Report regarding the implementation of racial Directive in Romania 2005-2010



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PART I

MEASURES OF TRANSPOSITION OF DIRECTIVE 2000/43/EC IN NATIONAL LEGISLATION



I. Context of adoption of the Directive and of national transposition legislation

A. Adoption, entry into force, the deadline for transposition and reporting on the implementation of the Directive

1. Directive 2000/43/EC applying the principle of equal treatment between persons, irrespective of racial or ethnical origin was adopted on 29 June 2000. The Directive was published in the **Official Journal (JO L 180) of 19 July 2000**.

2. According to art. 16 of Directive 2000/43/EC: Member States shall **adopt the laws, regulations** and administrative provisions necessary **to comply with this Directive by 19 July 2003**. When the Member States adopt these acts, they contain a reference to this directive or are accompanied by such reference at the date of their official publishing."

3. According to art. 17 par. 1 of Directive 2000/43/EC: Member States shall communicate to the Commission by **19 July** 2005, and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

B. Adoption, entry into force, amendments and additions to national legislation for transposition of the Directive

4. The **Romanian Government** adopted **Ordinance no. 137/2000** on the prevention and sanctioning of all forms of discrimination on 31 August 2000. The Ordinance was published in the Official Gazette of Romania, Part I, no. 431 of 2 **September 2000** and was approved with amendments and additions by Law no. 48/2002, published in the Official Gazette of Romania, Part I, no. 69 of 31 January 2002.

5. Following its adoption and approval by law, G.O. no. 137/2000 was also amended and supplemented through:

- Government Ordinance no. 77/2003 amending and supplementing G.O. no. 137/2000, published in the Official Gazette of Romania, Part I, no. 619 of 30 August 2003, approved with amendments and additions by Law no. 27/2004, published in the Official Gazette of Romania, Part I, no. 216 of 11 March 2004;
- Law no. 324/2006 amending and supplementing G.O. no. 137/2000, published in the Official Gazette of Romania, Part I, no. 626 of 20 July 2006;
- Emergency Ordinance no. 75 of 11 June 2008 establishing measures to resolve financial issues in the system of justice, published in the Official Gazette no. 462 of 20 June 2008, approved by Law no. 76 of 1
 April 2009, published in the Official Gazette no. 231 of 8 April 2009.

6. Law no. 324/2006 amending and supplementing G.O. no. 137/2000 stipulates that it **"transposes the provisions of** Council Directive 2000/43/EC implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin, published in the Official Journal of European Communities (OJ) no. L 180 of 19 July 2000 and the provisions of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, published in the Official Journal of the European Communities (OJ) no. L303 of 2 December 2000".



II. The concept of discrimination in the racial Directive (ARTICLE 2) and national law

A. DIRECT DISCRIMINATION IN THE RACIAL DIRECTIVE

7. According to art. 2 para. 1 letter a) of the racial Directive:

"(1) For the purposes of this Directive, t**he principle of equal treatment shall mean that there shall be no** direct or indirect discrimination based on racial or ethnic origin.

(2) For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur when one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin".

B. DIRECT DISCRIMINATION IN NATIONAL LAW

8. According to art. 1 par. 2 and par. 3 of G.O. no. 137/2000, republished, the principle of equality among citizens, of exclusion of privileges and discrimination are guaranteed as regards the exercise of the following rights¹ and concern persons in comparable situations.

9. The concept of discrimination is defined in art. 2 par. 1 of G.O. no. 137/2000, republished. The definition of discrimination in G.O. no. 137/2000 is a replication of the definition incorporated in art. 1 of the **International Convention regarding the elimination of all forms of racial discrimination**. The Convention defines racial discrimination as: "...any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

10. Similarly, art. 2 par. 1 of G.O. no. 137/2000 defines the concept of discrimination:

(b) (...) **discrimination means any distinction, exclusion, restriction or preference based on race, nationality, ethnic and social origin, language, religion**, beliefs, gender, sexual orientation, age, disability, non-infectious chronic disease, HIV contamination, affiliation to a disadvantaged category, as well as on any other criterion **aiming or resulting in the restriction or hindering of the recognition, use or exercise, under equality conditions, of the human rights and fundamental freedoms or of the rights recognized by the law in the political, economic, social and cultural field, or in any other fields of public life.**

¹ Particularly: a) the right to equal treatment before courts and any other jurisdictional body ; b) the right to individual safety and to obtaining state protection against violence or maltreatment performed by any individual, group or institution; c), political rights, namely electoral rights, the right to take part in public life and to access positions and public offices d) civil rights, particularly: (i) the right to the freedom of movement and choice of the residence; ii) the right to leave the country and return to the country; (iii) the right to obtain and waive Romanian citizenship; (iv) the right to marry and choose a partner; (v) the property right; (vi) the inheritance right; (vii) the right to the freedom of thought, conscience and religion; (viii) the right to the freedom of opinion and expression; (ix) the right to the freedom of assembly and association; (x) the petition right; e) economic, social and cultural rights, particularly: : (i) the right to labour, to freely choosing an occupation, to fair and appropriate labour conditions, to protection against unemployment, to equal pay for equal work and to a fair and satisfactory income; (ii) the right to education and professional training; (vi) the right to take part, under conditions of equality in cultural and sportive events; f) The right to access to all the places and services intended for public use.



C. INDIRECT DISCRIMINATION IN THE RACIAL DIRECTIVE

11. According to art. 2 par. 2 lett. b of the racial Directive:

(a) Indirect discrimination shall be taken to occur when **an apparently neutral provision, criterion or** practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

D. INDIRECT DISCRIMINATION IN NATIONAL LAW

12. The concept of indirect discrimination was established in anti-discrimination legislation through Government Ordinance no. 77 of 28 August 2003 amending and supplementing G.O. no. 137/2000, published in the Official Gazette no. 619 of 30 August 2003 and is regulated in art. 2 par. 3.

