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PRELIMINARY REPORT *

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**ON THE HUMAN RIGHTS SITUATION OF
THE ROMA, SINTI AND TRAVELLERS IN EUROPE**

* This is a preliminary report, drawing together the main findings on the situation of the Roma made by the Commissioner as a result of the country visits conducted so far and his contacts with Roma communities and individuals in the context of his other activities. The Commissioner will subsequently issue a consolidated version of this report in the light of the comments submitted by Governments, associations and civil society.

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FOREWORD

1. Since the establishment of the mandate of the Council of Europe Commissioner for Human Rights in 1999¹, the enjoyment of human rights by Roma individuals and communities has constituted one of the Commissioner's priorities during his official visits to member states of the Council of Europe. In most countries, the Roma populations face considerable obstacles to the enjoyment of basic rights, notably in the fields of access to health care, housing, education and employment and are often disproportionately affected by poverty. Discrimination and racism, also resulting in violence, remain serious problems throughout the continent, and present a major impediment to the full enjoyment of human rights and fundamental freedoms by the Roma.
2. The Commissioner has also focussed on the situation of Roma communities in his cooperation activities with national institutions for the protection and promotion of human rights. For instance, the Commissioner organised a meeting between the human rights ombudspersons and representatives of Roma/Gypsy communities of Central and Eastern Europe in November 2001 in Strasbourg. This event was initiated during the 2nd annual meeting between the Central and Eastern European ombudspersons and the Commissioner which took place in Warsaw in May 2001 and centred on the rights of the Roma. In his 2002 Annual Report, the rights of the Roma featured as one of the priority themes.
3. The purpose of this report is to draw together the Commissioner's main findings related to the situation of the Roma on the basis of his official country visits conducted so far, as well as his contacts with Roma communities and individuals in the context of his other activities. Rather than offering a comprehensive survey on the vast range of issues affecting the Roma communities in the Council of Europe member states, the report aims at highlighting and analysing some of the most frequently occurring human rights concerns. Under each theme, the Commissioner has chosen two or three particular questions to examine in the light of examples from those states already visited.
4. The matters dealt with in this report were discussed with a number of Roma organisations and European institutions in a meeting organised in the Vatican City in February 2003. The Commissioner is grateful to the participants for their valuable input towards this report, and for the many organisations who have provided information to the Commissioner during the process of drafting this report. The Commissioner would also like to thank the European Roma and Travellers Forum (ERTF) for their constructive comments on the final draft of the report. Finally, the Commissioner expresses his particular appreciation to Ms Alexandra Raykova who worked as a consultant with the Commissioner's office during the early stages of the preparation of the report.

¹ The Council of Europe Commissioner for Human Rights is mandated to promote the awareness of human rights, to identify possible shortcomings in the law and practice of member States of the Council of Europe and to help promote the effective observance and full enjoyment of human rights, as embodied in the various Council of Europe instruments. For the full text of the mandate, see Resolution (99)50 on the Council of Europe Commissioner for Human Rights, 7 May 1999.

INTRODUCTION

5. A truly pan-European minority, the Roma are present in almost all Council of Europe member States, comprising approximately ten million people. The history of Roma is an integral part of European history, and Roma culture an integral part of European culture. The general perception is, however, often quite different – even in countries where the Roma have been living for centuries they are frequently viewed by the majority population as “others”, as foreigners in their home countries.
6. Throughout history such perceptions have led to manifestations of discrimination and exclusion all over Europe. The Roma existence has been characterized by isolation – at best arousing curiosity and at worse leading to rejection, violence and persecution. In the most horrendous manifestation of persecution, an estimated half a million or more² Roma were exterminated in the Holocaust. This history has resulted in a loss of confidence in the state authorities and society as a whole pushing many Roma communities to isolate themselves from the rest of society as a measure of self-protection. Even at present, the Roma often continue to experience intolerance, prejudice and discrimination in their daily lives in all parts of Europe, creating significant obstacles to their enjoyment of a number of fundamental rights. Human rights concerns faced by them in Central and Eastern Europe have attracted relatively high attention in recent years – partly due to the accession process to the European Union of a number of these countries – with less attention being afforded to their situation in Western Europe. However, also in these countries many Roma continue to suffer the consequences of prejudice and discrimination in their daily lives. Ensuring that the fundamental values of democracy, equality and respect for human rights become a reality for the Roma is therefore a task for Europe as a whole, each of its countries and all of its regions.
7. Since the early 1990s, the Council of Europe and other European institutions have enhanced efforts aimed at bringing about a long-term improvement in the situation of the Roma through commitments to draw up national action plans, various assistance programmes and the strengthening of international standards related to minority protection and non-discrimination. In 1994, a Coordinator for Council of Europe Activities on the Roma/Gypsies was nominated with an additional responsibility for developing working relations with Roma/Gypsy organisations and for promoting cooperation with other international organisations. A Specialist Group on Roma/Gypsies was established in 1995³, with the task of advising the Committee of Ministers on Roma issues and encouraging action where needed. This work has resulted in a growing number of Recommendations of the Committee of Ministers on education, employment and housing as well as movement and encampment of Travellers.⁴ These recommendations are currently being compiled into a comprehensive policy recommendation. Another important initiative has been the recent creation of the European Roma and Travellers Forum, which will give them a stronger voice in these processes.

² Estimates of the number of Roma victims of the Holocaust vary between 250 000 and one-and-a-half million people. The United States Holocaust Memorial Research Institute (Washington) gives the estimate as “between half and one-and-a-half million”.

³ The current title of the Group is *Group of Specialists on Roma, Gypsies and Travellers*.

⁴ Recommendations of the Committee of Ministers Rec(2000)4, Rec(2001)17, Rec(2004)14 and Rec(2005)4.

8. The legal instruments adopted within the Council of Europe during the 1990s⁵ have great potential for enhancing the respect of human rights of the Roma, and, to a certain extent, have already shown this potential. A deep gap persists, however, between the standards set forth in these instruments and the level of enjoyment of human rights by the Roma. Lack of awareness of the existing problems does not explain this state of affairs. On the contrary, the attention of European Governments has been frequently drawn to human rights concerns faced by Roma in Europe, both by local and international actors.⁶
9. It is of considerable concern that concrete improvements at local level remain largely insufficient, irrespective of the wide body of existing recommendations and commitments undertaken. In certain respects, the situation even appears to have deteriorated in recent years, partly due to the social impacts of the economic transition of the last decade, but also due to an increased climate of intolerance which has been particularly noticeable since 2001. A new wave of anti-Roma attitudes appears to be emerging in some countries of Western Europe, with media speculations about large-scale immigration of Roma from Eastern Europe following the enlargement of the European Union. The growth of nationalistic movements and the increased suspicion towards everyone who is perceived somehow different seem to have deepened anti-Roma sentiments. In some countries, national identity and even citizenship are frequently confused with the ethnicity of the majority population of the country. It is important to pay attention to the way in which national identity is produced and promoted – it needs to be inclusive and reflective of all members of the society. These phenomena indicate that there is a long way to go before the multiethnic and multicultural character of European societies is fully recognised and respected.
10. Undoubtedly, the past ten years have also seen positive developments at national level, such as the emergence of stronger Roma movements, and the adoption of national programmes, strategies or action plans for the improvement of the

⁵ Most notably the Framework Convention for the Protection of National Minorities in 1994, the revised European Social Charter and its Protocol establishing a collective complaints procedure, the European Charter for Regional or Minority Languages, and Protocol 12 to the European Convention on Human Rights relating to non-discrimination of 2001.

⁶ The various international human rights monitoring mechanisms of the Council of Europe and the United Nations have frequently taken up issues relating to the situation of Roma in their country-specific recommendations and conclusions. For instance, the Advisory Committee on the Framework Convention for the Protection of National Minorities expressed concern over discrimination of the Roma in 20 of the 27 country-specific opinions published by the Committee. Also, the problems encountered by Roma were covered in 32 of the 43 country-specific reports of the European Committee against Racism and Intolerance (ECRI) during its second-round of reporting. Recognising the particular vulnerability of the Roma to racism and discrimination, the ECRI adopted in 1998 its General Policy Recommendation No 3 on Combating Racism and Intolerance against Roma/Gypsies. A number of Roma and Traveller individuals have approached the European Court for Human Rights, which so far has rendered a judgment in approximately ten cases involving Roma or Traveller applicants. Also, the Parliamentary Assembly has frequently addressed issues relating to the Roma, notably in its 2002 recommendation on the Legal Situation of the Roma in Europe, and its 2003 report on Forcible returns of Roma from the former Federal Republic of Yugoslavia, including Kosovo Comprehensive surveys of the challenges faced by Roma have also been undertaken by other international organisations, such as the 2000 Report by the OSCE High Commissioner on National Minorities on the Situation of Roma and Sinti in the OSCE, the 2002 Report by the UNDP on the Roma in Central and Eastern Europe, and the 2004 Report of the European Commission on the Situation of Roma in an Enlarged European Union.

situation of the Roma in many Council of Europe member states. The concrete results of such strategies remain, however, sporadic and their implementation is often hampered by resistance at local level. Each of my visits has revealed with increasing clarity, that the lack of real political will and the prevailing climate of intolerance create significant obstacles for the implementation of national programmes. In many countries, I observed that local authorities, especially those holding elected positions, are often unwilling to implement measures under national programmes in fear of unpopularity in the eyes of the majority population, or sometimes because of their own discriminatory attitudes. Technical, economic and legal obstacles are often evoked as reasons for non-implementation of, for instance, programmes aimed at ensuring decent living conditions at Roma settlements, although in most cases, such obstacles could be overcome if there was the necessary political will. In situations where local authorities fail to implement national programmes, the central Government ought to intervene much more rigorously in order to ensure that commitments undertaken by it through the adoption of such strategies and national programmes are fulfilled.

11. Addressing in a single report the situation of a very large minority, whose members live in different countries under very different circumstances, clearly carries the risk of unjustified generalisations. It is therefore necessary to underline that not all the issues raised in this report affect all Roma in Europe, or not even all the Roma in the countries or communities from which examples are provided in this report. On the contrary, when formulating responses to overcome discrimination against the Roma, it is necessary to bear in mind the wide variety of Roma communities within Europe, and within individual states. In addition, it is to be recalled that a person belonging to the Roma minority, like any other individual, is first and foremost a holder of human rights in his or her own right. However, the fact that the very membership in a Roma minority often affects the manner in which an individual can enjoy his or her human rights, necessitates an approach based also on that membership.
12. I am also aware that the choice of terminology in this report does not do justice to the diversity of the various Roma and related groups. Evidently, the question of denomination of minority groups is not merely one of terminology, but first and foremost, one of identity. Many Roma-related groups identify themselves primarily under a denomination other than Roma – such as Sinti, Kalé, Manouches and Gypsies (Tziganes, Gitanos). However, practical and linguistic reasons necessitated the use of the term “Roma” to refer to the various minority groups of Roma origin in this report. Naturally, when addressing the situation of a particular minority group, the wish of that minority as to their denomination should be the determining factor. In this report, the denomination “Travellers” refers both to the travelling Roma and Sinti (“gens du voyage”) as well as the distinct Traveller minority in Ireland and the United Kingdom who are not of Roma origin, but who lead a nomadic life-style, and therefore share many problems in common with the travelling Roma.

