination legislation and policies of combating discrimination against Roma in Romania” is a reference document elaborated by Romani CRISS and proposed for debate, in order to be discussed and adopted by Roma associations in Romania within the meeting “Harmonisation of the legislative anti-discrimination framework in Romania and policies of combating discrimination against Roma”, Poiana Braşov, 13 – 15 September 2003.

This document is the result of the undersigned Roma associations’ co-operation, joint efforts and agreement:

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Free Roma Democratic Association -Sasa-Petrosani
Roma Association Romascani
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Alliance for Roma Unity
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Roma Center for Social Intervention and Studies-Romani CRISS
Roma Cneter for Public Policies - Aven Amentza
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Romano Euro-Drom-Craiova
Roma Party – restrainedly by the approval of the decisional body
Roma Young Generation Society
Roma Democratic Union-Alba
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General Policy Recommendation regarding anti-discrimination legislation and policies of combating discrimination against Roma in Romania

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Preamble

The undersigned Roma associations in Romania,

Having in mind the Declarations of the Member States of OSCE (Organisation for Security and Co-operation in Europe) within the meetings: *Copenhagen in 1990*, through which "we acknowledge Roma peculiar problems"; *Geneva in 1991*, through which "the states express their availability to enforce effective measures in order to realise equal chances opportunities for Roma persons and the rest of population in the residence states"; *Moscow in 1991*, through which "The States acknowledge that education on human rights field contributes to combating intolerance, hatred, racial and ethnic prejudices against Roma"; *Helsinki in 1992*, through which "The participants States take into consideration the development of programs aiming to create conditions for the promotion of non-discrimination and multi-culturality towards education on human rights, actions at local level and research; the States reaffirm, in this context, the need to develop programs aiming to solve the problems of Roma ethnic persons and of other traditional groups identified as Roma/ Tzigani and to create conditions to ensure equal chances opportunities for effective participation to social life"; *Istambul in 1999*, through which "The States deplore violence, racist and discriminatory manifestations against minorities, including Roma and commit to ensure that Roma and Sinti rights are fully respected through laws and public policies and, where necessary, will promote a anti-discrimination legislation to this effect. The States underline the importance of careful attention to social exclusion of Roma and Sinti and acknowledge, in particular, the difficulties Roma are confronting with and the need to adopt effective measures for equal opportunities; the States will joint heir efforts to ensure that Roma and Sinti are able to play a full and equal role in our society and will eradicate discrimination against them; *Vienna in 2003*, through which it was presented the OSCE initiative to adopt the Action Plan on Roma and Sinti.

Having in mind the General Recommendation XXVII on Roma discrimination adopted in 2000, at the fifty seventh session of the Committee for the Elimination of Racial Discrimination (within United Nations): "for the benefit of Roma communities,

following the submissions of the States parties to the International Convention for the Elimination of All Forms of Racial Discrimination, their periodic reports submitted under article 9 of the Convention, as well as concluding observations adopted by the Committee in connection with the consideration of States parties' periodic reports; having in mind the thematic discussions on the issue of discrimination against Roma and received the contribution of members of the Committee, as well as contributions by experts from United Nations bodies and other treaty bodies and from regional and non-governmental organisations"

Having in mind the European Union Parliament Resolution on 1995, through which "it is acknowledged discrimination against Roma in all countries they reside in, as well as the acute problems in Central and Eastern Europe, considering their great number and the fact that, potentially, Roma life conditions are a problem which can be debated at international level, reminding that the European Parliament requested from European bodies in general, including European Commission, Council of Europe and OSCE, to work together with the Parliament in order to combat discrimination against Roma"

Having in mind the Recommendation 1203 adopted by the Parliamentary Assembly of the Council of Europe through which "it is acknowledged that a special place among the minorities is reserved for Roma and, the statute of non-territorial minority contribute to Europe's cultural diversity, respect for Roma rights, human individual and fundamental rights, as well as their rights as minority are essential for improving their situation; guarantees for equal rights, equal chances, equal treatment and measures to improve their situation will make a revival of Roma language and culture, thus enriching the European cultural diversity; the guarantee of the enjoyment of the rights and freedoms set forth in Article 14 of the European Convention Rights is important for Roma as it enables them to maintain their individual rights"

Having in mind the Recommendation of General Policies no.3 on combating racism and intolerance against Roma/Gypsies, adopted by ECRI (European Commission against Racism and Intolerance), noting that "Roma/ Gypsies suffer throughout Europe from persisting prejudices, are victims of a racism which is deeply-rooted in society, are target of sometimes violent demonstrations of racism and intolerance and that their fundamental rights are regularly violated or threatened, noting also the persisting prejudices against Roma/ Gypsies lead to discrimination against them in many fields of social and economic life, and that, such discrimination is a major factor of social exclusion affecting Roma"

Having in mind "Treaty Establishing the European Union Community and, in particular, article 13, discrimination based on racial or ethnical origin could undermine the realisation of the objectives of the European Community Treaty, in particular, reaching a high level of employment and social security, increasing the life standard and the quality of life, cohesion and economical and social solidarity. It could also undermine the objectives of development of the European Union, as region of liberty, security and justice";

The undersigned Roma associations in Romania adopt the herein Recommendation of General Policy regarding anti-discrimination legislation and policies to combat discrimination against Roma in Romania.

Context and Recommendations regarding anti-discrimination legislation and policies of combating discrimination against Roma in Romania

Considering Article 1 of the Universal Declaration of Human Rights, which proclaims that all human beings are born free and equal in dignity and rights;

Considering that the right of equality before the law and protection against discrimination for all persons is an universal right acknowledged by the Universal Declaration of Human Rights, the United Nations Convention for the Elimination of All Forms of Discrimination against Women, the International Convention for the Elimination of All Forms of Racial Discrimination and the United Nations Agreements on Civil and Political Rights, as well as Economical, social and Cultural Rights, the European Convention for the Protection of Human Rights and the Fundamental Freedoms, signed by all member States;

Considering the International Convention for the Elimination of All Forms of Racial Discrimination;

Considering Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

Considering Protocol no.12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which contains a general clause that forbids discrimination;

Considering the jurisprudence of the European Court of Human Rights;

Considering the European Union Council Directive 2000/43/EC regarding the implementation of the principle on equality of treatment among persons, regardless of the race and ethnical origin, as well as European Union Directive 2000/78/CE, which establishes the general framework in favour of the equal treatment in the field of employment and professions;

Having in mind the ECRI General Policy Recommendation no.1 for combating racism, xenophobia, anti-semitism and intolerance, ECRI General Policy Recommendation no.2

regarding specialised bodies in combating racism, xenophobia, anti-semitism and intolerance at national level, ECRI General Policy Recommendation regarding the national legislation on combating racism and racial discrimination.

Aware that legislation alone does not suffice to eliminate racism and discrimination, but certain that legislation is essential in combating racism and discrimination

Underlining the primordial importance of the adequate juridical measures in combating racism and discrimination in such manner that will discourage and, as possible, be satisfactory from the victim's point of view,

Underlining the importance of adoption of coherent and comprehensive public policies regarding the prevention and combating discrimination against Roma, in accordance with the European principles of realisation and enforcement of such policies "with, of and for Roma"

Wishing, along with other efforts at national and international level, to bring our contribution to the fight against racism and discrimination, presenting in a succinct and exact manner the key elements, which need to be included in the national anti-discrimination legislation and in the policies of combating discrimination against Roma:

The undersigned Roma associations in Romania recommend the Government, Parliament and appropriate institutions in Romania, especially the National Council for Combating Discrimination:

- a. To harmonise the anti-discrimination legislation in Romania according to the international standards**
- b. To ensure a transparency and consultation program with the representative of the civil society in Romania during the legal steps for harmonising the legislation**
- c. To ensure that the component elements within the Recommendation are integrated into the anti-discrimination legislation in Romania**
- d. To adopt a comprehensive public policy on the prevention and combating discrimination against Roma**
- e. To ensure a process of consultation and collaboration with Roma associations in Romania in the elaboration, implementation and monitoring of the policies of prevention and combating discrimination against Roma in Romania**
- f. To ensure that the component elements within this Recommendation are integrated into the policies of prevention and combating discrimination against Roma**

Key elements in the Romanian legislation regarding the prevention and sanction of all forms of discrimination in connection with the present minimal standards on discrimination at international level

Roma associations in Romania, saluting the initiative of the Romanian Government to adopt the Governmental Ordinance 137/2000 regarding the prevention and sanction of all forms of discrimination, approved by the Romanian Parliament through Law 48/2002, the modifications within Governmental Ordinance no.77/2003; saluting the adoption of the Governmental Decision 430/2001 regarding the Romanian Government Strategy for the Improvement of Roma Situation;

Given that in a democratic society human rights are protected effectively through the care of competent institutions and by awareness of the general population about respecting the rights of the others, we believe that the existence of clear set of regulations applicable in the field of discrimination is essential;

In this meaning, we believe fundamental the harmonisation of the anti-discrimination legislation in Romania with the current minimal standards on discrimination at international level.