13. According to art. 2 par. 3 of G.O. no. 137/2000, republished:

According to this ordinance, the apparently neutral provisions, criteria or practices that put at disadvantage certain persons in relation to others, based on the criteria referred to in par. (1) shall be deemed to be discriminatory, except when such provisions, criteria or practices are objectively justified by a legitimate aim and the means of attaining it are appropriate and necessary.

E. HARASSMENT IN THE RACIAL DIRECTIVE

14. According to art. 2 par. 3 of the racial Directive:

(a) Harassment shall be deemed to be discrimination within the meaning of paragraph 1, when an **unwanted conduct** related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

F. HARASSMENT IN NATIONAL LAW

15. The concept of harassment was explicitly established in national legislation through law no. 27 of 5 March 2004 approving G.O. no. 77/2003 amending and supplementing G.O. no. 137/2000, published in the Official Gazette no. 216 of 11 March 2004.

16. According to art. 2 par. 5 of G.O. no. 137/2000, republished:

a) **Any behaviour based on a criterion** such as race, nationality, ethnic and social origin, language, religion, social category, beliefs, gender, sexual orientation, affiliation to a disadvantaged category, age, disability, the refugee or asylum seekers status or on any other criterion **that creates an intimidating, hostile, degrading or offensive** environment **constitutes harassment** and shall be contraventionally punished.



G. THE INSTRUCTION TO DISCRIMINATE IN THE RACIAL DIRECTIVE

17. According to art. 2 par. 4 of the Racial Directive:

(a) An instruction to discriminate against persons on grounds of racial or ethnic origin shall be deemed to be discrimination within the meaning of paragraph 1.

H. INSTRUCTION TO DISCRIMINATE IN NATIONAL LAW

18. G.O. no. 137/2000 in its initial form, published in the Official Gazette no. 431 of 2 September 2000 stipulated in art. 2 par. 3 the following: "The measures or if case the regulations of an individual or legal person that generate the effects set forth in par. (2) draw the contraventional liability of the individual or legal person, if they don't fall under the criminal law". Art. 2 par. 3 of G.O. no. 137/2000 was repealed through Law no. 48 of 16 January 2002 approving G.O. no. 137/2000 for the prevention and sanctioning of all forms of discrimination, published in the Official Gazette no. 69 of 31 January 2002.

19. The concept of instruction/measure to discriminate was established through Law no. 27 of 5 March 2004 approving G.O. no. 77/2003 amending and supplementing G.O. no. 137/2000, published in the Official Gazette no. 216 of 11 March 2004.

According to art. 2 par. 2 of G.O. no. 137/2000, republished:

(a) For the purpose of this ordinance, the rule to discriminate against persons based on any of the grounds stipulated in par. (1) shall be regarded as discrimination.

III. The scope of the racial Directive (ARTICLE 3) and national transposition law

A. THE SCOPE OF THE RACIAL DIRECTIVE

20. According to art. 3, Directive 2000/43/EC "shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

- conditions for access to employment, to self-employment and to autonomous activities, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- employment and working conditions, including dismissals and pay;
- membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;
- social protection, including social security and healthcare;
- social advantages;
- education;
- access to and supply of goods and services which are available to the public, including housing.





B. THE SCOPE OF THE NATIONAL TRANSPOSITION LAW (GENERAL PART)

21. According to art. 3 of Chapter I (Principles and definitions) of G.O. no. 137/2000 republished, "The provisions of this ordinance shall be applied to all individuals or public or private legal persons, as well as to all public institutions having prerogatives regarding:

- employment conditions, criteria and conditions of recruitment, selection and promotion, access to all forms and levels of guidance, training and advanced training;
- protection and social security;
- public services or other services, access to goods and facilities;
- educational system;
- securing the freedom of movement;
- securing public order and peace;
- other fields of social life".

C. THE SCOPE OF THE NATIONAL TRANSPOSITION LAW (SPECIAL PART)

22. Chapter II (Special provisions) of Ordinance no. 137/2000 republished is structured in 5 sections which refer to Equality in the economic activity and employment, access to goods and services, access to education, freedom of movement and right to personal dignity.

23. Section I, **"Equality in the economic activity and in the fields of employment and occupation**" regulates issues concerning:

- participation of a person to an economic activity or his free choice or exercise of a profession;
- conclusion, suspension, modification or termination of labour relations;
- establishing and modification of the labour tasks, place of work or wage;
- granting of other social rights than the wage;
- training, advanced training, conversion and advancement;
- enforcement of disciplinary measures;
- the right to affiliate to a trade union and access its facilities;
- any other labour provision conditions, according to legislation in force;
- an individual's or legal person's refusal to employ somebody;
- limiting the filling of a post through competition or advertisement published by an employer or by its representative;
- social entitlements granted.

24. Section II, **"Access to legal and administrative public services, to health and other services, goods and facilities**" regulates issues concerning:

- refusal to grant public administrative and legal services;
- refusing the access of a person or of a group of persons to public health services choosing the personal physician, medical assistance, health insurance, emergency or other health services;
- the refusal to sell or lease a plot of land or dwelling location;
- the refusal to grant a bank loan or to conclude any other type of contract;
- refusing the access of a person or a group of persons to the services offered by theatres, cinemas, libraries, museums and exhibitions;
- refusing the access of a person or of a group of persons to the services offered by shops, hotels, restaurants, bars, discotheques or by any other service providers, irrespective if they are under private or public ownership;
- refusing the access of a person or of a group of persons to the services offered by public transport companies – by plane, ship, train, metro, bus, trolley, tram, taxi or by other means;
- refusal to grant certain rights or facilities to a person or a group of persons.
- **25.** Section III, "Access to education" regulates issues concerning:



- refusing the access of a person or of a group of persons to the state or private educational system;
- any restraint in the process of setting up and accreditation of educational institutions established under legislation in force.
- 26. Section IV, **"Freedom of movement, right to freely choose a residence and access to public places**" regulates issues concerning:
 - actions consisting of threats, coercion, use of force or any other means of assimilation, resettlement or colonization of persons, in order to change the ethnic, racial or social composition of a zone of the country or of a locality;
 - behaviours consisting of persuading a person to leave his/her residence, of deporting or burdening the living conditions with the purpose of waiving the traditional residence of a person or a group of persons without their agreement. Forcing a group of persons belonging to a minority to leave the locality, area or zones of living and obliging a group of persons belonging to the majority to settle in localities, areas or zones inhabited by a national minority;
 - behaviours aimed to displace or send away a person or a group of persons from a neighbourhood or a building;
 - interdicting the access of a person or of a group of persons to public places.
- 27. Section V, "Right to personal dignity" regulates issues concerning::
 - behaviours exhibited in public, having a nationalist and chauvinist nature, inciting to racial or national hatred or that behaviour aimed or intended to offend the dignity or create an intimidating, hostile, degrading, humiliating or offensive environment, which is directed against a person, a group of persons or a community.

IV. Specific occupational requirements in the racial Directive (ARTICLE 4) and national transposition law

A. SPECIFIC OCCUPATIONAL REQUIREMENTS IN THE RACIAL DIRECTIVE

28. 4 of the racial Directive regulates the concept of "Specific occupational requirements". According to art. 4 of the racial Directive:

Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to racial or ethnic origin shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

B. SPECIFIC OCCUPATIONAL REQUIREMENTS IN NATIONAL LAW

29. Section I of Chapter II of G.O. no. 137/2000 republished regulates the field of equality in the economic activity, in employment and occupation. The content of articles 5-8 of G.O. no. 137/2000 regulate infringements regarding the limitation of taking part in an economic activity or of choosing or exercising a profession; discrimination in labour relationships, wage entitlements, labour tasks, training, disciplinary measures, affiliation to a trade union, employment refusal and employment advertisements, social entitlements (for details see the Appendix of Ordinance no. 137/2000, republished).

30. In this context, art. 9 of G.O. no. 137/2000, republished provides:



The provisions of art. 5-8 cannot be construed in the sense of restricting the right of an employer to refuse employing a person that does not meet **the relevant occupational requirements, as long as the refusal is not a discrimination deed for the purpose of this ordinance and such measures are objectively justified by a legitimate aim and the methods of attaining it are appropriate and necessary**.

V. Positive action in the racial Directive (ARTICLE 5) and national transposition law

A. IN THE RACIAL DIRECTIVE

31. Art. 5 of the racial Directive regulates the concept of positive action and provides:

With a view to ensuring full equality in practice, the principle of equal treatment **shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages** linked to racial or ethnic origin.

B. POSITIVE ACTION IN NATIONAL LAW

32. According to the provisions of art. 2 par. 9 of G.O. no. 137/2000, republished:

For the purpose of this ordinance, **the measures imposed by local authorities or by private law entities in** favour of a person, a group of persons or a community aiming to secure their natural development and effective attainment of equality of chances in relation to other persons, groups of persons of communities, as well as positive measures aiming to defend disadvantaged groups is not discrimination.

VI. Minimal requirements in the racial Directive (article 6) and national transposition law

A. MINIMAL REQUIREMENTS IN THE RACIAL DIRECTIVE

33. According to art. 6 par. 1 of the racial Directive:

Member States **may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment** than those laid down in this Directive.



B. "AGGRAVATING CIRCUMSTANCES" IN NATIONAL LAW

34. National law implicitly introduces the concept of multiple discrimination and regulates discrimination on two or more grounds as an aggravating circumstance in determining contraventional liability.

According to art. 2 par. 6 of G.O. no. 137/2000, republished (introduced by G.O. no. 77/2003):

Any distinction, exclusion, restriction or preference **based on two or more criteria provided in par. 1 is an aggravating circumstance in determining contraventional liability** if one or more of their components are not under the criminal law.

VII. Means of appeal and of protection of rights in the racial Directive (article 7) and national transposition law

A. "PROVIDING JUDICIAL AND ADMINISTRATIVE PROCEDURES"

35. According to art. 7 par. 1 of the racial Directive:

(a) Member States **shall ensure that judicial and/or administrative procedures, including** where they deem it appropriate **conciliation procedures**, for the enforcement of obligations under this Directive **are available** to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

B. NATIONAL LAW AND JUDICIAL AND ADMINISTRATIVE PROCEDURES

36. The procedure of settling discrimination cases is regulated by art. 20 of G.O. no. 137/2000 republished. The person who deems himself/herself to be discriminated may appeal to the National Council for Combating Discrimination with a petition for ascertaining and sanctioning discrimination. Also, the person who deems himself/herself to be discriminated may appeal to justice with a request for damages, under the conditions provided in art. 27 of G.O. no. 137/2000.

37. The National Council for Combating Discrimination adopted the **Internal procedure for settling petitions and notifications, published in the Official Gazette no. 348 of 6 May 2008**. The requests addressed to justice demanding damages caused through discrimination deeds shall be settled **according to ordinary law**.

C. CAPACITY TO PURSUE THE PROCEEDINGS IN THE RACIAL DIRECTIVE

38. According to art. 7 par. 2 of the racial Directive:

Member States shall ensure that **associations, organisations or other legal entities**, which **have**, in accordance with the criteria laid down by their national law, **a legitimate interest** in ensuring that the provisions of this Directive are complied with, **may engage**, either on behalf or in support of the complainant, with his or her approval, **in any judicial and/or administrative procedure provided** for the enforcement of obligations under this Directive.