I. ADDRESSING DISCRIMINATION AND INEQUALITY

'There is a lot of prejudice and discrimination against Roma in my country. We find it hard to do things that others take for granted.

It's difficult to get your child into a good school and higher education is often an unattainable goal. There are problems with the housing because no-one wants Roma in their neighbourhood.

We encounter problems because of who we are every day and we want to do something about it because our government turns a blind eye to racial crimes committed against Roma. Quite often we have problems with the police, they suspect we all must be criminals.

Even if you manage to graduate, it's really hard to get a job. People assume that Roma are crooks and will steal or swindle.

We don't want to be given preferential treatment, we just want the same opportunities as everyone.'

13. This message that I received from a young Roma man describes well the reality which many Roma in Europe continue to face. Discrimination is not an issue affecting one particular branch of life, but it manifests itself in various different forms in public and private life, and is frequently fuelled by negative stereotyping in the media and even in statements by public officials. Anti-Roma sentiments are so deeply rooted in some societies that discrimination against the Roma in areas such as employment, education, housing or access to public premises appears to be generally tolerated, and not considered illegal.
14. Achieving full respect for the principle of non-discrimination is a broad task implicating all members of society and requiring a significant shift in mentalities. Whilst this task is challenging, it is by no means unattainable. Education and awareness raising about Roma culture and traditions remain vital to this goal, since intolerance is often generated by lack of knowledge. Such education should start in schools, and include information on the negative consequences of racism and discrimination, and the importance of good ethnic relations for the development of the society as a whole. Initiatives aimed at increasing interaction between the Roma and non-Roma populations are also of great importance. The media play a crucial role in shaping public opinion, ideally offering an effective tool for distributing objective and educational information. Unfortunately, the media-images of the Roma often continue to be negative and distorted, which only increases the existing prejudices.
15. A shift in mentalities does not, however, occur by itself without the state setting clear objectives and prohibitions while also taking positive promotional measures. This is why anti-discrimination legislation is of paramount importance for attaining the goals of equality. It is vital that each national constitution or other basic law should enshrine the principle of equality and the right of individuals to be free from discrimination. These general principles risk, however, to remain of little practical significance unless they are given full effect in civil, administrative and criminal laws. Whilst the adoption of Protocol 12 to the European Convention on Human Rights and of the EU equality directive⁷ have given

⁷ Council Directive 2000/43/EC of 29 June 2003 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

significant impetus to strengthening anti-discrimination laws at national level, many member states are still to adopt sufficiently detailed anti-discrimination legislation. In this context, I would like to draw attention to the general policy recommendation on national legislation to combat racism and racial discrimination adopted by the European Commission against Racism and Intolerance in December 2002.⁸ This recommendation provides detailed advice on the establishment of an effective anti-discrimination regime in national legislation and offers important guidance for states which are in the process of ratifying Protocol 12 to the European Convention on Human Rights and applying the EU equality directive.

16. Recent years have seen an increase in litigation both at national and international levels in cases involving discrimination. Although each case is an indication of the persistence of anti-Roma discrimination, the increase in the number of cases brought before the courts is also reflective of enhanced awareness by the Roma about their rights. In countries where specific anti-discrimination provisions remain insufficient, a court judgment finding a violation of a constitutional equality provision has provided important jurisprudence. For instance, in countries which lack national legislation explicitly prohibiting discrimination in access to public places there have been successful cases before the national courts overturning denial of access to Roma to such places on the basis of the equality provision in the constitution.⁹ In addition to bringing a remedy to the victim, court decisions can have a preventive function by way of indicating to the public that certain behaviour is illegal. This requires, however, that sanctions imposed for the crimes of discrimination are of a sufficient level to be effective. In some countries, it is reported that the relatively low level of sanctions imposed in discrimination cases does not provide a sufficient deterrent for violations, nor are they effective in terms of preventing recidivism.
17. National institutions for the protection and promotion of human rights have a crucial role in fighting discrimination, and in offering a venue for individuals to complain about discriminatory measures against them. In many countries, however, the ombudspersons and other institutions noted that they receive relatively few complaints from Roma individuals, although many of them would certainly have grounds to do so. Reasons for this are many, as was noted in the conclusions of the European Ombudsmen Conference held in Vilnius in 2002:¹⁰

“[S]ome groups of the population complain less than others. Quite often there is an absence of complaints from precisely the most vulnerable sectors of the population, such as children, elderly people, foreigners, minorities of all kinds. This does not mean that violations do not occur among these groups; often, indeed, it is quite the opposite. The reason probably lies elsewhere: too little information about their own rights, unfamiliarity with the system, lack of trust in society, fear, etc. For the individual to be able to lodge a complaint, at least four conditions need to be met. These are: the awareness of one’s own rights

⁸ Document CRI (2003)8, 13.12.2002.

⁹ See Gloria Jean Garland, *Fighting Discrimination Through the Courts*, in *Roma Rights*, Numbers 1 and 2, 2003, pp. 81-82.

¹⁰ Conclusions of the European Ombudsmen Conference co-organised by the Council of Europe Commissioner for Human Rights and Ms Leonarda Kuodiene, Lithuanian Ombudsman, Vilnius, Lithuania, 5 - 6 April 2002, *CommDH*(2002)3.

and the rights of others; the existence of complaint procedures; the absence of fears of negative consequences of complaining; and confidence that the system is capable of correcting violations.”

18. On a number of occasions, I have also underlined the importance for the national human rights institutions to reach out more actively to the Roma communities in their countries. At a meeting with Central and Eastern European ombudspersons in Budapest, the ombudspersons committed themselves to pay particular attention to the most vulnerable sections of the population, in particular minorities and persons who did not hold the nationality of the country in which they lived.¹¹ The following year, in a meeting in Warsaw, the ombudspersons resolved to make a special effort to defend the rights of Roma/Gypsies.¹²
19. Unequal treatment is not always the result of intentional discrimination or racist attitudes, but it may be the result of societal structures that cater primarily to the needs of the majority population, without giving sufficient attention to the particular needs that minority populations may have. To a large extent, this results from the absence of members of minorities in the decision-making processes. Several studies have indicated that the level of participation of Roma in the conduct of public affairs is strikingly low, even when it comes to measures affecting exclusively the Roma.¹³
20. Auspiciously, a number of member states have taken measures to enhance the participation of Roma in decision-making processes through, for instance, the establishment of advisory councils or special governmental structures responsible for minority affairs, or through making a special provision for minority representation in elected bodies at national or local level. Whilst these developments are clearly very welcome, they are not sufficient by themselves. Some commentators have noted that the creation of special Roma posts within the administration has often more of a symbolic value, rather than a concrete impact. I have moreover been informed that those holding an official position representing the interests of the Roma, do not always communicate in an effective manner with Roma communities and, in particular, with young Roma.
21. What is of critical importance is the long-term enhancement of the right of the Roma to participate, on terms of equality, in the general conduct of public affairs, be it in elected bodies or positions within the administration. Special attention must be devoted to promoting the participation of Roma women and Roma youth in decision-making processes. Strong Roma women and youth movements have emerged in recent years, and I encourage further support to be given to such movements.
22. Ensuring that the situation of Roma populations is adequately addressed in decision-making processes is not, however, a task for the Roma alone. It is

¹¹ CommDH(2000)2 Conclusions of the meeting between the Ombudsmen of Central and Eastern Europe and the Council of Europe Commissioner for Human Rights, Budapest, 23-24 June 2000.

¹² CommDH(2001)6 Conclusions of the meeting between the Ombudsmen of Central and Eastern Europe and the Council of Europe Commissioner for Human Rights, Warsaw, 28-29 May 2001.

¹³ See for instance, *Political Rights of the Roma* by Savelina Russinova, in *Roma Rights*, Nr 4/2003. See also *Preliminary analysis of the replies to the questionnaire on forms of participation of Roma/Travellers and related groups in decision-making processes in Europe*, prepared for the Committee of Ministers' Working Party with the task of examining the question of a possible forum for Roma and Travellers, GT-ROMS(2003)9prov2E.

important that non-Roma politicians and authorities recognise that the situation of the Roma, like that of any other individuals, is a cause for the whole society. This requires that discriminatory attitudes within administrations are tackled, and that authorities and politicians assume their responsibilities in ensuring that all individuals are able to enjoy human rights on an equal footing. This does not apply only to those who are explicitly mandated with human rights tasks, but to all authorities, including in areas such as budget planning or formulation of housing policies. It is essential that in all segments of public administration, attention is given to the specific situation and needs of minority groups. This calls for an effective mainstreaming of minority rights issues within state structures.

23. Ensuring effective participation of Roma at the European level is equally important, particularly when formulating responses to the many challenges faced by them in Europe. I have closely followed and supported the work towards the creation of the European Roma and Travellers Forum, which was recently established as an independent association with a special relationship with the Council of Europe. The Forum will be able to provide advice to decision-making bodies at European, national and local levels on issues related to the protection of the rights of the Roma and Travellers.¹⁴ The expertise and advice given by the Forum will undoubtedly make a significant contribution towards ensuring that states are better informed and thereby better equipped to fulfil their obligations vis-à-vis their Roma and Traveller populations. The Forum also has great potential for giving a stronger voice to the Roma at national and local levels, as it is likely to reinforce the synergies of Roma organisations working at these levels. Moreover the Forum, as it will bring together individuals from Roma, Sinti, Traveller and other related groups from all over Europe with very different backgrounds and experiences, could help understand the diversity of European Roma communities and the wide range of factors that must be taken into consideration when formulating European policies in this area. It is therefore essential for the success of the Forum that the process of selecting and electing its members at the national level ensures that the composition of the Forum is representative of different Roma communities.
24. Finally, it is to be recalled that the fight against discrimination is not only necessary for the respect of human rights of the individuals concerned, but a prerequisite for the democratic and stable development of any society. The benefits of equality go even further, including economic considerations. For no society can afford that a part of its population is effectively prevented, through discriminatory measures or unequal opportunities, from actively participating in economic life. The empowerment of disadvantaged groups is therefore beneficial, and indeed a vital necessity, for all societies. It is also to be recalled that achieving social inclusion requires efforts from all sides and calls for greater efforts also on the part of the disadvantaged communities, in particular in terms of adjusting to changes in society.

¹⁴ Upon the initiative of Ms Tarja Halonen, the President of Finland, the Council of Europe Committee of Ministers started in 2002 a process towards the establishment of the Forum. The structure of the forum was outlined in a joint proposal by France and Finland in the summer of 2003, which suggested that the Forum should be an independent association with a special relationship with the Council of Europe. The Forum was registered in Strasbourg as an NGO in September 2004 and a partnership agreement between the Forum and the Council of Europe was signed on 15 December 2004. The First Plenary Assembly Meeting of the Forum is scheduled for June 2005.

25. In the following chapters, I will highlight a number of specific issues related to discrimination of the Roma in the fields of education, housing, health care and employment as well as questions connected to racially motivated violence and relations with law enforcement authorities, asylum, displacement and trafficking in human beings. As will be pointed out, most of these issues are closely interlinked and must therefore be addressed in an integrated manner.