Wishing, along with other efforts at national and international level, to bring our contribution to the prevention and combat of racism and discrimination against Roma, we present succinctly and precisely the key elements that should be included in the Romanian legislation on anti-discrimination.

I. Harmonising the legislation

1. The necessity to harmonise the internal legislation with the international standards

The standards stipulated in the international law on discrimination are minimal. The existence of these standards in different international documents, to which Romania is part of, obliges Romania to rise the current adopted standards. The States, including Romania, have the option to include the minimal stipulations, as well as to enlarge those stipulations.

II. Anti-discrimination law

1. Criteria of discrimination

The Romanian legislation should be unitary from the point of view of the considered non-discrimination criteria and the enumeration of the criteria shouldn't be limit: "race, nationality, ethnicity, language, religion, social appurtenance, consciousness, gender, sexual orientation, appurtenance to an underprivileged category, age, disability, refugee or asylum seeker statute or any other criterion." These should be mentioned explicitly according to the European Union Council's Directive 43/2000 and 78/2000.

2. Definition of discrimination

The law should define explicitly direct and indirect discrimination. Thus, "direct discrimination" is any behaviour through which a person, group or community is treated less favourable than other person, group or community is, has been or would be treated in a comparable situation, on grounds of race, nationality, ethnicity, language, religion, social appurtenance, consciousness, gender, sexual orientation, appurtenance to an underprivileged category, age, disability, refugee or asylum seeker statute or any other criterion;

"Indirect discrimination" is any stipulation, criterion or practice apparently neuter that disadvantage certain persons in comparison with other persons on grounds of race, nationality, ethnicity, language, religion, social appurtenance, consciousness, gender, sexual orientation, appurtenance to an underprivileged category, age, disability, refugee or asylum seeker statute or any other criterion, except the case these stipulations, criteria or practises are well-founded.

3. Harassment

The law should include explicitly the concept of harassment and stipulate sanctions for this deed. Thus, harassment is any behaviour which leads to

the creating an atmosphere of intimidation, hostility, degradation or insult, on the grounds of race, nationality, ethnicity, language, religion, social appurtenance, consciousness, gender, sexual orientation, appurtenance to an underprivileged category, age, disability, refugee or asylum seeker statute or any other criterion;

4. Victimisation

The law should include explicitly the concept of victimisation and stipulate sanctions for this deed. The victimisation is any adverse treatment coming as a reaction to a complaint or legal proceeding regarding a breach of the principle of equal treatment or non-discrimination.

5. The instruction to discriminate

The law should stipulate that the following acts are considered to be, among others, forms of discrimination: the instruction to discriminate, discrimination by association, training other person to discriminate, inciting other person to discriminate, helping other person to discriminate.

6. Affirmative measures

The law should stipulate that the measures taken by public authorities or private legal persons in favour of a person, a group of people, or a community, which measures aim to ensure their development and to effectively bring about equality of chances and opportunity between these and other persons, people, or communities, as well as positive measures aiming to protect disadvantaged groups, shall not be taken to be discrimination.

7. Mediation and conciliation

The law should guarantee the existence of judicial and/or administrative proceedings, including conciliation proceedings, which shall be easily accessible and available to persons who consider themselves aggrieved by not being applied the principle of the equal treatment, even after the relation in which the discrimination occurred was over.

8. Public authorities

The law should stipulate the obligation of the public authorities to foreseen and prevent antidiscrimination while exerting their duties;

9. Shifting the burden of proof

The law should stipulate that persons who consider themselves wronged because the principle of equal treatment has not been applied to them can establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, and

it shall be for the respondent to prove that there has been no breach of the principle of equal treatment;

10. Defending the rights

The law should stipulate that non-governmental organisations, which aim to protect human rights or have a legitimate interest in combating discrimination, shall have standing when discrimination affects a community or a group of people. The organisations mentioned above also have standing when discrimination affects a natural person, upon request of the said person;

11. Sanctions

The law should stipulate efficient, proportional and discouraging sanctions for the breach of legal provisions regarding cases of discrimination;

12. Means of proof

The law should stipulate that discrimination can be proved through all types of evidence, including audio and video recordings; indirect discrimination can be proved also by the use of statistical data;

III. The National Council for Combating Discrimination

1. Independence

The structure and functioning of the National Council for Combating Discrimination should be regulated by law. Thus, the National Council for Combating Discrimination should be established as an autonomous administrative authority subordinated to the Parliament. The National Council for Combating Discrimination is the national authority that sanctions contravenitionally the acts or deeds of discrimination. While exerting its duties, the National Council for Combating Discrimination is answerable to the Parliament. the National Council for Combating Discrimination shall submit to the Parliament an annual activity report.

2. Independent assistance for the victims of discrimination

The law should stipulate that this Council will provide independent assistance to victims of discrimination when submitting their complaints regarding cases of discrimination, including free of charge judicial assistance and, if necessary, a lawyer ex officio for the victims who want to file a lawsuit as suitors or claimants and have not enough means. If necessary, it a free of charge translator will be foreseen.

3. Competencies

The law should among the competencies of such a body: the power to lead investigations, assistance for the victims, the right to proceed before the court and to intervene in the judicial proceedings, to monitor the legislation and the right to provide consultancy on discrimination to the legislative and executive power, to promote policies and practices that aim to ensure the equal treatment.

4. Accessibility

The law should stipulate the establishment of local offices of the National Council for Combating Discrimination in order to increase the accessibility of NCCD and to improve the efficacy of the functions of prevention and sanction of discrimination.

IV. Constitutional law

1. Modifications

It is essential to modify the Constitution by extending the criteria of discrimination according to the international standards, as well as including the National Council for Combating the Discrimination institution into the constitutional text.

The Constitution may dispose which exceptions from the equality of treatment principle can be stipulated in the law, but with the condition that these shall not constitute discrimination.

The Constitution should stipulate that exerting the freedom of speech, reunion or association could be limited with the aim to combat racism and discrimination. Such restrictions should comply with the stipulations of the European Convention of Human Rights.

V. Criminal law

The criminal law should be modified in accordance with the stipulations of the ECRI general policy Recommendation no.7 regarding the legislation on combating racism and racial discrimination.

Disquisition of reasons referring to the key elements in the Romanian legislation regarding the prevention and sanction of all forms of discrimination

1. The General Policy Recommendation is the result of the consultation of the undersigned Roma associations in Romania. The Recommendation referring to the key elements in the Romanian legislation regarding the prevention and sanction of all forms of discrimination in connection with the minimal standards on discrimination was elaborated with respect to, in principal, European Union Council Directive 2000/43/CE, 2000/78/CE and ECRI general policy Recommendation no.7, the proposals realised by the group of experts delegated by the Center of Juridical Resources, Open Society Institute, Romani CRISS, ACCEPT, APADOR-Helsinki Committee, Partnership Center for Equality, Pro Europe League and the Institute for Public Policies. Also, when elaborating this recommendation, it was also taken into consideration the draft of the „Concept Paper on Combating Discrimination in Romania” document elaborated by the Group of Experts in Romania (Renate Weber, Istvan Haller, Eugen Crai) within the Council of Europe program, „Non-Discrimination Review”.
2. The undersigned Roma associations in Romania consider that only juridical means are not enough to prevent and combat racism and discrimination, but the existence of the anti-discrimination legislation is necessary to fight efficiently against these phenomena.