D. CAPACITY TO PURSUE THE PROCEEDINGS OF NGO'S IN THE NATIONAL LAW

39. According to art. 28 par. 1 and par. 2 of G.O. no. 137/2000, republished, as amended through Law no. 27 of 5 March 2004:

(1) The non-governmental organisations which aim to protect human rights or have a legitimate interest in combating discrimination have a capacity to pursue the proceedings if discrimination is manifested in their sphere of activity and it offends a community or a group of persons.
 (2) The organizations provided in par. (1) have a capacity to stand the proceedings also if discrimination offends an individual, at his/her request.

E. LIMITATION PERIODS IN THE RACIAL DIRECTIVE

40. According to art. 7 par. 3 of the racial Directive:

(3) Paragraphs 1 and 2 are without prejudice to **national rules relating to time limits for bringing actions** as regards the principle of equality of treatment.

F. LIMITATION PERIODS IN NATIONAL LAW

41. The limitation periods for the actions brought before the National Council for Combating Discrimination or before courts are stipulated in art. 20 par. 1 and art. 27 par. 2 of G.O. no. 137/2000, republished. According to art. 20 par. 1 and art. 27 par. 2 of G.O. no. 137/2000, republished:

> Art. 20 par. 1: The person who deems himself/herself to be discriminated **may notify the Council within one year** from the date of deed perpetration or the date when he was able to acknowledge it. Art. 27 par. 1: The person who deems himself/herself to be discriminated **may file before the court a request for damages** and reinstatement of the situation previous to discrimination or cancellation of the situation generated through discrimination, according to ordinary law. The request is exempt of stamp tax and shall not be restrained by notifying the Council. (2) **The term for filing the request is 3 years** and it elapses from the date of deed perpetration or the date when the concerned person was able to acknowledge it.

VIII. Burden of proof in the racial Directive (ARTICLE 8) and national transposition law

A. BURDEN OF PROOF IN THE RACIAL DIRECTIVE

42. According to art. 8 par. 1 of the racial Directive:

(1) Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.



B. BURDEN OF PROOF IN NATIONAL LAW

43. Art. 20 par. 6 of G.O. no. 137/2000, as amended through Law no. 324/2006 (published in the Official Gazette no. 626 of 20 July 2006) regulates the burden of proof in discrimination cases. According to art. 20 par. 6 of G.O. no. 137/2000, republished:

The concerned person is obliged to prove the existence of the deeds allowing to presume the existence of a direct or indirect discrimination and **the person against whom the notification was lodged is responsible for proving that the deeds are not discrimination**. Any kind of evidence can be brought before the Steering Committee, including audio and video recordings or statistical data.

44. The same rule applies for actions filed to courts, according to art. 27 par. 4 of G.O. no. 137/2000, republished.

IX. Victimization in the racial Directive (ARTICLE 9) and national transposition law

A. VICTIMIZATION IN THE RACIAL DIRECTIVE

45. According to art. 9 of the racial Directive:

Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.

B. VICTIMIZATION IN NATIONAL LAW

46. The concept of victimization was introduced in national legislation through G.O. no. 77/2003 and through Law no. 27/2004. According to art. 2 par. 7 of G.O. no. 137/2000 republished:

According to this ordinance, any adverse treatment as a reaction to a complaint or to any legal proceedings regarding the infringement of the equal treatment or of the non-discrimination principles constitutes victimization and shall be contraventionally punished.

X. Bodies for the promotion of equal treatment in the racial Directive (ARTICLE 13) and national transposition law

A. BODIES FOR THE PROMOTION OF EQUAL TREATMENT - RACIAL DIRECTIVE

47. According to art. 13 of the racial Directive:

"building trust in human rights"



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Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.
 Member States shall ensure that the competencies of these bodies include:

- without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination;
- conducting independent surveys concerning discrimination;
- **publishing independent reports and making recommendations** on any issue relating to such discrimination.

XI. National Council for Combating Discrimination and accomplishment of standards of institutional independence

A. ESTABLISHMENT OF THE NATIONAL COUNCIL FOR COMBATING DISCRIMINATION

48. Government Ordinance no. 137 of 31 August 2000 on the prevention and sanctioning of all forms of discrimination, published in the Official Gazette no. 431 of 2 September 2000, referring to the National Council for Combating Discrimination provided in art. 23 par. 1 that is a specialized body and subordinated to the Government. Par. 2 of the same article provided that the organisational structure and other prerogatives of the National Council for Combating Discrimination shall be **regulated through Government Decision**. The nature of Government body, subordinated to the Government of NCCD is consequently laid down in art. 1 par. (1) of Government Decision no. 1194/2001 which adds that it has legal personality. Therefore, the National Council for Combating Discrimination in the initially adopted formula was a body of the Government, directly subordinated to the Government and organized separately from ministries.

49. Through Government Decision no. 1194 of 27 November 2001 on the organization and operation of the National Council for Combating Discrimination, published in the Official Gazette no. 792 of 12 December 2001 was provided in art. 4 par. 1 that: "(1) The President is appointed and released of office through Decision of the Prime-Minister, among the members of the Steering Committee". According to art. 5 (1) "The members of the Steering Committee are appointed and released through Decision of the Prime-Minister, and (2) "In order to appoint the members of the Steering Committee, the Ministry of Public Information, Ministry of Labour, Social Solidarity and Family, Ministry of Justice, Ministry of Health, Ministry of Administration and Interior and Ministry of Education, Research and Youth submit three proposals each…" and (3) The Prime Minister will appoint one member each from the three proposed by the public authorities provided in par. (2)".