II. DISCRIMINATION IN THE FIELD OF HOUSING – SEGREGATION AND LACK OF ACCESS TO ADEQUATE STANDARDS OF LIVING

26. During many of my country visits, I was shocked at the patent absence of adequate standards of living within Roma settlements. In a number of these settlements, the living conditions were of such a poor standard as to cause severe safety and health hazards for the inhabitants. Many Roma had to live in segregated ghettos of run-down buildings or shacks in settlements that were pushed to the margins of towns and sometimes built on contaminated land. Access to infrastructure, such as running water, electricity, roads, transportation and communication facilities was usually non-existent in these settlements. I find it unacceptable that in a continent of considerable prosperity resources are so unevenly distributed that such forms of extreme poverty continue to exist.
27. During my visit to Bulgaria, I visited Faculteta, a Roma/Gypsy district in Sofia, where many people lived in makeshift dwellings fabricated from recycled materials such as cardboard and pieces of wood and without drinking water, electricity or sanitary fittings.¹⁵ Living under such conditions was particularly dire in the winter time, with temperatures falling well below zero. In Hungary, I visited Budapest's District VIII where many Roma/Gypsy families found themselves homeless or in run-down and unsanitary housing with practically no amenities, but according to various sources, this was not even the city's most dilapidated. It was reported that the same phenomenon, or even worse, was to be found in other regions of Hungary, particularly in the east of the country. While in Romania, in the Bucharest district of Ferentari mainly inhabited by Roma, heating and hot-water supplies had been cut off in a number of apartments, which had forced the inhabitants to rig up dangerous electrical connections. The apartment blocks were in a deplorable condition, with sizable families often occupying only one or two rooms. There was no waste management system in place, which constituted a serious public-health problem.
28. Moreover, during a follow-up visit to Slovakia in September 2003, a team of the Commissioner's Office visited a Roma settlement near Sborov, in the eastern part of the country where people lived mainly in shacks made of recycled materials with no access to basic infrastructure such as running water, electricity or transportation. According to interviews conducted in the settlement, people have been living there for more than a hundred years and, despite appeals to successive municipal councils, very little had been done to assist them to move out from this settlement. Also, the conditions in the Roma settlement in Aspropyrgos on the outskirts of Athens, Greece, which I visited in 2001, were extremely poor and far from meeting the basic needs of the inhabitants. For instance, due to the absence of essential services in this area, the humanitarian organisation *Médecines du Monde* provided health care for the inhabitants of the settlement. Also, in Lithuania, the conditions in a Roma settlement of Kirtimai which I visited were harsh with houses lacking basic infrastructure and facilities.

¹⁵ Reports of Commissioner's country visits are available at the website of the Commissioner: www.commissioner.coe.int

29. The discussions I had with Roma representatives and authorities in these countries revealed that the reluctance of local authorities to improve the living conditions of the Roma often significantly contributed to the persistence of these problems. Even if a housing strategy with the necessary funds was in place to improve the living conditions in Roma settlements, the local authorities at times failed to apply for such funds, or even refused funds offered by the state. For instance, during my visit to Greece, the Secretary General of the Ministry of the Interior reminded the mayor of Aspropyrgos that funds, exclusively dedicated to improve public utilities and infrastructures of the Roma, were at his disposal and that urgent measures to supply water supplies to this community had to be taken. It however appears that these funds remain largely unused even today.
30. Such reluctance was often explained by pressure and resistance from the local population against the settlement of Roma in their neighbourhood. In cases of already existing settlements, there have been attempts by the local population to push the Roma away. For instance, in my report on Portugal, I noted that every so often, particularly in rural towns, local councils were seen to disparage or put at a disadvantage local Roma in efforts aimed at their relocation. Fortunately, such declarations and practises tended to be firmly condemned both by central authorities and the national press in the country. Also, while visiting a Roma community in the village of Veliko Mlačevo in Slovenia, the families informed me that they had been living for decades in this village, but there was no adequate infrastructure in place, including electricity or running water in the houses. In the subsequent discussions with the local authorities, it was noted that in addition to the legal difficulties caused by the privatisation of the land, the prejudices among the rest of the population had resulted in strong resistance towards investments benefiting the Roma.
31. The above examples illustrate the necessity for the state authorities to take great care in monitoring systematically the manner in which housing strategies are implemented at local level. It is evident that far too often municipal authorities are influenced by anti-Roma attitudes prevailing among the majority population, leading to a situation where the enjoyment of human rights by the Roma becomes conditional upon the views of the majority population. This, of course, is totally unacceptable. It is necessary to recall that the state is ultimately responsible for the respect for human rights of all individuals within its territory, including the right to housing and the right to an adequate standard of living. Therefore, transferring the task of implementing housing strategies to the local level does not free the government from its obligation to oversee that such strategies are effectively carried out, and that municipalities have the necessary resources at their disposal. This may require promotional measures in the form of training, but also appropriate sanctions for non-action.
32. Many Roma I have talked to underlined that in any comprehensive programme for the improvement of the situation of the Roma, priority should be given to housing and living conditions. Living in run-down settlements isolated from the rest of the population does not only jeopardize the right to adequate standards of living and the right to health care, but it also negatively affects the realisation of a number of

other rights.¹⁶ For instance, the lack of transportation facilities often means that children cannot attend schools and adults find it difficult to access employment outside the settlements. Moreover, living in a segregated settlement significantly diminishes the possibility of taking part in any economic, social and political activities of society.

33. In addition to the need to end any deliberate segregation policies, it is important to pay increasing attention to ways in which interaction between the Roma and non-Roma communities can be enhanced. Such initiatives can be effective in terms of increasing mutual trust and demystifying the differences between the various parts of the population.

34. In addition to the above problems faced by Roma living in isolated settlements, many continue to face significant difficulties in accessing public or private rental markets. Many Roma have stated that accessing the private rental market is practically impossible, due to the apartment owners' reluctance to give a lease to Roma, even if financial guarantees were in place. Rental markets, also for social housing, are sometimes governed by eligibility rules which in practice exclude many Roma from qualifying for the dwellings. For instance, when visiting the Czech Republic in 2003, I was told that some seemingly neutral criteria for the allocation of municipal housing obstructed the access of many Roma communities to such dwellings. In the Ostrava region, an adequate level of education for all members of a family represented an absolute condition for the allocation of housing, which frequently placed Roma families at a disadvantage. Such criteria, which unjustifiably exclude a specific group from benefiting from municipal housing, are clearly discriminatory and should be amended without delay. Moreover, it is necessary to ensure that national legislation provides for effective protection against discrimination in housing, through an explicit prohibition of discrimination in access to housing, in housing conditions and in the termination of rental contracts, as well as rigorous monitoring of such legislation. While training regarding the principles of equality provided to the authorities who decide upon allocation of housing is important, attitudes are not likely to change without an effective enforcement of anti-discrimination policies and laws.

The special situation of travelling Roma and Travellers

35. Although the majority of today's Roma in Europe are sedentary, a number of communities lead a nomadic lifestyle. These Roma, as well as the non-Roma Travellers, face, however, increasing difficulties in maintaining their life style,

¹⁶ See also criticism of other international human rights bodies against practices of segregation and ghettoisation of the Roma, in particular *Discrimination against Roma, General Recommendation No. 27 of the Committee on the Elimination of Racial Discrimination*, 16.8.2000, contained in UN Doc. A/55/18, annex V. The European Committee on Social Rights is currently considering two collective complaints relating to discrimination against the Roma in the field of housing, including residential and racial segregation. The first complaint, submitted by the European Roma Rights Centre in April 2003 against Greece, was declared admissible on 16 June 2003 by the Committee which is expected to publish its decision on the case in the near future, and the second was submitted against Italy in May 2004. Moreover, the European Commission against Racism and Intolerance (ECRI) and the Advisory Committee on the Framework Convention for the Protection of National Minorities have condemned the segregation of Roma in ghetto-like neighbourhoods in a number of their country reports and opinions.

because of insufficient provision of camping sites and stricter legislation relating to camping. This jeopardises the effective enjoyment of their right to preserve or develop one of the important elements of their culture and identity, namely travelling, and has led to a situation where many families have to stay in illegal settlements or keep constantly on the move.

36. In addition, many Travellers continue to face significant impediments to the enjoyment of a number of other rights, most notably in the field of social and economic rights, due to their lifestyle. For instance, according to a report prepared for the Council of Europe Specialist Group on the Roma, one third of states having a nomadic population fail to recognise mobile home as housing for the purpose of payment of certain social benefits, and one State in five does not recognise a mobile home as the occupant's home to be protected under criminal law.¹⁷

37. Whilst I have not yet visited all member states with considerable Traveller populations, I would like to draw attention here to some of the concerns that have been expressed by other Council of Europe institutions. The Advisory Committee for the Framework Convention for the Protection of National Minorities and the European Commission against Racism and Intolerance have in many of their country-specific recommendations made special references to the situation of the Travellers, including the difficulties related to housing. For instance, in its Opinion on Ireland¹⁸, the Advisory Committee expressed serious concern about the accommodation situation of Travellers and the slow progress in meeting targets for providing additional accommodation, including halting sites, as well as the standard of accommodation at the disposal of Travellers. Also with regard to Ireland,¹⁹ ECRI noted that "one of the main barriers to improvement of the situation as regards accommodation is reported to be the unwillingness of local authorities to provide accommodation and resistance and hostility among local communities to planned developments, often resulting in injunctions and court cases". In its report on Switzerland²⁰, ECRI noted that the provision of sufficient permanent and transit stopping places for Travellers remained a problem in a context where the communities were reporting an increasing interest on the part of young people in continuing the traditional way of life. It also noted that although some cantons had constructed sites in recent years, other cantons or communes had not given planning permission for sites to be built. In many cases, even if the political will to create sites had been present, the local population had voted against the plans. The current lack of sites meant that Travellers were often forced to stop without permission in areas without any sanitation facilities.

38. Concern has also been expressed about forced evictions of Roma and Travellers, and about the manner in which they have been conducted. For instance, in its report on the United Kingdom²¹, ECRI urged the British authorities to ensure that

¹⁷ *The Movement of Travellers in Council of Europe Member States*, Report prepared by consultants Dominique Steinberger and Laurent Keller, Doc. MG-S-ROM (2002) 10 Rev., 23 June 2002.

¹⁸ Opinion on Ireland, ACFC/INF/OP/I(2004)003.

¹⁹ Second Report on Ireland, doc. CRI(2002)3.

²⁰ Third Report on Switzerland, doc. CRI(2004)5. See also the Opinion on Switzerland of the Advisory Committee on the Framework Convention for the Protection of National Minorities, ACFC/INF/OP/I (2003) 007.

²¹ Second Report on the United Kingdom, doc. CRI(2001)6.

local authorities make adequate provision of camp sites throughout the country, so that evictions related to the shortage of legal sites could be avoided. In relation to Ireland, ECRI stressed that the powers afforded to local authorities to carry out evictions from unauthorised campsites should be kept under close review in order to ensure that such powers were not misused, particularly in situations where accommodation possibilities available for Traveller families were not sufficient to meet the needs of this community.