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I. Harmonising the legislation (Section I, paragraph 1 of the Recommendation)

1. The necessity of harmonising the internal legislation with the international standards.

The standards stipulated in the international law on discrimination are minimal. The existence of these standards in different international documents, to which Romania is part of, obliges Romania to rise the current adopted standards. The States, including Romania, have the option to include the minimal stipulations, as well as to enlarge those stipulations.

The States' obligation to ensure the equality is stipulated in the international law and the Universal Declaration of Human Rights proclaims that all human beings are born equal and free in their dignity and rights.

Art.5 of the International Convention for the Elimination of All Forms of Discrimination stipulates: "...States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law..."

Art.2 of the International Pact on Civil and Political Rights stipulates: "1. each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Art.2 of the International Pact on Economical, Social and Cultural Rights stipulates: "2. the States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Considering the fact that Romania ratified these international documents, Romania should comply with the stipulations mentioned above.

Also, the European Convention on Human Rights refers to forbidding discrimination in art.14, in connection with the rights stipulated in the Constitution. Art.14: "the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The adoption of Protocol 12 of the European Convention on Human Rights and the Directives on Equality within the European Union imposed to the States new standards on protection against discrimination.

The European Union Council's adoption of the Directive 2000/43/EC "that implements the principle of equal treatment of persons, regardless of their racial or ethnic origin" and of Directive 2000/78/EC, which establishes the general framework for the equality of treatment in the field of employment and profession impose to the States members of EU to adopt a legislation, regulations and necessary administrative stipulations for the implementation of the principles of these Directives. Moreover, as part of the *aquis communautaire*, the Directives should be transposed adequately in all candidate States to the European Union, including Romania.

II. Anti-discrimination law (Section II)

1. Criteria of discrimination (Paragraph 1 of the Recommendation)

Protocol 12 to the European Convention on Human Rights, referring to the general interdiction to discrimination, stipulates: "1. the enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

After the ratification and entrance into force of the Protocol 12, Romania will find itself in the situation to harmonise the legislation, including from the point of view of non-discrimination criteria.

The European Union Council Directive 2000/43/EC on 29 June, 2000 for the implementation of the principle of equality of treatment of persons, regardless of their racial or ethnic origin refers precisely to "persons of a certain racial or ethnic origin" and Directive 2000/78/EC on 27 November 2000 establishing a general framework for the equality of treatment in the field of employment or profession, consider "persons of a certain religion or belief, a certain disability, a certain age or sexual orientation."

The two Directives on equality adopted on 2000, once entered into force, become part of the *aquis communautaire* and, through it, become implicitly obligatory for Romania, in its quality of candidate State to the European Union.

Per ensemble, Romanian legislation forbids discrimination but, from the point of view of the discrimination criteria, there is not a uniformity in the current different documents in the field.

The Romanian Constitution refers to race, nationality, ethnic origin, language, religion, sex, opinion, political appurtenance, wealth or social origin, but do not explicitly forbids discrimination on grounds of age, disability or sexual orientation.

Ordinance 137/2000 refers to race, nationality, ethnicity, language, religion, social category, beliefs, sex or sexual orientation, appurtenance to an underprivileged category or any other criterion..." Age is not mentioned in this definition as an explicit criterion, but appears in Ordinance 137/2000, all the contravention in art.5-18 refer explicitly to discrimination on grounds of age too. Still, art.19 do not refers explicitly, but limiting and excludes the age criterion.

The Penal Code, referring to the felony stipulated and sanctioned in art. 247¹, mentions expressly and limiting only nationality, race, sex or religion: "The abuse

on duty by limiting rights: "The confining from a public clerk of the use or exercise of rights of any citizen, or creation of an inferiority situation for a citizen shall be sanctioned with imprisonment for a period of 6 months to 5 years".

The Deontology Code of the Magistrates mentions the race, sex, religion, nationality, socio-economical and cultural status.

The Labour Code is practically the only exhaustive regulation in accordance with the criteria of the European Union legislation, going even further than this, although it lacks the criterion on "language".

The whole Romania legislation should be unitary from the point of view of the considered non-discrimination criteria. This implies to amend all the laws that refer to forbidding discrimination, including the Constitution and Ordinance 137/2000 (Law 48/2002). The enumeration of the criteria should not be limiting, but it should contain expressly the criteria within the European Union directives. The text from the Labour Code could constitute a reference in this regard, adding the interdiction of discrimination on grounds of language.

Considering the competencies established by law for NCCD, it would be natural that his institution realise a complex analyses of the whole legislation and propose the necessary modifications.

2. Definition of discrimination (Paragraph 2 of the Recommendation)

The definitions of direct and indirect discrimination contained in the herein Recommendation are inspired from the ones within the European Union Council's Directive 2000/43/EC regarding the implementation of the equality of treatment principle among persons, no matter the racial and ethnical origin and Directive 2000/78/EC referring to the creation of a general framework in favour of equality in the filed of employment and profession.

The definitions within the Directives on equality should be present in the national legislation and the normative acts defining direct and indirect discrimination should be modified in this regard.

3. Harassment (Paragraph 3 of the Recommendation)

The definition of harassment in the herein Recommendation is based on the one within the European Union Council's Directive 2000/43/EC regarding the implementation of the equality of treatment principle among persons, no matter the racial and ethnical origin. Despite the fact that the Romanian legislation doesn't contain any definition on harassment and doesn't refer to harassment as a discriminatory act, Romania should appropriate the concept of harassment and introduce it expressly in the anti-discrimination legislation in order to be in accordance with the aquis communautaire.

4. Victimization (Paragraph 4 of the Recommendation)

The definition of discrimination is inspired from the one within the European Union Council's Directive 2000/43/EC regarding the implementation of the equality of treatment principle among persons, no matter the racial and ethnical origin. In the

Romanian anti-discrimination legislation there is no stipulation that would protect the victim of discrimination from an adverse behaviour coming as a reaction to a complaint or legal proceeding regarding a breach of the principle of equal treatment or non-discrimination.

The concept of victimisation should be expressly introduced in the Romanian anti-discrimination legislation.

5. The instruction to discriminate (Paragraph 5 of the Recommendation)

Through the acts that the Recommendation mention in special as forms of discrimination, we mention the fact that currently, the Romanian legislation does not refer expressly to the instruction to discriminate. Still, to introduce into the law the sanction of the instruction to discriminate complies with the constitutional provisions that sanctions expressly the incitement to discrimination, as well as with the European Union Council's Directive on equality. The use of term instruction instead of incitement is justified, firstly, by the harmonisation with the European stipulations, which are prudent in sanctioning discriminatory acts realised as incitement to discrimination (see Art.2 of Directive 2000/78/EC).

The discrimination by association appears when a person is discriminated on grounds of his association or of his contacts with one or more persons differentiated based on one of the discrimination criteria. For instance, the refusal to hire a person because he/she is married with a person which belongs to a certain ethnical group.

The intention announced by discrimination should be considered as discrimination even in the absence of a victim. For instance, an ad mentioning that Roma are not hired is within the law enforcement area, even though no Roma applied for that job.

Within the national anti-discrimination legislation it should be introduced expressly that the instruction to discriminate persons on any one of the reasons stipulated in the law shall be regarded as discrimination and shall trigger contraventional liability.

6. Affirmative measures (Paragraph 6 of the Recommendation)

Both Directives on equality allow the EU member States to maintain or adopt affirmative measures for the members of groups targeted by these Directives. These measures are actually a treatment that favours the members of a certain group in certain fields of life. They aim to promote the principle of equality of treatment and are temporary by their nature, namely they last until the disfavoured position is sufficiently compensated.