B. DECISIONS OF THE COUNCIL OF THE EUROPEAN UNION ON ROMANIA'S ACCESSION AND INSTITUTIONS TO COMBAT DISCRIMINATION

50. The Accession Partnership with Romania of 1999, reviewed in 2000 provided in the chapter Political Criteria/Human Rights, Section Objectives, point 4.2. " Medium Term" as a priority the recommendation to "**implement measures to combat discrimination**, also within the government".²

51. Through **Decision of the Council of the European Union 2002/92/EC**, point 6, the EU Council indicates that " in order to prepare for accession, Romania must continue to revise its national program for adopting the acquis. Thus, the Council, in

²See Accession Partnership with Romania (1999, reviewed February 2000) – political criteria/human rights; 4.3. Medium term: Political criteria: "...implement measures aimed at fighting discrimination (including within the public administration...").



accordance with art. 2 of (EC) norms no. 622/98 established the principles, priorities, intermediate objectives and conditions of the Accession Partnership with Romania. Chapter 4 Priorities and intermediate objectives, Section Political Criterion/Human Rights and protection of minorities includes as a priority to be met by Romania i.e. " the establishment and ensuring of the proper operation of institutions to prevent and combat all forms of discrimination"³. Also, the chapter Economic Criteria, section Social and employment policies includes Romania's obligation to "adopt secondary legislation to combat discrimination and develop an implementation plan".

52. Romania's priorities for accession were restated and revised through the **Decision of the Council of the European Union 2003/397/EC⁴** regarding the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Romania. The Council of the European Union expressly decided in chapter 4, Priorities, Section Political Criteria **"continue to align the acquis in the field of non-discrimination and appropriately implement it in order to ensure the operation of the National Council for Combating Discrimination**". In the chapter Economic Criteria, section social and employment policies, the EU Council restates **"Romania's obligation to align the acquis in the field of non-discrimination and ensure its implementation**". The implementation of the Accession Partnership and obligations assumed through the Decisions of the Council of the European Union were monitored under art. 2 of Decision 2002/92/EC and 2003/397/EC by the institutions of European Agreement and the institutions of the Council to which the European Commission submitted periodical reports.

C. NCCD'S CRITIQUE OF THE EUROPEAN COMMISSION REGARDING THE TRANSPOSITION OF THE ACQUIS IN THE FIELD OF NON-DISCRIMINATION AND NCCD'S INDEPENDENCE

53. The European Commission, starting from the end of 1998, has regularly monitored the progress of EU candidate countries in Central and Eastern Europe in preparation for accession. As regards Romania, the Commission published each year the Periodical Report regarding the process of accession to the Union, monitoring among others in particular Romania's alignment to the acquis in the field of non-discrimination. In this respect, are presented below the conclusions of the European Commission in 2000-2005 regarding the National Council for Combating Discrimination and the transposition of the acquis. The Periodical Report of the European Commission in 2000: "substantial efforts are needed to transpose the acquis".

54. The European Commission appreciated the adoption of Government Ordinance no. 137/2000 setting down in its 2000 Report that "in September there has been significant progress in the adoption by the Government of legislation prohibiting discrimination by civil servants, individuals, private entities and undertakings on grounds of nationality, race, ethnic origin, age, gender and sexual orientation. Severe sanctions were provided for breaching the relevant provisions. This initiative is a positive step, **but a secondary legislation and the review of institutional aspects will be necessary before the provisions of the Ordinance become applicable. It is therefore too early to evaluate the effectiveness of this measure."**⁵ In the same respect, it is stated that "implementation of this legislation which, inter alia is intended to transpose the provisions of Directive EC, under art. 13 of the Treaty regarding discrimination on grounds of racial or ethnic origin will **require substantial effort and continued attention**.⁶

The 2001 Regular Report of the European Commission: *"inoperative legislation and the National Council for Combating Discrimination has not been established"*.

55. The European Commission restates the importance of adopting Government Ordinance no. 137/2000 on the

⁶See idem; page. 59 "The implementation of this legislation (which, inter alia, aims to transpose the provisions of the EC Directive, based on Art. 13 of the Treaty, relative to discrimination on the grounds of race or ethnic origin), will require substantial effort and continuous attention".

³See the Official Journal of the European Communities, L44/82, 14.2.2002, Council Decision on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Romania (2002), Political criteria, Human rights and minority protection, "...Establish and ensure the due functioning of institutions to prevent and combat all forms of discrimination...".

⁴See the European Journal of the European Communities, L145/26, 12.6.2003, Council Decision on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Romania; "Continue alignment of the acquis on anti-discrimination and ensure its proper implementation by making the Romanian National Council for Combating Discrimination fully operational".

⁵See Regular Report from the Commission on Romania's Progress towards accession; 8 November 2000; page 21, "In September 2000, one important development was the introduction, by government ordinance, of new legislation prohibiting discrimination by public employees, individuals, private companies and economic operators on the grounds of nationality, race, ethnicity, age, gender, or sexual orientation. Heavy fines have been established for violating its provisions. This initiative is a very positive step – but both further secondary legislation and revised institutional arrangements will be necessary before the provisions contained in the ordinance can be applied. It therefore remains too early to assess the effectiveness of this measure".



prevention and sanctioning of all forms of discrimination, considering that broadly the law is in line with Directive 43/2000 and with the recent recommendations of the European Commission against Racism and Intolerance, but it notes that: **"The ordinance is inoperative because secondary legislation has not been adopted and the National Council for Combating Discrimination has not been established**^{"⁷}.

The 2002 Regular Report of the European Commission: "NCCD is not an independent institution".

56. In 2002, the European Commission explicitly expresses concern for the status of the National Council for Combating Discrimination, as established through G.O. no. 137/2000 and consequently through G.D. no. 1194/2001 and G.D. no. 1514/2002. The Commission Report underlines that: it is necessary to amend legislation in order to be in line with the acquis under the provisions of art. 13 of the EC Treaty" and in respect of NCCD it indicates that **"in practice it is not an independent institution since it is administratively subordinated to the Government**"⁸.

The 2003 Regular Report of the European Commission: "NCCD remains subordinated to the Government...limited capacity to act independently".