39. It is of particular concern that, when executing an eviction order, often no consideration appears to be given by the authorities to the particular circumstances of the persons concerned, such as their health status. The European Court of Human Rights recently delivered an important judgment in which it found a violation of the right to family and private life in a case involving the eviction of a Traveller family from their home in the United Kingdom.²²
40. Another concern relates to the level of sanctions imposed for illegal camping, which often appear disproportionately high, in particular when the municipalities have failed to provide a sufficient number of legal camping sites. For instance, in 2000 France adopted a law on the reception and accommodation of Travellers²³ which stipulated that all communities with a population of more than 5000 must have camping sites for Travellers as well as resting areas for 50 to 200 families. However, the vast majority of municipalities have not yet complied with this requirement making the number of camping sites clearly insufficient for the nomadic population of the country. As a result, many Travellers have no other possibility than to encamp illegally and face eviction and severe penalties under the 2003 law on internal security²⁴.

²² See *Connors v. the United Kingdom*, Application no. 66746/01. The family's baby was suffering from serious illnesses, including a kidney problem, and the mother suffered from asthma. According to the applicant, no assistance was given to them as to where to go, apart from an offer of accommodation in another, distant, part of the United Kingdom which failed to take into account the family's local community ties. The family's teenage son stopped going to the school after the eviction, since they had to be on the move.

²³ Law No 2000-614 of 5 July 2000.

²⁴ Law No 2003-239 of 18 March 2003. This law envisages the punishment of 6 months' imprisonment and a fine of € 3750 for illegal parking or encampment, as well as the confiscation of the vehicle and the suspension of the drivers licence. Furthermore, the Irish Housing Miscellaneous Act prevents Travellers from parking their vehicles at non-regulated places, with the threat of punishments of a fine up to € 3000 or imprisonment of 6 months.

Recommendations related to housing

- As a matter of priority, it must be ensured that alternative accommodation is provided, on equal terms with other citizens, to those Roma who live in settlements which are hazardous to the health of the inhabitants.
- Appropriate infrastructure, including electricity, roads, clean water and garbage removal, must be put in place in settlements where such infrastructure does not exist; urgent measures are needed to ensure adequate living conditions in winter time.
- Policies of deliberately segregating Roma communities in settlements outside otherwise inhabited areas must be ended and, when needed, reverted.
- Central authorities should intervene more actively in situations where implementation of housing projects for the Roma is hampered by local authorities and local majority populations.
- Initiatives should be launched to promote tolerance and regular contacts between the Roma and non-Roma populations.
- Anti-discrimination legislation in the field of private and public housing must be enacted or strengthened while special measures must be taken to ensure that seemingly neutral allocation criteria do not negatively affect Roma populations.
- With regard to travelling Roma, it is important to ensure that there is a sufficient number of camping sites with adequate facilities; that sanctions imposed for illegal camping are not disproportional; and that if eviction is unavoidable, consideration is given to the particular circumstances of the persons concerned.

III. DISCRIMINATION IN EDUCATION – UNEQUAL ACCESS AND SEGREGATED EDUCATION

41. Investing in the education of Roma children and young Roma is an investment into the development of their communities and societies as a whole. The fact that a significant number of Roma children do not have access to education of a similar standard enjoyed by other children does not only jeopardise the effective enjoyment by Roma individuals of their right to education, but negatively affects the future of whole societies. In certain countries, school non-attendance and school dropouts continue to be unacceptably high among Roma children and have even increased during the past ten years.²⁵ While poverty and, in certain communities, traditions create additional impediments to access to education, discriminatory practices and prejudices are a profound cause of inequality in access to education.
42. In extreme cases, whole communities might lack access to education due to their segregation from the rest of society and the resulting physical distance from schools. By way of example, last year it was reported that children living in the Spata Roma community in Greece were unable to attend school for three years because the distance from the municipality made it impossible for the Roma children to reach school due to lack of transportation. Following a public protest, a bus was finally provided enabling the Roma children to attend a preparatory class in view of their integration into ordinary school classes in September 2004.²⁶
43. Another grave concern is segregation in education, which, in one form or another, is a common feature in many Council of Europe member states. In some countries there are segregated schools in segregated settlements, in others special classes for Roma children in ordinary schools or a clear over-representation of Roma children in classes for children with special needs. It is common that Roma children are placed in classes for children with special needs without an adequate psychological or pedagogical assessment, the real criteria clearly being their ethnic origin. Being subjected to special schools or classes often means that these children follow a curriculum inferior to those of mainstream classes, which diminishes their opportunities for further education and for finding employment in the future. The automatic placement of Roma children in classes for children with special needs is likely to increase the stigma by labelling the Roma children as less intelligent and less capable. At the same time, segregated education denies both the Roma and non-Roma children the chance to know each other and to learn to live as equal citizens. It excludes Roma children from mainstream society at the very beginning of their lives, increasing the risk of their being caught in the vicious circle of marginalisation.
44. In almost all the countries I have visited, Roma children were faced with these problems in one way or another. While in Hungary, I was informed that Roma children were systematically placed in so-called special, or “C”, classes which received children from underprivileged backgrounds and the academic level of which was lower than in regular classes. About 70% of the pupils in “C” classes

²⁵ The UNDP report of 2002 indicated, for instance, that in Hungary, more than 90 percent of children start secondary education, but only 33 percent of Roma youth do. In the Slovak Republic, the dropout rate of Roma children in the first grade rose from 46 percent in 1976 to 63 percent by 1999.

²⁶ Press release of the World Organisation against Torture (OMCT) of 18 February 2004.

were said to be Roma children who followed a simplified curriculum without experienced teachers in poor facilities. In Bulgaria, I visited a Roma-only school in the “Faculteta” district of Sofia, which encountered serious economic and structural difficulties and was said to receive less state assistance than other schools. In Slovakia, I was informed that, in some regions, 80% of Roma children were placed in specialised institutions and only 3% reached as far as secondary school, while only 8% enrolled in secondary technical school. In the Czech Republic, I was told that the young members of the Roma/Gypsy community were drastically over-represented in “special” schools and classes for children with a slight mental disability. Some statistics indicated that 70% of all Roma children present in Czech territory were placed in these schools.

45. During my visit to Denmark, I was informed of a complaint relating to special classes in the municipality of Elsinore. According to the complaint, 30 children were enrolled in so-called “Romi classes”, which, whilst not officially described as classes for special education, offered education that corresponded to that of classes for special education rather than regular classes. The pupils in the classes were not of the same age, but from all class levels in the public school system. Reportedly, no proper pedagogical-psychological counselling and assessment took place prior to a placement of a child in a “Romi class”. Instead, the decision was taken on the basis of the assessment of the teachers alone. It was noted that the children in “Romi classes” had widely differing problems, some of which could be better addressed in special classes with other children with similar problems. When visiting Finland in 2001, I was informed that quite large numbers of Roma children were placed in specialised education units. Linguistic difficulties as well as cultural differences between Roma and the majority population were among the reasons adduced by the authorities.
46. It is often stated that special classes or special curricula for the Roma were introduced with good intentions, for the purposes of overcoming language barriers or remedying the lack of pre-school attendance of Roma children. Evidently, it is necessary to respond to such challenges, but segregation or systematic placement of Roma children in classes which follow a simplified or a special Romani-language curriculum while isolating them from other pupils is clearly a distorted response. Instead of segregation, significant emphasis should be placed on measures such as pre-school and in-school educational and linguistic support as well as the provision of school assistants to work alongside teachers.
47. Auspiciously, many countries, including those mentioned above, have recognised the problems inherent in a segregated school system and introduced measures facilitating desegregation. In Poland, I visited the Malopolska region where positive results had been reached through language training in nursery schools and the provision of school assistants who had been appointed for Roma children to smooth the transition from Roma classes to regular classes.²⁷ These measures had significantly increased school attendance by Roma children and facilitated regular contacts between Roma and non-Roma students. At the time, this project was limited to one municipality, although the Polish authorities have indicated that

²⁷ See the *Report by the Commissioner for Human Rights on his visit to Poland* 18 - 22 November 2002, submitted to the Committee of Ministers and the Parliamentary Assembly on 19 March 2003, Doc. CommDH(2003)4.

they would use the project as a basis for longer-term nation-wide measures.²⁸ In the Czech Republic, I was told that the authorities had introduced Roma assistant teachers in regular classes and the provision of preliminary classes. These initiatives have had promising results, though only on a small scale due to lack of adequate resources. Moreover, I was informed that the municipal authorities responsible for the funding of schools evidently did not consider this matter a priority.

48. While visiting Croatia in 2004, I learned of a two-year programme, initiated in 2002, to prepare all Roma children for schools under which children were taught various skills in the Croatian language. In Bulgaria, the Ministry of Education and Science issued in 2002 an instruction for the integration of minority pupils while preserving their ethnic specificity with the aim of overcoming specific problems which violate the principle of equal access to quality education and fostering the successful socialisation of young people from different ethnic minority communities. In Hungary, an amendment made in 2003 to the Law on Education introduced a ban on segregation in schooling.²⁹ The European Roma Rights Centre has reported of an initiative in Hungary, where schools must integrate at least 10 percent of the disadvantaged pupils from segregated classes every year or face the risk of losing eligibility for special grants.
49. Unfortunately, desegregation efforts have at times met with resistance from non-Roma parents. In Croatia, when visiting a school in Čakovec, I was told that several parents of non-Roma children had protested against a decision to block the formation of separate classes for Roma children, arguing that Roma children were not at the same level with other children, linguistically and otherwise.³⁰ Moreover, I was informed that, following the initiative to desegregate the above-mentioned school in “Faculteta” district in Sofia, parents of several Roma children who attempted to enrol their children into integrated schools near their homes did not manage to do so. The European Roma Rights Centre reported that administrators at three schools obstructed the filing of enrolment applications by the parents of fifteen Roma children.³¹ The Roma parents were informed that either the maximum number of children in the respective school had been reached or that the Roma children did not have the right to apply to a school outside the municipality where they were registered. However, the non-Roma children had reportedly been enrolled without any problems in the meantime. I have also heard of situations where non-Roma parents withdraw their children from schools where there are many Roma children.
50. Such incidents, even if they would not lead to formal segregation, are extremely harmful also because they risk arousing feelings of inferiority amongst the Roma pupils. Moreover, that type of attitude is easily passed from the parents and teachers to children, leading to the harassment and bullying of Roma children at school. It is of paramount importance that schools assume their responsibilities in

²⁸ Opinion on Poland of the Advisory Committee on the Framework Convention for the Protection of National Minorities, ACFC/INF/OP/I(2004)005.

²⁹ Letter from the ERRC to the European Commissioner for Employment and Social Affairs and the Minister of Health, Social and Family Affairs of Hungary, 5 April 2004.

³⁰ See also Roma rights, 3-4, 2002.

³¹ See ‘*Romani children denied enrolment in Bulgarian schools*’, in *Roma Rights, Quarterly Journal of the European Roma Rights Centre*, Numbers 3-4, 2002.

promoting tolerance and respect for others. Hostility towards any group of children at school must not go unattended, and special emphasis must be placed upon teacher

training so as to better prepare them to work in a multi-cultural environment and to respond to the bullying of minority children. It is also important that governments remind school administrations that obstructing the enrolment of Roma children in regular classes is an act of discrimination and therefore illegal.