7. Mediation and conciliation (Paragraph 7 of the Recommendation)

There is no juridical definition of mediation or conciliation in the Romanian legislation. In this situation, mediation, as a means to combat discrimination by remedying the harm inflicted upon the victim, cannot be featured among the National Council for Combating Discrimination's functions unless two mandatory conditions are fulfilled, namely:

a. Including in Romanian legislation a definition of mediation and regulating such activities.

b. Creating a new structure for the NCCD, through an organic law, which should provide for separate departments with distinct, non-conflicting powers and functions. It is inadmissible to perpetuate the current situation, where the same people who mediate between the parties are then called upon to verify and sanction discrimination, if an agreement is not reached.

If these conditions are fulfilled, and only then, we advise reflecting upon the inclusion of "conciliation" in the ordinance, alongside "mediation", because of their complementary meaning. Traditionally, "mediation" refers to the impartial intervention of an official in order to resolve a conflict, by assisting the parties in negotiations and formulating proposals. Mediation does not have a judicial value. "Conciliation", on the other hand, refers to the procedure of reconciling the parties in a conflict, and its final result is an agreement, which is legally binding, being similar to a civil law transaction concluded before a judge. Of course, the choice of the appropriate means hinges upon the way in which the Romanian lawgivers decide to regulate the content, and especially the results, of a mediation or conciliation procedure

8. Public authorities (Paragraph 8 of the Recommendation)

According to this paragraph and bearing in mind also the stipulation of ECRI general policy Recommendation no.7, the law should stipulate the obligation of the public authorities to foresee and prevent antidiscrimination while exerting their duties. Their duty should be written in the law as explicitly as possible. In this purpose, public authorities could be obliged to elaborate and apply "programs of equality" defined with the help of the National Council for Combating Discrimination. The law should stipulate a periodical evaluation of these programs of equality, a monitoring of their effects, efficient mechanisms to implement them, as well as the possibility to impose respecting of these programs, appealing to NCCD especially.

9. Shifting the burden of proof (Paragraph 9 of the Recommendation)

Considering the difficulties faced by the victims of discrimination to collect the necessary evidence to prove the discrimination, the law should facilitate the burden of proof.

Therefore, the claimant should establish the facts from which it may be presumed that there has been discrimination, and this shifts the proving of guiltiness upon the accused, who would have to prove the absence of discrimination. European Union Directive 2000/43/EC stipulates: Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

The need to regulate the reversal of the burden of proof is imperative because the European directives mandate the existence of national regulations to this effect.

We must highlight the fact that the text of the Article 8, paragraph (5) of the directive, "Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case," should not be

interpreted to mean that, the NCCD being a “pro-active body”, there is no automatic need for reversing/sharing the burden of proof. Given the fact that the burden of proof aim all legal proceedings , it is necessary that the victim benefits from the shifting/reversing/sharing the burden of proof before a court.

10. Defending rights (Paragraph 10 of the Recommendation)

This change in legislation would allow NGOs who are solely concerned with protecting minorities or disadvantaged categories, without a broader mission to protect human rights, to have standing in the courts in cases which are of interest to them, something that the restrictive provisions of the law do not currently allow. (see the current jurisprudence in this regard).

The text we propose uses the formulation in Law 202/2002 – *“non-governmental organisations which aim to protect human rights”* and adds to it a formulation in line with the European directives (Article 7 of Council Directive 2000/43/EC and Article 9 of Council Directive 2000/78/EC; ...*“a legitimate interest in ensuring that the provisions of this Directive are complied with”*).

The text of the law should be changed to guarantee that standing can be achieved in the manner prescribed by Law 202/2002, i.e. at the simple request of the victim to an NGO, rather than through a specific mandate granted by the victim, a change needed in order to ensure rapid and effective protection for the victim in question.

11. Sanctions (Paragraph 11 of the Recommendation)

The law should stipulate efficient, proportional and discouraging sanctions for the breach of legal provisions regarding cases of discrimination. The list of sanctions should include the payment for material and moral damages.

The non-pecuniary forms of remedying, such as partially or totally publishing of NCCD’s decision or the Court’s decision could be important in doing justice again in a case of discrimination.

The law should stipulate the possibility to impose a program of positive measures towards the one who discriminated against. For instance, the person who discriminated could be obliged to organise special programs of training with the purpose to combat discrimination. NCCD should play an essential role in such programs.

12. Means of proof

Since audio and video recordings are not recognised as evidence by the Code for Civil Procedure, it is useful to provide for their use in cases of discrimination, given the complexity of acts of discrimination.

Recognising statistical data as evidence in the field of discrimination is in line with the minimal requirements of the two community directives (paragraph (15) of the Preamble to Council Directive 2000/43/EC).

III. The National Council for Combating Discrimination (Section III)

1. Independence (Paragraph 1, Section III of the Recommendation)

Establishing the National Council for Combating Discrimination as an autonomous administrative authority, through an organic law passed by Parliament, in accordance to the provisions of Article 72 and Article 116 of the Romanian Constitution, would serve not only to guarantee a greater measure of independence for the NCCD, but also to ensure a different status for the Council, with respect to other state authorities, Parliament, Ministries, and structures of the local and central administration, thus contributing to the Council's legitimacy, and rendering its activity more efficient.

By adopting such provisions, the ordinance would be in line with Principle 5 of ECRI General Policy Recommendation no. 2, referring to the independence and accountability of the specialised body to combat racism, xenophobia, antisemitism and intolerance at national level: *"1. Specialised bodies should be provided with sufficient funds to carry out their functions and responsibilities effectively, and the funding should be subject annually to the approval of parliament. "*

2. Specialised bodies should function without interference from the State and with all the guarantees necessary for their independence including the freedom to appoint their own staff, to manage their resources as they think fit and to express their views publicly.

3. Specialised bodies should independently provide reports of their actions on the basis of clear and where possible measurable objectives for debate in parliament."

2. Independent assistance for victims of discrimination (Paragraph 2, Section III of the Recommendation)

The European Union Council's Directives on equality, within their minimal provisions regarding the attributions of the national bodies on combating discrimination refer to: independent assistance to victims of discrimination in pursuing their complaints about discrimination, surveys, publishing independent reports on discrimination – Art.13, paragraph 2 of Council's Directive 2000/43/EC.

The assistance for victims includes consultancy, legal and financial assistance, as well as legal representation before the courts of law, when law suits occur.

3. Competencies (Paragraph 3, Section III of the Recommendation)

The National Council for Combating Discrimination as an independent body should conduct official inquiries, under the procedural rules. NCCD should have the power to solicit documents and other elements for verifying and examination, to confiscate documents and other elements in order to be copied or offprint. It also should be able to act in justice and to intervene before the court as an expert.

IV. Constitutional Law (Section IV of the Recommendation)

1. Modifications (Paragraph 1, Section IV of the Recommendation)

The whole Romania legislation should be unitary from the point of view of the considered non-discrimination criteria. This implies to amend and harmonise all the current laws that refer to forbidding discrimination within the national juridical system, including the Constitution and Ordinance 137/2000 (Law 48/2002). NCCD should play an essential role in solving this issue.

Establishing the National Council for Combating Discrimination as an autonomous administrative authority, through an organic law passed by Parliament, in accordance to the provisions of Article 72 and Article 116 of the Romanian Constitution, would serve not only to guarantee a greater measure of independence for the NCCD, but also to ensure a different status for the Council, with respect to other state authorities, Parliament, Ministries, and structures of the local and central administration, thus contributing to the Council's legitimacy, and rendering its activity more efficient. Including the NCCD institution to this effect within the text of the Constitution is essential.

The Constitution should stipulate that exerting the freedom of expression, of reunion and of association could be limited with the purpose to combat discrimination. Articles 10 and 11 of the European Convention on Human Rights enumerate the purposes that can justify confinement of this freedom. Although combating discrimination is not mentioned alongside these purposes, the European Court on Human Rights considers it included, through its jurisprudence. These restrictions should be stipulated by law and constitute one of the necessary measures in a democratic society.