57. The 2003 Commission report appreciates the significant progress made by the National Council for Combating Discrimination "in its first year of activity and the ruling of sanctions in discrimination cases which were an important exhibit of the Council's authority". The Commission further underlines that "the new legal provisions have clarified the responsibilities of the Council, but a number of legislative issues remain unresolved. The legal framework should be revised in order to clarify the role of the Council in relation to other public bodies". The issue of the lack of independence is restated by the European Commission and "as noted in the previous year Regular Report, **"the fact that NCCD remains administratively subordinated to the Government seems to limit its capacity to act independently"**⁹. In the Report, the European Commission appreciates that "it should be noted that among the candidate countries, Romania is the first that has an efficient equality institution"¹⁰. The 2004 European Commission Regular Report: **"NCCD's capacity should be strengthened**".

58. The European Commission analyzes the activity of preventing and combating discrimination conducted by NCCD, considering, inter alia that "the institution has proved its capacity of making decisions: courts confirmed the existence of discrimination in disputed solutions, although the sanctions enforced were cancelled in various cases". "The new legislative provisions adopted in February 2004 were a progress in the transposition of the acquis in the field of non-discrimination, but some elements of an effective anti-discrimination mechanism, such as the reversal of the burden of proof or statistical data to prove indirect discrimination are still missing". The European Commission also stresses that "the capacity of the National Council for Combating Discrimination should be strengthened"¹¹. (In this respect see Annex 5).

¹⁰See idem, page 79; "It should be noted that among the acceding and candidate countries Romania is the first to have a functioning equality body". ¹¹A se vedea 2004 Regular Report from the Commission on Romania's Progress towards accession, 6.10.2004, pag.23 si 95 "The National Council for Combating Discrimination (NCCD) has continued its policy to prevent discriminatory actions. New legal provisions adopted in February 2004 represented further progress with the transposition of the anti-discrimination acquis. However, despite several legislative improvements, some elements of an efficient antidiscrimination mechanism, such as the shift of the burden of proof or acceptance of statistical data as evidence of indirect discrimination, are still lacking. Nevertheless, the NCCD proved its capacity to get support for its decisions: court decisions have usually confirmed the existence of discrimination in the cases contested - although the fines applied by NCCD have been invalidated in several cases. Notwithstanding the progress made, the capacity of the National Council for Combating Discrimination could also be enhanced.

⁷See 2001 Regular Report from the Commission on Romania's Progress towards accession, 13.11.2001; page 22 "...The ordinance covers rights defined in relevant international agreements and is broadly in line with the Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of their Racial and Ethnic Origin as well as recent recommendations of the European Commission against Racism and Intolerance. However the ordinance is not yet operational since the necessary secondary legislation has not been adopted and the implementing body, the National Council for Preventing and Combating Discrimination, has not yet been established. Despite these delays, this legislation should, when implemented, represent a positive development by providing legal protection against discrimination on various grounds, including ethnic origin, language, religion and sexual orientation.

⁸See 2002 Regular Report from the Commission on Romania's Progress towards accession, 9.10.2002; page 29; "However, amendments to the law will be needed in order to fully conform with the acquis based on Article 13 of the EC Treaty, notably with regard to indirect discrimination and the burden of proof. ...The decision setting up the Council states that it will operate independently of any institution or public authority. However, in practice it is not an independent body as it remains administratively subordinate to the Government" and page 85 "The National Council for Combating Discrimination was established in August 2002. These are positive developments although amendments to the law will be needed in order to fully conform with the acquis".

⁹ See 2003 Regular Report from the Commission on Romania's Progress towards accession, page 22 "The National Council for Combating Discrimination has made significant progress during its first year of activity and the issuing of decisions sanctioning cases of discrimination has been an important demonstration of its authority. New legal provisions have clarified the responsibilities of the National Council. However, a number of the gaps in the legislative framework raised in last year's Regular Report have not been resolved (i.e. indirect discrimination and the burden of proof). The legal framework also needs to be revised in order to clarify the role of the National Council vis-à-vis other public institutions. As noted in last year's Regular Report, the fact that the National Council remains administratively subordinate to the government appears to limit its capacity to act independently...".



59. The European Commission underlines that, in the field of non-discrimination, legislation still requires completions regarding the reversal of the burden of proof in order to establish an efficient mechanism in Romania and draw attention particularly on the strengthening of NCCD's administrative capacity, on providing financing for the institution, transparency **and especially**, "**securing independence**"¹². In particular, the European Commission draws attention that "Romanian authorities should prove at all levels that they apply a zero tolerance policy regarding racism against Roma or other minorities or groups and that this policy is effectively implemented"¹³".

D. The process of transposition of the acquis in 2006 and securing the independence of the National Council for Combating Discrimination

60. Following successive amendments brought to Government Ordinance no. 137/2000 and through Law no. 48/2002, Government Ordinance no. 77/2003 and Law no. 27/2004, the minimum standards set out in European Directives were partly transposed in Romanian legislation, but, as specified by the European Commission in its reports pending disagreements remained between the internal law and the provisions of the acquis communautaire, i.e. Council Directives 2000/43/EC and 2000/78/EC and for this reason, anti-discrimination legislation still requires amendments (Regular Reports of the European Commission, years 2001-2006).

61. Given the potential risk that at the date of accession of Romania to the European Union, at 1st January 2007, nondiscrimination legislation shall not be not in accordance with the acquis, on 14 July 2006 was adopted Law no. **324/2006**, an organic law by which the non-discrimination standards were substantially amended, especially as regards the status of the national body designated to monitor and implement relevant legislation, the National Council for Combating Discrimination.

62. Law no. 324/2006 amending and supplementing Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination, published in the Official Gazette of Romania, Part I, no. 626 of 20 July 2006 expressly provides that it transposes the provisions of the Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, published in the Official Journal of the European Communities (OJ) no. L180 of 19 July 2000 and the provisions of Council Directive 2000/78/EC establishing a general framework in employment and occupation, published in the Official Journal of the European Communities (OJ) no. L303 of 2 December 2000.