51. In certain communities, it is crucial to raise the awareness of Roma parents, who themselves might not have had the possibility to attend school, of the necessity and benefits of adequate education for their children. In this context, it is important to promote programmes to overcome illiteracy among adult members of Roma communities.
52. Particular emphasis should also be placed on promoting the education of Roma girls within those communities which tend to hold traditional views on gender roles. I have heard that in some communities there remain practices of withdrawing girls from schools once they reach the age of puberty. For instance, while visiting Portugal, I was informed that the necessity of formal education for girls, beyond the acquisition of basic literacy, was still not generally recognised within the Roma/Gypsy community. There was, moreover, a widespread reluctance amongst parents to sanction the daily departure of post-pubescent girls whose assistance around the house was appreciated and for whom travelling to school alone was considered inappropriate. In situations where school non-attendance is partly the result of unwillingness of parents to send their children to school, the authorities should take a firm stand in ensuring that all children attend at least the period of mandatory education. In some countries, positive results have been reached through the creation of a system of Roma mediators who liaise between schools and Roma families in order to overcome difficulties in access to and achievement in education.
53. These questions cannot be dealt with in isolation without addressing the reasons which lie behind school non-attendance and drop-outs. In those communities which are affected by severe poverty parents might feel that education is a luxury that their children cannot afford. While states should ensure such an income for every family that they do not need to send their children to work in order to survive, it is equally necessary that parents recognise that the only way out of poverty is through education which ensures employment in the future.
54. Sometimes bureaucratic obstacles are invoked as reasons for excluding Roma children from schools. The lack of birth certificates or identity documents, lack of residence permits of persons living in illegal settlements in their own countries and non-recognition of school certificates from other countries have been used to deny access to schools.³² With regard to the latter, it is essential that when Roma families which have migrated or sought asylum in other countries are repatriated back to their home countries, special attention is given in the repatriation process to ensure that children can continue their education. Although this is primarily the responsibility of the receiving state, I find it of the utmost importance that access to education is addressed in all repatriation arrangements.

³² The European Roma Rights Centre described several such cases in Romania, France, Spain, Greece and Italy See *Barriers to Education of Roma in Europe, A position paper by the European Roma Rights Centre*, May 5, 2002.

Recommendations related to education

- As a matter of priority, access to adequate education must be ensured for children and youth living in isolated settlements, through, for instance, the provision of transportation to regular schools.
- Where segregated education still exists in one form or another, it must be replaced by regular integrated education. Adequate resources must be made available for the provision of pre-school education, language training and school assistant training in order to ensure the success of desegregation efforts.
- Adequate assessment must be made before children are placed in special classes, in order to ensure that the sole criteria in the placement is the objective needs of the child, not his or her ethnicity.
- Measures must be taken to remove the existing legal and bureaucratic obstacles leading to school non-attendance and drop-outs, such as lack of identity documents and residence permits.
- Special efforts must be undertaken to stop harassment of Roma children in schools, and to facilitate regular contacts between Roma and non-Roma pupils.
- Efforts should be undertaken to enhance the awareness of the importance of education within such Roma communities, which have been traditionally excluded from educational opportunities. Where appropriate, a system of Roma mediators could be created to liaise between schools and families, in order to overcome difficulties in access to education.
- Programmes to overcome illiteracy among adult members of Roma communities should be promoted.

IV. ACCESS TO EMPLOYMENT – OVERCOMING DISCRIMINATION

55. The high unemployment rates affecting many Roma communities is associated with a range of factors, including the impact of economic transition in countries of Central and Eastern Europe where Roma were often the first to be laid off from state-owned enterprises at the outset of restructuring, the disappearance of traditional Roma occupations in a number of countries, as well as the residential segregation of many Roma resulting in social exclusion.³³ In addition, unequal access to education, as described above, puts many Roma at a serious disadvantage in the labour market, indicating long-term impacts of discrimination in education.
56. For instance, during my visit to Portugal, I was informed that the greatest challenge faced by Roma was the gradual disappearance of the local markets or “feiras”, in which they had traditionally made their living as travelling salesmen. Many Roma found it difficult to adapt to the demands of the modern labour market, and I called for serious efforts to assist Roma/Gypsies in making this transition. Some admirable steps had, indeed, already been taken. The Institute of Employment and Vocational Training had, for instance, introduced specific training schemes for Roma/Gypsies and signed a protocol with the High Commissioner for Immigration and Ethnic Minorities to promote the access of Roma/Gypsies to the labour market. I noted however, that the real long-term challenge was the provision of adequate education and training to young Roma/Gypsies arriving on the labour market.
57. In addition to the challenges created by structural changes and past discrimination, direct or indirect discrimination against the Roma by potential employers remains a major impediment for many Roma to access the labour market. When visiting Romania in 2002, I was deeply disturbed to learn that the local newspapers published job advertisements stating that ‘no Roma need to apply’. I urged that legal proceedings be immediately taken both against the employers as well as the newspapers publishing such advertisements. I was pleased to learn that, after the visit, the National Council against Discrimination had imposed sanctions for the publication of such announcements. In Slovenia, a Roma woman told me that when attempting to look for work through a municipal employment office, she was turned away, since ‘no employment for the Roma would be available’. During many other country visits, such as to the Czech Republic, Finland and Sweden, I heard accounts of cases where qualified Roma candidates had had successful telephone interviews for a job, but were subsequently denied the job once the employer realised that the person to be recruited was a Roma.
58. As a first step, it is necessary to ensure that national legislation provides for effective protection against discrimination in the field of employment, and that such legislation is effectively implemented. Due to the difficulties for the job applicants to provide evidence of the employer’s motivations for refusing employment it is important that states, which have not yet done so, modify their legislation so that the burden of proof in discrimination cases is extended to be

³³ For an analysis on employment, see *Economic and employment problems faced by Roma/Gypsies in Europe*, MSG-ROM (99) 5 rev., and Dena Ringold, *Poverty and Roma in Central and Eastern Europe: A View from the World Bank*, Roma Rights Quarterly, No 1, 2002, pp. 31 – 39.

shouldered by the employer as well. In other words, the employer should prove that the job applicant or employee has not been discriminated against.

59. It is moreover important that temporary measures be adopted to promote the recruitment of the Roma in the labour market, both in the private and public sectors, and to intensify training programmes and job creation programmes for members of Roma communities particularly affected by unemployment. In addition to educating young Roma, it is necessary to intensify vocational training and retraining of adults whose professional skills are no longer marketable.
60. In some countries, severe unemployment and the resulting poverty and indebtedness have made Roma communities particularly vulnerable to criminal networks. In the Ostrava region of the Czech Republic, a large section of the Roma community was at the mercy Roma/Gypsy usurers (“sharks”) who abused and exploited financial distress and relied on the most dastardly methods, consenting to deal only with women whom they threatened with dire consequences for failure to repay. The police should take effective action against such criminal practices.

Recommendations related to employment

- As a first step, it is necessary to ensure that national legislation provides for effective protection against discrimination in the field of employment, and that such legislation is effectively implemented.
- Due to the difficulties of the job applicants to provide evidence of the employer’s motivations for refusing employment, it is important that states, which have not yet done so, modify their legislation so that the burden of proof in discrimination cases is extended to be shouldered by the employer as well.
- Special measures should be taken to promote the recruitment of Roma particularly within public administration.
- Deficiencies in educational levels, caused by unequal access to education, must be remedied through training and retraining programmes.

V. DISCRIMINATION IN HEALTH CARE

61. In many countries, health indicators such as life expectancy, child mortality, rate of infection and chronic diseases among Roma/Gypsy communities indicate drastic differences compared with the health indicators among the majority populations. By way of example, the UNDP statistics on infant mortality dramatically illustrate this problem. For instance in Bulgaria, infant mortality rate for Roma children was 240 per 1.000 compared to the national average of 40, while in Romania, the total rate of infant mortality by 1000 live births was 28.8 for ethnic Romanians and 80 for ethnic Roma.³⁴ Changing the health status of the Roma is clearly a complex issue requiring long-term activities, but there are also measures that can and must be taken immediately, most notably those which tackle discrimination and lack of equal access to health care services by many Roma communities.
62. In many of the Roma settlements I visited, the lack of access to adequate health care was among the communities' major concerns. When visiting Romania, some Roma families informed me that hospitals had refused to treat their sick children who had only been admitted to the emergency department when their condition had significantly deteriorated. Most of these irregularities appeared to be due to the fact that Roma did not have the identity documents required for access to health care. I noted that, although it is essential that the community take the necessary steps to obtain such documents, the authorities should make the process easier, for example by reducing the costs connected with the issue of birth certificates which in the view of many Roma/Gypsies are exorbitant.
63. In addition to this type of bureaucratic obstacle, discriminatory attitudes of health care professionals appear to be a common cause for non-access to health services. A recent report on Roma women's access to health care³⁵ indicated several instances where Roma patients had been refused medical care or treatment. It was noted for instance, that general practitioners in Bulgaria had refused to register Roma patients, due to an unwillingness to visit Roma neighbourhoods or take on the burden of dealing with the severe health conditions faced by poorer Roma communities. There were also claims of physicians campaigning to get Roma on their rosters without the intent to treat them on a basis equal to non-Roma patients, if at all. It was further noted that in Romania the reluctance of doctors to receive Roma patients is among the reasons cited for the fact that 30% of Roma are not registered with general practitioners, and that many Travelling families in the UK had been refused registration with a doctor or health treatment of some kind.
64. Those Roma who live in segregated settlements outside otherwise inhabited areas are in a particularly vulnerable situation. The mere lack of transportation facilities creates significant obstacles for accessing regular health care services, let alone the grave consequences that it may have when emergency treatment is needed. By way of example, the European Roma Rights Centre reported of difficulties in

³⁴ *Avoiding the Dependency Trap, op cit.*, p. 64. The report also indicated that Roma infant mortality rates in the Czech Republic, Slovak Republic and Hungary were roughly double the national average.

³⁵ *Breaking the Barriers - Romani Women and Access to Public Health Care*, European Monitoring Centre on Racism and Xenophobia, 2003.

getting an ambulance to a Roma settlement in Serbia. In one case, an ambulance had been called six times for an elderly woman, but at the end she was advised to take a taxi to the hospital since no ambulances were available. It was also reported that health officials frequently tell Roma calling for emergency health services to call the police instead.³⁶ In the Aspropyrgos settlement in Greece, Medecins du Monde was providing health care to the inhabitants who lacked access to municipal health care.