V. Criminal law (Section V of the Recommendation)

1. The penal law should regard as felonies the following behaviours, if committed on purpose:

- a. public incitement to violence, hatred or discrimination
- B. insult or public defamation or
- c. threats against one or more persons on grounds of race, colour, language, religion, nationality, national or ethnical origin
- d. public expression, with racist purpose, of an ideology that states superiority or calumnies or denigrates a group of people on grounds of race, colour, language, religion, nationality, national or ethnical origin
- e. dissemination or public distribution, realisation or storage in view of dissemination or public distribution, with racist purpose, of texts, images or other materials containing behaviours described in paragraphs a, b, c, d.
- f. creating or leading a group that promotes racism, supporting that group or participation in its activities with the purpose to contribute to the felonies stipulated in paragraphs a, b, c, d, e.

The term defamation from letter b, the above paragraph, should be regarded in a broader meaning, including especially calumny.

Letter e refers to dissemination, distribution, realisation or storage of texts, images or other materials containing racist manifestations. These notions should also

include dissemination of such materials on the Internet. Such materials include audio, video, CDs, DVDs, floppy disks, software materials.

Letter f refers to certain acts of groups that promote racism. The notion of group includes especially groups of factors, organisations, associations or political parties. Creation of a group that promotes racism should include equally the maintenance re-creation of a group already forbidden.

2. The law should stipulate that incitement, complicity, encouragement or tentative must be included in the felonies on paragraph 1.

This recommendation should apply to felonies where complicity or tentative is possible.

3. The law should stipulate racial motivation as aggravated circumstance for all the felonies.

4. The law should stipulate that all juridical bodies are responsible from penal point of view for the felonies on paragraph 1.

The responsibility of the juridical bodies should be triggered when the felony took place on behalf of the juridical body, committed by any person who acts especially as representatives of the juridical body (president, director) or the person – member. The penal responsibility of the juridical body doesn't exclude the responsibility of the physical entities. The public authorities may be excluded from the area of the penal responsibility of the juridical bodies.

Public Policies on Prevention and Combating Discrimination against Roma in Romania

Preamble

The undersigned Roma associations in Romania, saluting the Romanian Government's initiative to adopt the Governmental Ordinance 137/2000 on prevention and sanction of all forms of discrimination, approved by the Romanian Parliament through Law 48/2002, Governmental Ordinance no77/2003 and the establishment of the National Council for Combating Discrimination;

Aware that legislation alone doesn't suffice to eliminate racism and discrimination, but sure that legislation is essential to in combating racism and discrimination

Considering the period of 3 years since the Governmental Ordinance no 137/200 has been adopted, we believe to be essential the adoption and effective implementation of comprehensive public policies on prevention and combating discrimination against Roma, in line with the European principles regarding the realisation and implementation of such policies "with/by and for Roma";

Wishing, along with other efforts at national and international level, to bring our contribution to the fight against racism and discrimination towards Roma, considering the National Council of Discrimination's intention to elaborate a national plan of combating discrimination, implicitly discrimination against Roma, we present in a succinct and exact manner the key elements, which need to be included in a plan of public policies for the prevention and combat of discrimination against Roma;

Key elements in Public Policies on Prevention and Combating Discrimination against Roma in Romania

I. Joint efforts in policies of prevention and combating discrimination against Roma in Romania

The efforts to ensure a framework of public policies with view to implement the principles of non-discrimination and equality of chances towards Roma can't be realised by a singular and isolated approach.

The whole society should be involved actively, by promoting the principles of equality, affirmative policies, solidarity and partnership, as well as ensuring transparency in the elaboration process of regulation and decision making.

The challenge we face is one of a new partnership that will ensure Roma involvement, on terms of equality, in all fields of life.

That is why it is necessary to promote the principles of non-discrimination and equality of chances towards Roma in the activity and public policies at all levels. This is the principle that involves promoting equality of chances in all general policies and measures, considering in the moment of planning, actively and openly, the possible effects towards Roma positions. This implies a systematic examination of such policies and measures, analysing possible effects when they are final and implemented in the day-to-day framework and which could have a different significant impact in what regards Roma and which should be considered for the promotion of non-discrimination.

II. Promotion of equality – a fundamental principle in public policies

Promotion of equality shouldn't be confused with the mere objective to create a balance of equality; it is an issue of promoting opportunities on long term in all fields of life, institutional practices, organising the employment and profession framework, as well as the society as a whole.

Promotion of equality doesn't necessitate especially adopting positive measures whose aim is to adapt the society structure towards a more fair division of the roles; it doesn't mean only realisation of programs and resources accessible to Roma, but, more exactly, simultaneous mobilisation of legal instruments, of financial resources and of analytical and organisational abilities of all involved actors and institutions, with the purpose to introduce in all the fields the will to build a relation between Roma and non-Roma.

III. Principles in building policies on prevention and combating discrimination

Public policies on prevention and combating discrimination against Roma should bear in mind the following aspects:

- **To be based upon the principles on human rights, equality and non-discrimination**
 - To be clear, accessible and in everyone's interest
 - To have in mind combating discrimination and also promoting an inclusive and multi-cultural society
 - To be strategically, coherent, realised in partnership with the civil society and to reflect both the governmental bodies' approaches and the Roma non-governmental organisations'.
 - To be realised considering current strategies and to identify innovative approaches
 - To have the support and to ensure the participation of the civil society and Roma's especially.
 - To consider the different situations and fields of life in which discrimination occurs, public or private sector, as well as institutional sector
 - To consider all the different forms of discrimination that Roma face with
 - To have a status and profile officially recognised by the Government
 - To have clear objectives, actions, expected results and impact on development and implementation
 - To have impact on national, regional and local level
 - To be allocated the necessary resources, both human and financial
 - To have mechanism of monitoring and reviewing of activities, impact and system analyses

IV. General framework of policies on prevention and combating discrimination against Roma

The general framework regarding the planing, implementation and review of policies on prevention and combating discrimination against Roma should be defined in terms of the following principles:

- **Working agenda**
- **Strategic approach**
- **Compatibility**
- **Synergy**
- **Participation**
- **Innovation**
- **Contextual**

IV .1 Working agenda- planning

The policies on prevention and combating discrimination against Roma should be ambitious and, in the same time, realistically. These represent a significant opportunity to build, as well as to intensify the existent policies and the strategy for combating discrimination and to identify new priorities, aspirations and working fields that could be realised together within a cohesion plan, which becomes the working agenda.

IV .2 Strategically approach

The policies on prevention and combating discrimination against Roma should create an impact within various levels. These would include:

National, regional and local level

A national plan of combating discrimination against Roma should consider an impact on regional and local level and should have the support and commitment of the key bodies, which could have impact on social exclusion.

International level

The public policies in this field should relate implicitly to the current directions of action at European level and at international organisations' level, such as OSCE, European Union, Council of Europe, UN etc.

IV .3 Compatibility

The anti-discrimination strategies cannot develop distinctly by the general political context. It should be especially a compatibility with related fields of policies, such as policies for the improvement of Roma situation in Romania or the one affecting Roma, and they also take into consideration the diversity.

IV .4 Synergy

An important principle that should be at the base of the policies on prevention and combating discrimination against Roma is the synergy with the actual strategically initiative, which address to social exclusion, among which the Government Strategy for the Improvement of Roma Situation, the National Plan of Action against Poverty and Social Exclusion, local and community development, target and strategic initiatives, especially in the field of health, employment and social welfare, education, training and housing.

IV .5 Participation

All the development stages of the policies for prevention and combating discrimination, including planning and reviewing, should be participatory and should involve the key delegates. The identified delegates include governmental bodies, specialised groups and experts, as well as Roma non-governmental organisations.

IV .6 Innovation

The consultative process should identify the need to build upon the existent structures and policies and to search for innovative ways to combat discrimination and promote a more comprehensive intercultural society.

IV .7 Contextual

The policies of prevention and combating discrimination should be placed in the current context and also to offer a bird's-eye view on the policies and the significant tendencies for the essence of these policies, considering the international standards in the field of protection against discrimination.

V. Objectives in realising policies of prevention and combating discrimination against Roma

The realisation and implementation of the policies for prevention and combating discrimination against Roma should take into consideration, as inter-conditionally key elements, the following objectives:

Protection – the enhancement of protection against discrimination, including victimisation, harassment or incitement to discrimination.