E. Amendment of NCCD's status in 20066

63. In order to transpose the acquis communautaire and consequently decrease constant criticism from the European Commission, European Commission against Racism and Intolerance, Advisory Committee on the Framework Convention for the Protection of National Minorities and from other international institutions, **the Romanian lawmaker regulated the institutional issues notified and aligned the National Council for Combating Discrimination, as regards its status, to international standards¹⁴.**

64. Thus, following amendments made by Law no. 324/2006, the National Council for Combating Discrimination is the **national authority that investigates and contraventionally sanctions** discrimination deeds or acts, **autonomous**, with legal personality, **under the Parliament's control** and a guarantor of the observance and enforcement of the non-discrimination principle, according to internal legislation in force and international documents to which Romania is a party".¹⁵

¹²See 2005 Regular Report from the Commission on Romania's Progress towards accession, pag. 54, 55; "Legislative alignment in the field of antidiscrimination is still to be completed especially as regards the shift of the burden of proof in order to have in place an efficient antidiscrimination mechanism in Romania. The overall administrative capacity of the National Council for Combating Discrimination should be enhanced, including funding, transparency and general awareness of its activities, and its independence should be guaranteed".

¹³See Idem, page 19 "The Romanian authorities should demonstrate, at all levels, that the country applies a zero-tolerance policy on racism against Roma or against any other minority or group and that this policy is effectively implemented.

¹⁴Directiva Consiliului Uniunii Europene nr. 43/2000, Recomandarea Comisiei Europene împotriva Rasismului și Intoleranței nr. 2 și Recomandarea nr. 7, Rezoluția Adunării Generale a ONU nr. 48/134 din decembrie 1993, "Principiile de la Paris" privind măsurile pentru crearea unor instituții naționale de drepturile omului.

¹⁵See art. 16 of Law no. 324/2006 amending and supplementing Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination, published in the Official Gazette of Romania, Part I, no. 626 of 20 July 2006.

65. The Council is responsible for the enforcement and control of observance of legal provisions in its sphere of activity, and for the **harmonization of provisions of legislation or administrative acts** which are contrary to the principle of non-discrimination¹⁶.

66. The Council develops and implements public policies in the field of non-discrimination. In this regard, the Council consults with public authorities, non-governmental organizations, trade unions and other legal entities which pursue the protection of human rights or have a legitimate interest in combating discrimination¹⁷.

67. In exercising its prerogatives, the National Council for Combating Discrimination **operates independently**, without being hindered or influenced by other bodies or public authorities. In order to combat discrimination deeds, the National Council for Combating Discrimination exercises its prerogatives in the following fields: **prevention of** discrimination **deeds**; mediation of discrimination deeds; **inquiry, ascertaining and sanctioning** of discrimination deeds; **monitoring** of discrimination cases; providing **specialized assistance** to the victims of discrimination¹⁹.

F. Position of the European Commission regarding the amendments adopted through Law no. 324/2006 and NCCD's independence status

68. Following the amendments introduced by Law no. 324/2006, in the Notice of the European Commission of 26 September 2006, included in the Monitoring Report regarding the stage of preparation of Bulgaria and Romania for accession to the European Union, chapter Political Criteria, point 2, "Other issues which needed further progress in May 2006", the European Commission expressly specifies: **"The law on preventing and sanctioning all forms of discrimination has been amended to meet EU standards related to the independence of the National Council for Combating Discrimination"²⁰.**

G. Conclusions

69. Change of the status of the National Council for Combating Discrimination from specialized body of the central Government, subordinated to the Government, in a state authority, autonomous, under the Parliament's control (art. 16, art. 17, art. 18 of law no. 324/2006) as it results from the conclusions of the European Commission, meets the independence standard specified in the European legislation in the field of non-discrimination.

70. The procedures of appointing the members of the NCCD's Steering Committee by the Parliament (art. 23, art. 24, art. 25 of Law no. 324/2006) contain clear provisions regarding the conditions for nomination, the term of office, guaranteeing prevention of arbitrary dismissals according to the standards set out in the General Policy Recommendation no. 2 of ECRI (Chapter 5, Principle 5, point 4) and the UN Assembly Resolution no. 48/134 from 1993 (see in this regard the Resolution to Annex 10, Chapter Composition and guarantees of independence and pluralism, par. 1, first statement and par. 3).

71. The Council has the freedom to hire its own staff, to manage its own resources and its funds are approved by Parliament according to Recommendation no. 2 of ECRI (Chapter 5, Principle 5, point 1, point 2) and UN General Assembly Resolution no. 48/134 of 1993 (see in this regard the Resolution to Annex 10, Chapter Composition and guarantees of independence and pluralism, par. 2, second statement).

72. The Council prepares annual activity reports, independent which are submitted to debate and approval from the Parliament (art. 22 par. 2 of Law no. 324/2006) in accordance with ECRI Recommendation no. 2 (Chapter 5, Principle 5, point 3) and Council Directive no. 43/2000 (art. 13, par. 2, final statement), UN General Assembly Resolution no. 48/134 of 1993 (see in this regard the Resolution to Annex 10, Chapter Prerogatives and responsibilities, point 3, lett. a).

73. The Council offers **specialized assistance to the victims** of discrimination (art. 19 par. 1 lett. e) in accordance with **ECRI Recommendation no. 7** (Chapter 5, point 24) and **Council Directive no. 43/2000** (art. 13, par. 2, first statement).

74. The Council investigates, ascertains and monitors discrimination deeds (art. 19 par. 1, lett. c, lett. d of Law no.

 $^{^{\}mbox{\tiny 16}}$ See art. 18 par. 1 of Law no. 324/2006. .

¹⁷ See art. 18 par. 2 of Law no. 324/2006

¹⁸ See art. 17 of Law no. 324/2006.

¹⁹ See art. 19 par. 1 of Law no. 324/2006.