65. Recently, I have paid particular attention to allegations of forced or coerced sterilisations of Roma women and girls in some member States. With regard to Slovakia, I issued in 2003 a recommendation to the Slovak Government relating to certain aspects of law and practice relating to sterilisation of women, following a visit by a team from my office to the country.³⁷ I concluded that on the basis of the available information, it could reasonably be assumed that cases of sterilisations had taken place, particularly in eastern Slovakia, without informed consent. I noted that the information available did not suggest that an active or organised Government policy of improper sterilisations had existed (at least since the end of the Communist regime). However, the Slovak Government had, in my view, an objective responsibility in the matter for failing to put in place adequate legislation and for failing to exercise appropriate supervision of sterilisation practices although allegations of improper sterilisations have been made throughout the 1990s and early 2000s.
66. Following the publication of the recommendation, I have been in continuous dialogue with the Slovak Government concerning the implementation of the recommendations. Whilst I remain concerned that sufficient consideration has not, at least as yet, been given to the question of responsibility for the violations that have already occurred as well as providing redress for the victims, I welcome the recent changes in legislation regarding health care which aim to prevent any future violations.³⁸

³⁶ *Roma Rights, Nos 1 and 2, 2003.*

³⁷ *Recommendation of the Commissioner for Human Rights concerning certain aspects of law and practice relating to sterilization of women in the Slovak Republic. CommDH(2003)12.*

³⁸ Allegation of forced sterilizations have recently been made in other countries as well, including Hungary and the Czech Republic. In February 2004, the European Roma Rights Center and the Legal Defence Bureau for National and Ethnic Minorities jointly filed a complaint against Hungary with the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) relating to an illegal sterilisation of a young Hungarian woman of Romani origin. According to the complaint, the victim had been sterilised during an emergency caesarean section, without her being aware of the sterilisation. The ERRC also conducted preliminary research in 2003 in the Czech Republic into allegations of forced sterilisations. Of the 36 women interviewed for the research, 27 had been sterilised, out of whom 24 seemed to be cases of sterilisation conducted without a proper, full and informed consent. See *Joint Statement of the European Roma Rights Centre (ERRC), the International Helsinki Federation for Human Rights (IHF) and the Slovak Helsinki Committee (SHC) on the Issue of Coercive Sterilizations of Romani Women, on the Occasion of the OSCE Supplementary Human Dimension Meeting on Roma and Sinti, 9 April 2003.*

Recommendations related to health care

- As a matter of priority, particular emphasis must be placed on ensuring that persons living in isolated settlements have access to adequate health care services which cover both emergency and regular health care (including preventive care and vaccinations).
- Measures must be taken to ensure that discriminatory attitudes do not impede access to health services, and that all patients are treated in an equal manner and in the same facilities.
- The process of obtaining personal documentation required for health care services must be facilitated.
- Any allegations of improper practices in the field of health care, such as sterilisations without informed consent, must be effectively investigated while the responsibility for such practices should be ascertained.

VI. RACIALLY-MOTIVATED VIOLENCE AND RELATIONS WITH LAW-ENFORCEMENT AUTHORITIES

67. I am deeply disturbed by the persistence of racially-motivated attacks against the Roma in many member states by gangs or other non-state actors. Moreover, cases involving excessive use of force by police officers and instances of inaction by the police towards acts of violence or other types of crime committed against Roma require urgent attention.
68. For instance, during my visit to the Czech Republic in 2003, I was informed of a steady and alarming progression of violence with racist connotations, principally targeting members of the Roma community. Moreover, the number of allegations of police violence towards this community continued to cause concern as did the cases of inaction by the police force in relation to crimes committed against the Roma. It appeared that the institutions in charge of implementing the provisions outlawing acts of racism and intolerance seemed to take an inappropriate and deficient attitude at times according to certain cases disclosed to me during the visit.
69. During my visit to Slovakia in 2001, I received many reports regarding inappropriate or excessive action by the police against the Roma community. During a follow-up visit to Slovakia in 2003, it became evident that the issue of police behaviour and racially-motivated violence continued to be of grave concern. For instance, in 2002 there had been 109 cases of racially motivated offences. Concerns remained also about police harassment and ill-treatment during police investigations, particularly of the Roma community, and there were reports about abusive raids on Roma settlements and the use of excessive force against Roma suspects. Measures have, however, been taken to address more effectively cases of ill-treatment by the police. For instance, the Ministry of the Interior established a commission at the end of 2001 to fight against racially-motivated violence through monitoring cases which demonstrate obvious racial discrimination from the police. Another line of action taken by the Slovak authorities aimed at suppressing racially motivated violence is regular specialised training for members of the police.
70. Roma individuals from some European countries have even sought asylum in other countries on account of failing to obtain adequate protection against violent attacks. The European Roma Rights Centre has reported that on 18 March 2003 the General Commissioner for Refugees in Belgium granted asylum to the family of a Roma woman from Slovakia who had been beaten to death by skinheads in August 2000. Following her death and the sentencing of the perpetrators, the family members had been targets of threats and assaults by other skinheads. Due to the publicity of the affair, it was felt that the family was in a high risk of violence in all parts of the country and was therefore granted asylum.
71. There has also been a number of complaints before the European Court of Human Rights involving violence against Roma individuals, mainly from Bulgaria. Some of these cases concerned deaths in police custody, others are related to insufficient action by law-enforcement officials in cases of violence against the Roma. On 26 February 2004, the Court gave a judgment in which it for the first time found a

violation of the non-discrimination provision in a case involving the killing of a Roma individual while in police custody.³⁹ In this judgement, which has been subsequently referred to the Grand Chamber on the request of the Bulgarian Government, the Court noted, *inter alia*:

"The Court considers that when investigating violent incidents and, in particular, deaths at the hands of State agents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. ... In order to maintain public confidence in their law enforcement machinery, contracting States must ensure that in the investigation of incidents involving the use of force a distinction is made both in their legal systems and in practice between cases of excessive use of force and of racist killing."

72. With regard to the burden of proof in such cases, the Court went on stating:

"The Court considers that in cases where the authorities have not pursued lines of inquiry that were clearly warranted in their investigation into acts of violence by State agents and have disregarded evidence of possible discrimination, it may, when examining complaints under Article 14 of the Convention, draw negative inferences or shift the burden of proof to the respondent Government ..."

73. Pending final judgment by the Grand Chamber, I would like to ask member states to give due consideration to the principles set out by the Court in this decision related to investigations of racially-motivated violence by the police. The type of action introduced in Slovakia, i.e. the establishment of special units to examine such cases and regular training for the police, is welcome. It is moreover important to ensure that, in addition to the internal police investigation mechanisms, there is a possibility for an independent outside scrutiny of such complaints.

74. In a number of countries I have visited, the indifference and inaction by the police towards crimes committed against the Roma have led to a situation where the Roma have generally very little confidence in the police. Rather than regarding the police as a protector of their rights, the Roma often view them with feelings of fear and suspicion. For instance, when the police were conducting an investigation into allegations of forced sterilisations in Slovakia, it appeared that the generally poor relations between the police and the Roma had made many potential victims reluctant to come forward for investigation. In addition to the need to strengthen human rights and minority rights training for the police, it is important to promote the recruitment of Roma candidates in the police force, and where needed, to take particular confidence-building initiatives between the local police and Roma communities.

³⁹ *Case of Nachova and others v. Bulgaria*, application nos. 43577/98 and 43579/98.

75. In order to overcome undesirable behaviour by certain members of the police force, it would be particularly useful to facilitate the participation of young Roma in preparatory training for joining the police force and for their effective integration within it. In some countries, there already are programmes for the integration of Roma in the police but the number of Roma who have actually joined the ranks is still insufficient. Efforts to train and recruit more Roma police officers will therefore have to be intensified to ensure that they are better represented among the police force.

Recommendations related to responses against racially-motivated violence and relations with law-enforcement authorities

- Racially-motivated violence against the Roma must be strongly condemned at the highest political level, and sanctions for such violence must be commensurate with the severity of the acts. When needed, special investigative units should be created to examine and address such violence.
- As regards allegations of improper behaviour by the police, including excessive use of force, it must be ensured that investigations are conducted by an independent and impartial body. Special emphasis must be placed on examining whether ethnic hatred or prejudice has played a role in violent behaviour by the police.
- Law-enforcement authorities should be provided with regular training on human rights law including anti-discrimination legislation. Such training should also provide information on minority cultures.
- Measures should be taken to enhance the preparatory training and recruitment of Roma individuals to the police force and the judiciary. In many countries, special initiatives should be taken to improve relations between the police and the Roma.

VII. ISSUES RELATED TO ASYLUM, DISPLACEMENT AND TRAFFICKING IN HUMAN BEINGS

76. The vast majority of the Roma in today's Europe are sedentary, and those who lead a nomadic life style move primarily within the borders of their home countries. However, the past decade saw a significant increase in the cross-border movement of Roma from Central, Eastern and South-Eastern Europe, particularly from the Balkans, towards Western Europe. This movement was not part of a traditional lifestyle but it was necessary for the same reasons as for many other people in the region. Many Roma had to flee their homes because of the war in the Balkans or persecution on the grounds of their ethnic origin while some were forced to seek income opportunities abroad due to extreme poverty and discrimination. Many Roma have also fallen victims of trafficking networks being either coerced or lured into Western European countries.
77. With the attention of the world turned to other crises, the situation of the displaced Roma and other minorities within some of the post-conflict regions in the Balkans remains precarious. In some areas, the Roma continue to face significant threats to their security, in others, they are faced with extremely difficult living conditions and discrimination. Following two official visits to the Balkans, I published in October 2002 a report on the human rights situation of persons displaced from their homes in Kosovo⁴⁰. I noted that the security situation in Kosovo continued to be far from satisfactory for the ethnic Roma, Egyptian and Ashkalie minorities. Many of them had to live in KFOR-protected enclaves, which put a significant constraint on their lives as regards access to public services, such as schools, health care, social services and administration. I also received several reports of discrimination against the Roma, especially as regards access to employment, education, health and other services.
78. Subsequent reports by the Council of Europe, UNHCR and the OSCE indicate that many of the concerns expressed above remain.⁴¹ The upsurge of violence in March 2004 against minorities in Kosovo sadly indicated that the security situation continues to be extremely vulnerable. A report by the OSCE noted that "the March events reminded us of the far reaching ethnically-motivated violent attacks, carried out especially against Kosovan Serbs and Roma in the summer of 1999".⁴² Against this background, it is evident that the present circumstances are not conducive for a safe and sustained return of the Roma to Kosovo. I therefore urge all asylum countries to refrain from returning Roma back to Kosovo.⁴³

⁴⁰ *Kosovo: the human rights situation and the fate of persons displaced from their homes*, Report by the Commissioner for Human Rights, Strasbourg, 16.10.2002, CommDH(2002)11.

⁴¹ See, for example, *Update on the Situation of Roma, Ashkalie, Egyptian, Bosniak and Gorani in Kosovo*, UNHCR Kosovo, January 2003 and *Tenth assessment of the Situation of Ethnic Minorities in Kosovo*, UNHCR and OSCE, March 2003.

⁴² *Human Rights Challenges following the March Riots*, by OSCE Mission in Kosovo, Department of Human Rights and Rule of Law, 2004.

⁴³ Also, in autumn 2003, the Parliamentary Assembly urged that there should be no forced returns of Roma originating from Kosovo neither to Kosovo, nor to Serbia and Montenegro, as long as the security situation in Kosovo does not allow for returns of Roma, *Forced returns of Roma from the former Federal Republic of Yugoslavia, including Kosovo, to Serbia and Montenegro from Council of Europe member states*, Doc. 9990, 31 October 2003.