Inclusion – the assurance of inclusion and equality in the economical field, focused on employment and access to a job

Promotion – the assurance of equality in access, participation and results for Roma minority in what regards public and private services.

Participation – the assurance and strengthening of Roma participation to the Romanian society in general and especially in the decisional process of the policies and practices aiming them directly or indirectly.

Recognition – the recognition and strengthening of respect in a diversified culture, in promoting interaction and mutual understanding

In this meaning, the prevalent aims will be:

1. Realisation and implementation of comprehensive specific measures in various fields, towards the prevention and combating discrimination against Roma

2. Elimination of practices and stereotypes that encourage discrimination against Roma, in comparison with the other citizens

2-3. Prevention and combating discrimination against Roma in accessing public services Formatted: Bullets and Numbering

2-4. Realisation and assurance of co-operation and equal opportunities of Roma in regard to the other citizens Formatted: Bullets and Numbering

4-5. Development of the transversality principle Formatted: Bullets and Numbering
ensures that any action defends and guarantees the principle of equal treatment in Romani through a continuous effort of co-operation with the current global framework at international level.

5-6. Enforcement of co-operation principle with the civil society and Roma non-governmental organisation in the creation, implementation and monitoring of public policies for the prevention and combating discrimination Formatted: Bullets and Numbering

VI. General measures in public policies of prevention and combating discrimination against Roma

I. Physical and juridical entities' respecting of regulations regarding prevention and combating discrimination against Roma

1. NCCD' realisation, in collaboration with Roma organisations, of testing actions regarding discrimination against Roma in economical field, employment and profession; access to public services, administrative and juridical services, health services, to other services, goods and facilities; access to education; freedom of movement, right to free choice of residence and access to public places; right to personal dignity.
2. NCCD's sanction of direct and indirect discrimination against Roma.

II. Harmonising the legislative and and institutional framework

1. Harmonisation of the internal legislation with the international stipulations, especially European Union Directive 2000/43/EC, 2000/78/EC and ECRI general policy Recommendation no. 7/2002
2. Initiation by NCCD of normative regulations in the activity field, namely to provide independent assistance for victims of discrimination, implicitly for Roma victims in the process of submitting complaint regarding cases of discrimination, including free of charge judicial

assistance and, if necessary, a lawyer ex officio for the victims who wish to file a lawsuit as claimants or suitors and haven't have the means.

3. Assurance that NCCD has the right to act in justice and intervene in the judicial proceedings

4. Assurance that mediation and conciliation procedures exist, that they are easily accessible and available for persons considering themselves wronged by not being applied the principle of equal treatment, even after the situation in which the discrimination occurred had ended.

5. Establishment of local offices of the National Council for Combating Discrimination in order to increase the accessibility of NCCD and to improve the efficacy of the functions of prevention and sanction of discrimination

6. Recruitment of staff in the local offices of NCCD, considering also persons from Roma ethnicity

III. Education for respecting human rights and non-discrimination towards Roma especially

1. Interventions in the formal education system and introducing in the educational system the discrimination topic and, implicitly discrimination against Roma

2. Promotion of non-formal educational activities regarding Roma issue from the point of view of discrimination

3. Promotion of actions regarding prevention and combating segregation of Roma children in education field

4. Training the personnel hired in public institutions and juridical entities of private law in what regards anti-discrimination legislation and especially discrimination against Roma.

5. Training the personnel hired in institutions with attributions regarding judiciary field and public order: magistrates, policemen, gendarmes etc about anti-discrimination legislation and especially discrimination against Roma.

6. Elaboration of guidance manuals regarding prevention and combating discrimination against Roma within the relation citizen – public authorities (public institutions) codes

7. Imposing to the public authority the obligation to prevent discrimination while exerting their functions and to monitor, in order to evaluate the impact of the realised services upon the target groups of the anti-discrimination law, especially Roma.

IV. Information, enlarging accessibility of law/ institutions, as well as making the public opinion aware of the discrimination issue, especially discrimination against Roma

1. Promotion of information means through mass media regarding discrimination against Roma

2. Organisation of meetings, seminars, conferences, topic shows on radio and television on the issue of discrimination against Roma

3. Issuing publications regarding discrimination against Roma

4. Publishing NCCD's decisions on sanctioning discrimination against Roma

5. NCCD, in collaboration with Roma non-governmental organisations, to realise anti-racist campaigns at national level in order to popularise non-discrimination towards Roma

6. Realisation, in collaboration with Roma organisations, of national campaigns on combating discrimination, dissemination of anti-discrimination law's stipulations, NCCD etc in Roma communities in Romania

V. Collaboration with inter-governmental and non-governmental organisations, national and international organisations

1. NCCD to establish co-operation relations with intergovernmental organisations dealing with Roma issue, especially the Contact Point for Roma and Sinti Issue within OSCE/ODIHR, Council for Europe, European Union, UN Committee for the Elimination of Racial Discrimination etc.
2. Periodical consulting with Roma non-governmental organisations
3. Co-operation with bodies from Europe, similar to NCCD

VI. Research and documentation in the field of discrimination

1. NCCD, in collaboration with Roma non-governmental organisations, to realise juridical and social researches: statistical analyses, study regarding the intern/international instrument on human rights, Gallup polls, monitoring of information media etc.

VII. Assurance of transparency in the actions aiming policies of prevention and combating discrimination against Roma

1. NCCD to ensure that all the development stages of policies of prevention and combating discrimination against Roma, including planning, reviewing, implementation, as well as monitoring are participate and involves Roma primarily

VII. The field to enforce public policies on prevention and combating discrimination against Roma

The policies on prevention and combating discrimination against Roma should aim especially the adoption of measures in specific fields, considering the enforcement field of the law on prevention and sanction of all forms of discrimination, such as:

- **Education**
- **Health**
- **Economic activity, employment and occupation**
- **Public administration**
- **Justice**
- **Services, goods, facilities and public places**
- **Free choice of residence**
- **Image and Mass-media**
- **Communication**

1. Education

Information and awareness campaigns

1. Promotion by NCCD of anti-racist civic education in the State and private educational system
2. Realisation by NCCD of information and awareness campaigns on the anti-discrimination law, in collaboration with the School Inspectorates, targeting the educational institutions, teachers and school mediators

Prevention programs

1. Elaboration, by NCCD, in collaboration with the Ministry of Education, of guidance manuals regarding prevention and combating discrimination against Roma, for the educational institutions.
2. Prevention of segregation situations in the field of education by elaborating and implementing by NCCD, in collaboration with County School Inspectorates and Roma organisations, of programs regarding the enforcement of non-discrimination principle and equal opportunities towards Roma
3. Realisation, by NCCD, of programs for prevention of segregation, also considering to raise educational quality standards at all levels of education.

Specific measures

1. NCCD to promote the including of prevention and combating discrimination topics within the school curricula, including the Roma discrimination issue.
2. Adoption by NCCD of measures to eliminate any form of discrimination, harassment or intimidation of Roma pupils in schools
3. NCCD, in collaboration with the Ministry of Education and Roma organisations of measures in order to improve the dialogue between the teaching staff, parents and Roma pupils, with the purpose to prevent and eliminate prejudices, stereotypes and discriminatory attitudes towards Roma in the educational institutions

Monitoring and sanctioning

1. Monitoring, in collaboration with Roma non-governmental organisations, the discrimination cases stipulated in Art.15, Law 48/2002 for the approval of O.G. 137/2000²

² Art. 15 - (1) Under the ordinance herein, denying the access of a person or of a group of persons to the state-owned or private education system of any kind, degree or level, on account of their appurtenance to a race, nationality, ethnic group, religion, social category or to a disadvantaged category, on account of their beliefs, sex or sexual orientation, shall constitute an offence.

(2) The provisions of the paragraph above shall be applicable to all stages and levels of education, including admission or enrolment in education institutions and the assessment and examination of students' knowledge.

(3) Under the ordinance herein, requiring a declaration to prove a person's or group's appurtenance to an ethnic group as a condition for access to education in their mother tongue shall constitute an offence. The exception to the rule is the situation when the candidates apply in the secondary and higher education system for places allotted specifically to a certain minority, in which case they must prove their appurtenance to that minority by means of a document issued by a legally established organisation of the respective minority.

(4) The provisions under paragraphs (1), (2) and (3) shall not be interpreted as a restriction of the right of an education institution to deny the application of a person whose knowledge and/or prior results do not meet the required admission standards of that institution, as long as the refusal is not determined by the person's appurtenance to a race, ethnic group, nationality, religion, social category or to a disadvantaged category, by his/her beliefs, sex or sexual orientation.

(5) The provisions under paragraphs (1) and (2) shall not be interpreted as a restriction of the right of education institutions that train personnel employed in worship places to deny the application of a person whose religious status does not meet the requirements established for access to the respective institution.

(6) According to the ordinance herein, any restrictions based on appurtenance to a race, nationality, ethnic group, religion, social category or to a disadvantaged category in the establishment and licensing of education institutions set up in accordance with the legal framework in force shall constitute an offence.

2. NCCD's sanctioning of discrimination cases against Roma in the field of education

2. Health

Information and awareness campaigns

1. Realisation by NCCD of information and awareness campaigns regarding the stipulations of the anti-discrimination law and Roma discrimination, in collaboration with the College of Physicians, the Ministry of Health- Ministerial Commission for Roma and the Public Health Directorates, targeting the medical institution, medical and sanitary staff, family doctors and health mediators in Roma communities.

Prevention programs

1. Elaboration by NCCD of guidance manuals for medical institutions regarding the prevention and combating discrimination against Roma

Specific measures

1. Adoption by NCCD of measures in order to eliminate any form of discrimination against Roma in accessing public health services
2. Adoption by NCCD, in collaboration with the Ministry of Health and Roma organisations, of measures with the purpose to improve the dialogue and communication between the medical staff and Roma communities, in order to prevent and eliminate prejudices, stereotypes and discriminatory attitudes against Roma in the field of health.

Monitoring and sanctioning

1. Monitoring, in collaboration with Roma organisations and health mediators, the discrimination situations stipulated within Art.11, Law 48/2002 for the approval of O.G. 137/2000³
2. Realisation, in collaboration with Roma organisations, of testing actions regarding discrimination in accessing health services
3. Sanctioning by NCCD of discrimination cases against Roma in the field of health

³ Art. 10 as modified by Law 48/2002. – The discrimination of a natural entity, a group of persons or a legal entity on account of their appurtenance to a race, nationality, ethnic group, religion, social category or disfavoured category, on account of their beliefs, age, sex or sexual orientation by:
b) the refusal to ensure the access of a person or group of persons to public health services – choosing the family doctor, medical assistance, medical insurance, emergency services or other medical services, if the deed does not fall under the incidence of criminal law, shall constitute an offence.

3. Economic activity, employment and occupation

Information and awareness campaigns

1. Realisation by NCCD of information and awareness campaigns regarding the stipulations of the anti-discrimination law, in collaboration with the National Agency for the Placement of the Labour Force and Roma organisations, targeting at the territorial structures of NAPLF

Prevention programs

1. Elaboration by NCCD of guidance manuals for the employees in the public and private sector regarding the prevention and combating discrimination against Roma, in collaboration with Roma organisations

Specific measures

1. Adoption by NCCD of measures to eliminate any form of discrimination against Roma in the economic field, employment and occupation within the public and private sector

Monitoring and sanctioning

1. Monitoring by NCCD of employment criteria and the employer's way to close, suspend, modify or cease the labour relation, considering the possible situations of direct or indirect discrimination against Roma

2. Realisation of testing actions regarding discrimination in employment, in collaboration with Roma organisations

3. Monitoring the discrimination situations, stipulated in Art.5-9, Law 48/2002 for the approval of O.G. 137/2000⁴, in collaboration with Roma organisations

4. Sanctioning by NCCD of discrimination cases against Roma in the economic field, employment and occupation

⁴ Art. 5. – According to the ordinance herein, conditioning the participation of a person in an economic activity or one's free choice and exercise of a profession on one's appurtenance to a race, nationality, ethnic group, religion, social status, on one's beliefs, age, sex or sexual orientation, respectively, or on one's appurtenance to a disfavoured category shall constitute an offence.

Art. 6. – The following shall constitute offences: discrimination on account of the race, nationality, ethnic group, social status, disfavoured category one belongs to, respectively on account of one's beliefs, sex or sexual orientation in a labour and social protection relation, with respect to: a) The conclusion, suspension, modification or conclusion of the labour relation; b) The establishment and modification of job-related duties, of the work place or of the wages; c) The granting of social rights other than the wages; d) The professional training, refreshment, conversion or promotion; e) The enforcement of disciplinary measures; f) The right to join a trade union and to access to the facilities it ensures; g) Any other conditions related to the carry out of a job, in accordance with the law in force.

Art. 7. – In accordance with the ordinance herein, the refusal of any legal or natural entity to hire a person on account of the applicant's race, nationality, ethnic appurtenance, religion, social status, beliefs, age, sex or sexual orientation shall constitute an offence. (2) If, in any job advertisement or interview, the employer or employer's representative set conditions related to the appurtenance to a race, nationality, ethnic group, religion, age, sex or sexual orientation, social status or disfavoured category or the applicant's beliefs for filling in a position, except for the situation provided under Art. 2 paragraph 4, this deed shall constitute an offence. (3) Natural or legal entities involved in mediating and distributing work places shall ensure the equal treatment of all applicants, their free and equal access to opportunities to consult the supply and demand of the labour market, to consulting on opportunities to obtain a job or a qualification, and shall refuse to support the employers' discriminatory requirements. All information related to the race, nationality, ethnic appurtenance, age, sex or sexual orientation of applicants for a job or any other private information shall be confidential.

Art. 8. – Discrimination committed by employers against their employees with regard to the social facilities they grant their employees on account of the employees' appurtenance to a race, nationality, ethnic background, religion, age, sex, social status, sexual orientation, age, underprivileged category or beliefs shall constitute an offence.

Art. 9 as modified through O.G.77/2003. – None of the provisions of articles 5-8 shall be interpreted as a restriction of the employer's right to refuse to hire a person that does not comply with the usual requirements and standards in the field, as long as the refusal does not constitute an act of discrimination under the ordinance herein and this measures are objectively justified by a legit purpose and the means to achieve that purpose are adequate and necessary.

4. Public administration

Information and awareness campaigns

1. Organisation by NCCD of information and awareness campaigns regarding the anti-discrimination legislation and Roma discrimination at the level of public clerks within the central and local public administration, in collaboration with Public Clerks Body and Roma organisations.

Prevention programs

1. Organising by NCCD of programs of prevention and combating discrimination for institutionalised Roma children, as well as for the other category of children in difficulty situations

Specific measures

1. NCCD to encourage the implementation of affirmative action programs for Roma in the structures of the central and local public administration

Monitoring and sanctioning

2. NCCD to monitor the enforcement of Law 48/2002's stipulation, in collaboration with Roma organisations and sanctioning the public clerks whom committed acts of discrimination against Roma

5. NCCD and Roma organisations to monitor and sanction (NCCD) the discrimination situations stipulated in Art.10, Law 48/2002 for the approval of O.G. 137/2000⁵

6. NCCD to monitor provision of public services by public authorities, based on respecting the non-discrimination principle towards Roma

⁵ Art. 10 as modified by Law 48/2002: The discrimination of a natural entity, a group of persons or a legal entity on account of their appurtenance to a race, nationality, ethnic group, religion, social category or disfavoured category, on account of their beliefs, age, sex or sexual orientation by: a) the refusal to ensure legal and administrative public services, if the deed does not fall under the incidence of criminal law, shall constitute an offence;

5. Justice and Public Order

Information and awareness campaigns

1. NCCD, in collaboration with Roma organisations, to realise information programs for the personnel hired in institutions with attributions in judicial domain or public order: magistrates, policemen, gendarmes etc in regard of anti-discrimination legislation and especially discrimination against Roma.