79. With the political situation having reached relative stability in Serbia and Montenegro, a number of Western European countries have started returning, or considering returning, persons who were granted temporary protection during the war. The returnees are either those who originated from Serbia and Montenegro or those originating from Kosovo in particular for whom some asylum countries regard Serbia and Montenegro as an appropriate alternative for readmission.
80. Several asylum countries have signed bilateral readmission agreements with the Government of Serbia and Montenegro concerning the return of these persons.⁴⁴ According to estimations, approximately 1000 Roma had already been forcibly returned, mainly from Germany, while between 50 000 and 100 000 Roma staying in different member states may fall in the category foreseen for readmission.
81. The Council of Europe conducted a fact-finding mission to Serbia and Montenegro in 2003 to assess the conditions of the returned Roma upon return, and identified a number of serious concerns relating to such returns⁴⁵:
- Very often, inadequate consideration was given for the individual circumstances of each case. For instance, persons undergoing medical treatment in the country of asylum were returned, although appropriate treatment was not available upon return. Families with small children who were born or lived most of their lives in Germany, thus being fully integrated into the German society, were returned, often under questionable circumstance;⁴⁶
 - Many families who had initially refused to leave on a seven day notice, were forcibly returned, often taken from their homes during the night, and given half-an-hour to pack their belongings;
 - Cases where families were separated during forced returns;
 - Loss of private possessions: sometimes the returnees are not allowed enough time to sell their belongings and they may encounter difficulties in withdrawing money from the European banks in Serbia;
 - The readmission agreements do not clearly define the conditions for the reception of returned persons and do not put any responsibility on the receiving state with regard to the reintegration of returnees. There are reports of families arriving in Belgrade on charter flights with no money and no place to go.
82. On the basis of the findings of the fact-finding mission, the Parliamentary Assembly adopted a recommendation in October 2003 in which it urged the member states to ensure, *inter alia*, that any decision on a forced return is taken on a case-by-case basis, that humanitarian grounds should be considered as a sufficient justification for granting a residence permit and that every Roma who

⁴⁴ According to a report by the Parliamentary Assembly, readmission agreements have been concluded with the following countries: Germany (2002), Switzerland (1997), Benelux countries (2002), Slovakia (2001), Denmark (2002), Sweden (2002). At the time, similar agreements were being negotiated with France, Norway, United Kingdom, Lithuania, Latvia, Austria, the Czech Republic and Poland.

⁴⁵ *Returnees to Serbia and Montenegro – Whose responsibility?* Mission report by Council of Europe fact-finding mission to Serbia and Montenegro, 16 – 20 February 2003, prepared by Mr Alan Phillips.

⁴⁶ The report described the situation of some returned children as follows: “One day [the children] would be at school playing with their German friends and the next day they would find themselves destitute in a foreign country, not speaking the language, having nowhere clean, warm and safe to live, without any friends and without any hope of going to school. They, and their parents, were traumatized having been taken from their beds, deported and deposited at Belgrade airport”, op cit., p. 15.

seeks international protection is given access to fair and effective asylum procedures. I fully endorse these recommendations and urge member states to take them into account.

Access to asylum procedures and collective expulsions

83. During the past decade, several European countries, particularly member states of the European Union, have introduced measures limiting access to asylum procedures justifying them with the need to end the perceived abuse of the asylum system by those who are not in need of international protection. Experience has shown that these measures – such as the concepts of safe countries and manifestly unfounded claims – carry a risk of denying genuine asylum-seekers their right to seek and enjoy asylum from persecution.
84. Among the persons who have been subjected to such procedures are Roma from Central, Eastern and South-Eastern Europe seeking asylum in Western Europe on grounds of discrimination or failure to receive protection against violence by non-state actors. In fact, the introduction of more restrictive asylum procedures was inspired in a number of European countries by the arrival of Roma asylum seekers from countries of Central, Eastern and South-Eastern Europe.⁴⁷ Whilst it may well be that not all of those seeking asylum meet the criteria stipulated under the 1951 Convention on the status of refugees or face a threat of being subjected to torture or inhuman or degrading treatment as to invoke the prohibition of return under the European Convention, it cannot be excluded that there are individuals who may indeed face such a threat. Therefore, as a minimum, it must be ensured that all applicants have access to an effective and individual examination of their claims.⁴⁸
85. In situations where several persons originating from the same country are seeking international protection, the reliance on the assumption that the applicants arrive from a safe country may easily lead to collective expulsions, a practice prohibited under Protocol 4 to the European Convention of Human Rights. In the judgment of the case of *Conka v. Belgium* in 2002, the European Court ruled that Belgium had violated the Convention, when expelling a group of four Slovak Romani asylum seekers. The Court noted that in this case the procedure had not afforded sufficient guarantees to demonstrate that the personal circumstances of each of those concerned had been genuinely and individually taken into account.⁴⁹
86. The fact that a significant number of Roma from these countries have sought asylum abroad – although in the vast majority of cases unsuccessfully – is a further indication of the urgent need to create such conditions in the countries of origin that Roma no longer feel compelled to seek asylum abroad. In my view, the countries in

⁴⁷ See, for example, the Commissioner's report on his visit to Finland, *CommDH(2001)7*.

⁴⁸ *Opinion of the Commissioner for Human Rights on certain aspects of the proposal of the Government of Finland for a new aliens act. CommDH(2003)13.*

⁴⁹ Case of *Conka v. Belgium*, Application No. 51564/99, judgment of 5 February 2002, paragraphs 56 – 63. During the same year, the Court declared admissible a complaint of a group of Bosnian Roma expelled from Italy in 2000. Following the admissibility decision, an agreement was reached between the two parties. Case of *Sulejmanovic and Sultanovic v. Italy*, Application No. 57574/00, decision of 14 March 2002.

which large numbers of Roma are seeking asylum should consider ways of supporting the countries of origin in their efforts to improve the living conditions of the Roma and other disadvantaged minorities.

Restrictions to migration laws

87. As part of the measures to limit illegal migration, some European countries have introduced in recent years legislation or policies that involve risks to the principles of non-discrimination and equality before the law. While in most cases such measures are not explicitly targeted against the Roma, in reality, those affected are very often the Roma.

88. On the basis of the Race Relations Act, the United Kingdom adopted a decree⁵⁰ in 2001 ordering the immigration authorities to subject certain persons to “*more rigorous examination than others in the same circumstances*” on the basis of their nationality or ethnicity. The decree includes, in an annex, a list of such groups, among them the Roma.⁵¹ An immigration officer may, by reason of that person’s ethnic or national origin, detain the person pending his examination, decline to give the person’s notice of grant or refusal of leave to enter, and impose a condition or restriction on the person’s leave to enter the United Kingdom or on his temporary admission to the United Kingdom. Moreover, when the person is outside the United Kingdom, an immigration officer or the State Secretary may, by reason of that person’s ethnic or national origin, decline to give or refuse the person leave to enter before he arrives in the UK. This decree, which subjects persons to differentiated treatment solely on the basis of their nationality or ethnicity, is clearly in breach of the fundamental principle of non-discrimination and equality before the law, and should therefore be amended.⁵²

89. Some European countries, such as Romania and Bulgaria, have developed domestic legislation criminalising the illegal entry into or stay in third countries. Bulgarian nationals who have violated such provisions will be prevented from leaving Bulgaria for two years and refused the issuance of passports or have their passports withdrawn for a maximum of one year. Similar provisions existed in Romanian legislation with the exception that the person’s passport may be withdrawn for a period of five years. Such laws raise serious concerns from the point of view of freedom of movement and the right of an individual to leave

⁵⁰ The *Race Relations (Immigration and Asylum) (No 2) Authorisation 2001* of 23 April 2001. While under 19B (1) of the *Amended Race Relations Act of 2000* “[i]t is unlawful for a public authority in carrying out any functions of the authority to do any act which constitutes discrimination”, Section 19 D (1) of that Act states that “[s]ection 19B does not make it unlawful for a relevant person to discriminate against another person on grounds of nationality or ethnic or national origins in carrying out immigration and nationality functions.”

⁵¹ The other groups are : Kurd, Albanian, Tamil, Pontic Greek, Somali, Afghan, and a person who is of Chinese ethnic origin presenting a Malaysian or Japanese passport or any other travel document issued by Malaysia or Japan.

⁵² Also, the UN Committee on the Elimination of Racial Discrimination noted in its concluding observations on the United Kingdom that it is “concerned about the application of section 19 D of the Race Relations Amendment Act of 2000, which makes it lawful for immigration officers to “discriminate” on the basis of nationality or ethnic origin provided that it is authorized by a minister. This would be incompatible with the very principle of non-discrimination. The Committee recommends that the State party consider re-formulating or repealing section 19 D of the Race Relations Amendment Act in order to ensure full compliance with the Convention.” Doc CERF/C/53/CO/11 of 10 December 2003.

one's country which are guaranteed in Article 2 of Protocol 4 to the European Convention on Human Rights. Moreover, the implementation of such provisions may lead to double punishment – such persons are punished in the destination country for an illegal entry and are again punished for the same violation in their home country.

90. While I fully recognise the legitimacy of states to take measures against illegal migration, such measures must always be fully compatible with the principles of non-discrimination. In addition, I would like to urge member states, both countries of origin and countries of destination, to seriously consider the reasons why people resort to illegal migration. In the case of the Roma, it is hardly ever a voluntary choice but is conditioned by the socio-economic disparities which, as noted earlier, are to a large extent the result of long-standing discrimination. In today's Europe, finding solutions to these problems can no longer be left to individual states, but they require serious consideration and cooperation between member states.

Trafficking in human beings

91. As was noted in the conclusions of a seminar on combating trafficking in children that I organised jointly with the Stability Pact and the Government of Albania in January 2004⁵³, over the last decade trafficking in human beings has developed into one of the most serious and pervasive violations of human rights and dignity on our continent. National authorities and regional and global organisations have reacted with increasing attention to this phenomenon. So far, however, these efforts have conspicuously failed to curb trafficking in human beings and to protect the vast majority of its victims. Indeed, trafficking in human beings has only increased in scale and intensity over this period.
92. In a number of countries, Roma individuals, men, women and children, have been particularly vulnerable to becoming victims of trafficking. In recent times, increased attention has been given to children who have fallen victims of trafficking for purposes such as sexual exploitation, begging, forced labour, illegal adoptions and removal of their organs. A report prepared for the Round Table on combating the trafficking of Roma children, organised by the Council of Europe Roma/Gypsies Division with the cooperation of the State Committee of National Minorities, the Ministry of Labour and Social Affairs of the Republic of Albania and the Office of the Greek Ombudsman, described some of the abhorrent methods used by the traffickers:⁵⁴

“After some time of exploiting the children as beggars, it is likely that trafficking networks will use them for other criminal activities, e.g. for selling drugs or the children are resold to prostitution, on condition that they are healthy and able-bodied as it is probable that they have been mutilated in order to be more ‘suitable’ as beggars (a disabled child is more appealing to the sentiments of the public).”

⁵³ Conclusions of the Platform “Combating trafficking in children in Europe” organised by the Commissioner for Human Rights, and the Chair of the Stability Pact Task Force on Trafficking in Human Beings, with the cooperation of the Minister of Labour and Social Affairs of the Republic of Albania, in Tirana 19 – 20 January 2004.

⁵⁴ *Facts and data concerning the trafficking of Roma Children between Albania and Greece*, by Athanassia Sykiotou, Lecturer of Criminology, Faculty of Law, Democritus University of Thrace.