Prevention programs

1. Elaboration by NCCD of guidance manuals for the personnel hired in institutions with attributions in judicial field and public order regarding prevention and combating discrimination against Roma, in collaboration with Roma organisations
2. Identification, prevention and mediation of conflict situations, which are the result of facts/acts of discrimination against Roma
3. Realisation by NCCD of programs regarding the prevention and combating discrimination within the relation institution – Roma person, in collaboration with the Ministry of Public Administration and Interior and Roma organisations
4. Initiation by NCCD, in collaboration with the Ombudsman, of programs of prevention and combating Roma discrimination in what regards the protection of personal data and statistics realised by institutions with attributions in the judiciary field and public order

Specific measures

1. Adoption by NCCD of measures in order to eliminate any form of discrimination against Roma in accessing juridical public services

Monitoring and sanctioning

1. NCCD to monitor and sanction the discrimination cases against Roma in what regards the refusal to provide juridical public services
2. NCCD to monitor and sanction the discrimination acts against Roma, committed by the personnel hired in institutions with attributions in judicial field and public order

6. Services, goods, facilities and public places

Information and awareness campaigns

1. Realisation by NCCD, in collaboration with Roma organisations, of information programs for the public services providers referring anti-discrimination legislation and especially discrimination against Roma

Prevention programs

1. Elaboration by NCCD, in collaboration with Roma organisations, of guidance manuals for public services providers on prevention and combating discrimination against Roma

Specific measures

1. Adoption by NCCD of measures to eliminate any form of discrimination against Roma in accessing goods, facilities and public places

Monitoring and sanctioning

1. Monitoring, along with Roma no-governmental organisations, of discrimination situations stipulated in Art.10 and Art.18 of Law 48/2002 for the approval of 137/2000⁶
2. Realisation, in collaboration with Roma organisations, of testing actions regarding discrimination against Roma in accessing public places and services
3. Sanction by NCCD of cases of discrimination against Roma in the field of public services and goods

⁶ Art. 10 as modified by Law 48/2002. – The discrimination of a natural entity, a group of persons or a legal entity on account of their appurtenance to a race, nationality, ethnic group, religion, social category or disfavoured category, on account of their beliefs, age, sex or sexual orientation by:

(the paragraphs e, f and g of art.10 as modified by O.G.77/2003). e) denying access to a person or group of people to services provided by theatres, cinemas, libraries, museums and exhibitions, except the situation when this restriction is objectively justified by a legit purpose and the means to achieve that purpose are adequate and necessary

f) denying the access of a person or group of persons to the services provided by hotels, shops, restaurants, bars, discotheques or any other service providers, whether they are public or private property, unless this restriction is objectively justified by a legit purpose and the means to achieve that purpose are adequate and justified

g) denying the access of a person or group of persons to the services provided by public transportation companies - by plane, ship, train, subway, bus, trolley-bus, tram car, taxi or by any other means of transport - unless this restriction is objectively justified by a legit purpose and the means to achieve that purpose are adequate and justified

Art. 18. – Under the ordinance herein, denying the access of a person or of a group of persons to public places on account of their appurtenance to a race, nationality, ethnic group, religion, social category or to a disadvantaged category, to their beliefs, age, gender or sexual orientation shall constitute an offence.

7. Free choice of domicile/ residence

Information and awareness campaigns

1. Realisation by NCCD, in collaboration with Roma organisations, of information programs for the public authorities referring to anti-discrimination legislation and free choice of domicile

Prevention programs

1. Development and implementation by NCCd of programs aiming to prevent segregation of Roma communities from the rest of the population in the field of housing; including Roma communities in projects on housing, rehabilitation and maintenance, taking into consideration the respecting of non-discrimination principle and equal chances opportunities
2. Adoption by NCCD of measures for prevention and sanction of any discriminatory practices that affect Roma, either practices of the public authorities, or practices regarding residence and housing; also prevention and sanction of local decisions that deny access or expel Roma, including placing Roma outside the populated areas, in zones without access, facilities, infrastructure and facilities.

Specific measures

1. Adoption by NCCD of measures to eliminate any form of discrimination against Roma in what regards the free choice of domicile/ residence

Monitoring and sanctioning

1. Monitoring by NCCD of criteria to grant/ distribution of social houses/ necessity houses or other categories, respecting the principle of non-discrimination towards Roma
2. Monitoring, in collaboration with Roma organisations, of the discrimination situations stipulated in Art.16 and Art.17, Law 48/2002 for the approval of O.G. 137/2000⁷ and sanction, by NCCd, of these facts

⁷ Art. 16 - (1) Any threats, constraints, use of force or any other means of assimilation, colonisation or forced movement of persons with a view to modify the ethnic, racial or social composition of a region or of a locality shall constitute an offence.

(2) According to the ordinance herein, any behaviour consisting in forcing a person or a group of persons belonging to a race, nationality, ethnic group or religion, or a community, respectively, to unwillingly leave their residence, deportation or lowering their living standards with a view to determine them to leave their traditional residence shall constitute an offence. Forcing a group of persons belonging to a national minority to leave the area or regions where they live or a group belonging to the majority population to settle in areas or regions inhabited by a population belonging to national minorities shall both represent violations of the ordinance herein.

Art. 17 - (1) Any behaviour aiming to determine a persons or group of persons to move away from a building or neighbourhood or aiming to chase them away on account of their appurtenance to a race, nationality, ethnic group, religion, social category or to a disadvantaged category, on account of their beliefs, age, gender or sexual orientation, shall constitute an offence.

(2) The provision within paragraph (1) shall not be interpreted as a restriction of the authorities' right to enforce urbanism plans, as long as the movement is effected under the law, with fair compensation, and the measure is not determined by the person's or group's appurtenance to a race, nationality, ethnic group, religion, social category or to a disadvantaged category, by their beliefs, age, gender or sexual orientation.

8. Image and Mass-Media

Information and awareness campaigns

1. Realisation by NCCD, in collaboration with Roma organisations, of information campaigns for media services providers (radio, television, press etc) referring to anti-discrimination legislation and especially discrimination against Roma

Prevention programs

1. Elaboration by NCCD, in collaboration with specialised media institutions and Roma organisations, of a guidance manual for mass media referring to presentations with discriminatory, subjective and/ or racist feature and combating discrimination against Roma
2. NCCD, in collaboration with Roma organisations, to elaborate and implement programs of prevention and combating discrimination against Roma in mass media.
3. NCCD and CAN to encourage and promote in professional mass media the responsibility not to present reportages, harmful information, stereotypes or information about incidents that involve members of Roma communities and that affect or blame the entire Roma community.

Specific measures

1. Adoption by NCCD of measures with the purpose to eliminate any form of discrimination against Roma in mass-media

Monitoring and sanctioning

1. Sanctioning by NCCD of mentioning in mass media the ethnical appurtenance, namely Roma, when presenting fact with anti-social feature.
2. Sanctioning by NCCD of any form of promotion on racial or ethnical superiority, on racial hatred and incitement to discrimination in mass-media

9. Communication

Specific measures

1. NCCD to realise a national program of public informing and combating prejudices against Roma in public institutions
2. NCCD and Roma organisations to make public the cases of discrimination against Roma through public campaigns at national, regional and local level
3. NCCD to present the decisions to sanction discrimination against Roma in mass media also on different channels such as Internet, publications, CDs.
4. NCCD to conceive and implement support programs for the development of Roma organisations' capacity, with the purpose to prevent and combat discrimination against Roma
5. With the participation of Roma, NCCD to organise and develop information programs for the population, through mass media and other media, regarding the prevention and combating discrimination against Roma
6. NCCD, in collaboration with Roma organisations, to realise information programs for Roma communities in order to identify, monitor and solve correctly the cases of discrimination

VIII. Implementation structures of public policies for the prevention and combating discrimination against Roma

All the development stages of the policies of preventing and combating discrimination against Roma, including planning, reviewing, implementation and monitoring, should be participatory and involve firstly Roma. The key actors identified in this process are: central/ local institutions, specialised groups, experts, as well as Roma non-governmental organisations.