93. It is also of grave concern, that some of the child victims of trafficking appear to have been sent abroad with the consent of their parents, or even sold or rented to the traffickers by them.⁵⁵ It is extremely important to intensify awareness raising efforts among the parents about the grave risks of trafficking.
94. In recent years, several Roma organisations have joined the efforts to combat trafficking in human beings. In a declaration adopted in 2002 during the OSCE Human Dimension Implementation Meeting, a number of Romanian and French Roma organisations made a commitment to contribute to the efforts to, *inter alia* “identify and help vulnerable persons (namely young women, children and disabled persons) who fall victims to Rromani, and often non-Rromani networks, developing genuine modern slavery by taking advantage of their weakness and by maintaining pressure on the families of these persons”.⁵⁶ The Romanian Roma NGOs also adopted a statement where they reaffirmed their intention to cooperate actively and efficiently with state authorities to, for instance, identify the causes of trafficking and to find efficient solutions to prevent and combat it.⁵⁷
95. I would like to end by quoting from the conclusions of the seminar that I organised in Tirana at the beginning of last year:

“The most effective prevention of trafficking in human beings is the elimination of the root causes of trafficking. The market for people smuggling and the ready supply of victims for trafficking for sexual or other purposes, is determined, at the most basic level, by fundamental economic disparities. The success in eliminating poverty and creating real opportunities in countries of origin will inevitably determine the success of the fight against trafficking in human beings. The disintegration of societal structures, even down to its most basic unit, the family, in post-conflict and depressed transitional countries has also facilitated the work of traffickers and their agents. Economic development must, therefore, be accompanied by the restoration of social cohesion and effective social policies for the most vulnerable. The wider ratification of the Social Charter would contribute to this development. Gender and racial inequalities and the unequal access to employment opportunities are also influential in encouraging the ill-fated flight of many young people from their countries of origin.”

⁵⁵ Ibid.

⁵⁶ *Warsaw Declaration concerning the international migration of Rroms and the fight against the smuggling of human being*, joint declaration by Romani NGOs of France and Romania, drafted in cooperation with the Contact Point for the Rroms, Sinti and Kale of the OSCE/ODHIR, Warsaw, 9 – 19 September 2002.

⁵⁷ *Statement of Roma Associations from Romania regarding the International Migration of Roma and the Trafficking in Human Beings*, adopted in Sibiu in August 2002.

Recommendations related to displacement, asylum and trafficking in human beings

- It must be ensured that no forced returns of displaced Roma and other minorities are undertaken to areas where they continue to face threats to their safety and security.
- Where returns take place, they must be conducted in a manner respecting the rights and dignity of the person concerned, and only when conditions are conducive for a safe and sustainable return.
- Particular vigilance is required to ensure that measures introduced to limit illegal migration do not violate the principles of non-discrimination and equality before the law. In particular, any policies or practices restricting the issuance of visas or entry into countries on the basis of the individual's ethnicity must be ended.
- Serious measures must be taken to tackle the root causes of trafficking in human beings, including the particular vulnerabilities of some Roma communities.
- Criminal networks and their members as well as parents who sell their children for the criminal purposes of prostitution and organised begging should be actively targeted and pursued. It is necessary that the police act in a co-ordinated manner at national and European level in this field.

CONCLUDING REMARKS

96. This report has addressed major human rights concerns regarding the Roma in Europe while underlining their seriousness and necessity to take urgent action to remedy the situation. Under each section - discrimination in housing, education, employment and health care, racially-motivated violence and relations with law enforcement authorities, issues related to asylum, displacement and trafficking in human beings - I have made recommendations to member states as to the type of action required. Although measures to review, complete and apply relevant legislation, especially anti-discrimination legislation, are an essential step forward, a broader range of actions is needed to bring about the full enjoyment of all basic rights by the Roma. It is also important that those member states that have not yet done so become party without delay to the Council of Europe instruments which provide a legal basis for measures to improve the situation of the Roma, especially the revised European Social Charter, the Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages and Protocol 12 of the European Convention on Human Rights.
97. Since the recommendations of this report are related to a broad spectrum of inter-linked themes, multisectorial action plans seem to me necessary to address all these issues in an integrated manner. Both the Council of Europe and the Organization for Security and Cooperation in Europe have prepared models for such action plans and policies.⁵⁸ While some countries have already put in place and are pursuing their national action plans in this area, others, which have not yet done so, should make use of the model policies to prepare their own national initiatives.
98. Active partnerships of all authorities, institutions and people concerned - and naturally including the Roma themselves and organisations representing them - are a key for the preparation and implementation of national action plans. Special efforts should be made to co-ordinate the activities of different national authorities and to ensure the effective co-operation of local authorities. Action plans should be adequately resourced in the long-term and regularly monitored for progress achieved bearing in mind their sustainability. It is important that the leaders of Roma communities become aware of the need of the members of these communities and the leaders themselves to co-operate actively in resolving problems that concern them, especially in the fields of education and trafficking in human beings.
99. The improvement of the human rights situation of the Roma is long over due. The long history of continued discrimination and persecution experienced by the Roma who, we should not forget, also were one of the principal victims of the holocaust – *porraimos* (“the devouring”) in Romani – must finally come to an end. I take heart of the recent establishment of the European Roma and Travellers Forum that

⁵⁸ A draft Recommendation of the Committee of Ministers on policies towards Roma and Travellers is about to be finalised by the Group of Specialists on Roma, Gypsies and Travellers while the OSCE has already adopted an *Action plan on improving the situation of Roma and Sinti within the OSCE area* (Decision No. 566. PC.DEC/566 27 November 2003). Furthermore, new national “Decade Action Plans” are in the process of being prepared under the framework of the Decade of Roma Inclusion 2005-2015 recently launched by the Governments of Bulgaria, Croatia, the Czech Republic, Hungary, “The Former Yugoslav Republic of Macedonia”, Romania, Serbia and Montenegro, and Slovakia.

the broad partnership needed for ensuring the full and equal participation of the Roma in European societies is at last in the making.

APPENDIX – SUMMARY OF RECOMMENDATIONS

This appendix lists the Recommendations given under the different sections of the report for easy reference. It should be kept in mind, however, that the recommendations should be understood in the context outlined in the respective chapters of the report.

Recommendations related to housing

- As a matter of priority, it must be ensured that alternative accommodation is provided, on equal terms with other citizens, to those Roma who live in settlements which are hazardous to the health of the inhabitants.
- Appropriate infrastructure, including electricity, roads, clean water and garbage removal, must be put in place in settlements where such infrastructure does not exist; urgent measures are needed to ensure adequate living conditions in winter time.
- Policies of deliberately segregating Roma communities in settlements outside otherwise inhabited areas must be ended and, when needed, reverted.
- Central authorities should intervene more actively in situations where implementation of housing projects for the Roma is hampered by local authorities and local majority populations.
- Initiatives should be launched to promote tolerance and regular contacts between the Roma and non-Roma populations.
- Anti-discrimination legislation in the field of private and public housing must be enacted or strengthened while special measures must be taken to ensure that seemingly neutral allocation criteria do not negatively affect Roma populations.
- With regard to travelling Roma, it is important to ensure that there is a sufficient number of camping sites with adequate facilities; that sanctions imposed for illegal camping are not disproportional; and that if eviction is unavoidable, consideration is given to the particular circumstances of the persons concerned.

Recommendations related to education

- As a matter of priority, access to adequate education must be ensured for children and youth living in isolated settlements, through, for instance, the provision of transportation to regular schools.
- Where segregated education still exists in one form or another, it must be replaced by regular integrated education. Adequate resources must be made available for the provision of pre-school education, language training and school assistant training in order to ensure the success of desegregation efforts.
- Adequate assessment must be made before children are placed in special classes, in order to ensure that the sole criteria in the placement is the objective needs of the child, not his or her ethnicity.
- Measures must be taken to remove the existing legal and bureaucratic obstacles leading to school non-attendance and drop-outs, such as lack of identity documents and residence permits.
- Special efforts must be undertaken to stop harassment of Roma children in schools, and to facilitate regular contacts between Roma and non-Roma pupils.
- Efforts should be undertaken to enhance the awareness of the importance of education within such Roma communities, which have been traditionally excluded from educational opportunities. Where appropriate, a system of Roma mediators could be created to liaise between schools and families, in order to overcome difficulties in access to education.
- Programmes to overcome illiteracy among adult members of Roma communities should be promoted.

Recommendations related to employment

- As a first step, it is necessary to ensure that national legislation provides for effective protection against discrimination in the field of employment, and that such legislation is effectively implemented.
- Due to the difficulties of the job applicants to provide evidence of the employer's motivations for refusing employment, it is important that states, which have not yet done so, modify their legislation so that the burden of proof in discrimination cases is extended to be shouldered by the employer as well.
- Special measures should be taken to promote the recruitment of Roma particularly within public administration.
- Deficiencies in educational levels, caused by unequal access to education, must be remedied through training and retraining programmes.

Recommendations related to health care

- As a matter of priority, particular emphasis must be placed on ensuring that persons living in isolated settlements have access to adequate health care services which cover both emergency and regular health care (including preventive care and vaccinations).
- Measures must be taken to ensure that discriminatory attitudes do not impede access to health services, and that all patients are treated in an equal manner and in the same facilities.
- The process of obtaining personal documentation required for health care services must be facilitated.
- Any allegations of improper practices in the field of health care, such as sterilisations without informed consent, must be effectively investigated while the responsibility for such practices should be ascertained.

Recommendations related to responses against racially-motivated violence and relations with law-enforcement authorities

- Racially-motivated violence against the Roma must be strongly condemned at the highest political level, and sanctions for such violence must be commensurate with the severity of the acts. When needed, special investigative units should be created to examine and address such violence.
- As regards allegations of improper behaviour by the police, including excessive use of force, it must be ensured that investigations are conducted by an independent and impartial body. Special emphasis must be placed on examining whether ethnic hatred or prejudice has played a role in violent behaviour by the police.
- Law-enforcement authorities should be provided with regular training on human rights law including anti-discrimination legislation. Such training should also provide information on minority cultures.
- Measures should be taken to enhance the preparatory training and recruitment of Roma individuals to the police force and the judiciary. In many countries, special initiatives should be taken to improve relations between the police and the Roma.

Recommendations related to displacement, asylum and trafficking in human beings

- It must be ensured that no forced returns of displaced Roma and other minorities are undertaken to areas where they continue to face threats to their safety and security.
- Where returns take place, they must be conducted in a manner respecting the rights and dignity of the person concerned, and only when conditions are conducive for a safe and sustainable return.
- Particular vigilance is required to ensure that measures introduced to limit illegal migration do not violate the principles of non-discrimination and equality before the law. In particular, any policies or practices restricting the issuance of visas or entry into countries on the basis of the individual's ethnicity must be ended.
- Serious measures must be taken to tackle the root causes of trafficking in human beings, including the particular vulnerabilities of some Roma communities.
- Criminal networks and their members as well as parents who sell their children for the criminal purposes of prostitution and organised begging should be actively targeted and pursued. It is necessary that the police act in a co-ordinated manner at national and European level in this field.