²⁰ See COMMUNICATION FROM THE COMMISSION, Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania, Brussels, 26/09/2006, COM (2006), 2. OTHER ISSUES WHICH NEEDED FURTHER PROGRESS IN MAY 2006; 2.1 Political criteria, Protection and integration of minorities; pag. 40: "...The law on preventing and sanctioning all forms of discrimination has been amended to meet EU standards related to the independence of the National Council for Combating Discrimination".



324/2006) in accordance with **Council Directive no. 43/2000** (art. 13, par. 2, second statement), **ECRI Recommendation no.** 7 (Chapter 5, point 24), **UN General Assembly Resolution no. 48/134 of 199**3 (see in this regard the Resolution to Annex 10, Chapter Principles regarding the status of commissions with quasi-jurisdictional prerogatives).

75. The Council develops and implements **public policies** and is responsible for the **harmonization of provisions of laws** or administrative acts in the field of non-discrimination (art. 18 par. 1 and par. 2 of Law no. 324/2006), **in accordance** with **Council Directive no. 43/2000** (art. 13, par. 2, final statement) and **ECRI Recommendation no. 7** (Chapter 5, point 24), **UN General Assembly Resolution no. 48/134 of 1993** (see in this regard Resolution to Annex 10, Chapter Prerogatives and responsibilities, point 3, lett. a and lett. b).

76. The transposition of the provisions of the Directive of the European Council no. 43/2000 and 78/2000 by the adoption of **Law no. 324/2006 ensure the alignment of legislation in the non-discrimination field in Romania to the acquis** communautaire in the field of non-discrimination.

77. Thus, as provided in art. 6 par. 1 and par. 2 of Council Directive no. 43/2000, it must be taken into account that Romania has introduced more favourable provisions in order to ensure the protection of the principle of equal treatment than the provisions stipulated in the Directive, as regards the specialized body to combat discrimination, so that, under no circumstance, the implementation of the Directive, by amending the non-discrimination legislation should not constitute a reason to diminish the protection against discrimination already in place in Romania.

XII. Sanctions in the racial Directive (ARTICLE 15) and national transposition law

A. "SANCTIONS" IN THE RACIAL DIRECTIVE

78. According to art. 15 of the racial Directive:

Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 19 July 2003 at the latest and shall notify it without delay of any subsequent amendment affecting them.

B. SANCTIONS PROVIDED IN NATIONAL LEGISLATION

79. According to art. 26 of G.O. no. 137/2000, republished, the perpetration of contraventions laid down in this law draws, as appropriate, sanctioning by **warning or by fine from 400 lei to 4.000 lei** when perpetrated against an individual and by **fine from 600 lei to 8.000 lei** when perpetrated against a group of persons or a community.

PART II

NCCD'S CASE LAW UNDER THE LAW OF NATIONAL TRANSPOSITION OF DIRECTIVE 2000/43/EC

I. Complaints filed to NCCD under the national anti-discrimination law

80. The number of complaints filed to NCCD since its establishment (August 2002) until the reporting date is 4260. This number includes complains filed under all discrimination criteria prohibited by national law.

Figure 1 Complaints filed to NCCD										
	2002	2003	2004	2005	2006	2007	2008	2009	2010 ^[21]	
Criterion										
Non-contagious chronic disease	0	0	6	2	3	2	4	2	0	
Sexual orientation	1	5	6	9	6	7	6	6	3	
HIV/Aids infection	0	1	15	10	5	3	7	1	2	
Language	0	2	1	2	2	7	11	13	8	
Convictions	4	12	23	19	8	10	14	13	3	
Religion	2	9	9	11	8	12	15	6	3	
Disadvantaged category	2	0	10	6	4	26	22	9	2	
Age	6	11	14	17	10	10	24	10	8	
Gender (Sex)	3	14	13	9	11	22	32	9	13	
Nationality	1	12	21	39	20	39	54	28	28	
Disability (Invalidity)	3	31	18	21	20	70	55	49	25	
Ethnic origin	34	66	45	85	69	82	62	62	23	
Others	52	184	108	61	132	32	159	96	42	
Race	0	0	1	1	2	0	0	2	1	
Social category	26	126	63	90	132	514	372	222	124	
Total	134	473	353	382	432	836	837	528	285	

As it results from the Table (Figure 1), the complaints filed to NCCD gradually increased annually, the maximum being reached in 2008. In 2009, there was a decrease of the number of complaints, to a great extent explained through the amendment of anti-discrimination legislation (G.O. no. 137/2000 republished), especially G.E.O. no. 75/2008 which defined NCCD's jurisdiction regarding the legislative measures in the field of wages of the personnel in the public sector, by which it was settled that NCCD has no jurisdiction to rule on discrimination which has its direct source in the content of norms.

81. The Constitutional Court has set down that: ", if it was admitted that by way of the jurisdictional control based on art. 20 par. (3) of Government Ordinance no. 137/2000, the National Council for Combating Discrimination could ascertain the existence of discriminatory situations which have their direct source in the content of norms, the Council's decisions would result in terminating the applicability of those provisions and even the application by analogy of other legal texts, which do not refer to the discriminated person or social group. In such a circumstance, it is questioned the legitimacy of this body to interfere with legislative bodies, by suppressing the applicability of certain laws and establishing that of others, but also with the jurisdiction of the Constitutional Court, which acts as a negative legislator when it finds the lack of compliance between the provisions of a law or ordinance and constitutional provisions, under art 16 regarding the principle of non-discrimination".

82. The decreased number of complaints filed to NCCD in 2009 is also reflected in the number of complaints on discrimination on grounds of social category and socio-professional category. If in 2007, from all 836 complaints, 515

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²¹Complaints filed to NCCD during 1 January 2010 – 1 August 2010



concerned social categories and socio-professional categories, in 2008 the number of these complaints decreased to 372 and in 2009 to 222. Thus, there was a decrease of about 50% of complaints regarding discrimination on this criterion to 2007 and of about 40% to 2008. The explanation for this decrease, in NCCD's opinion is tightly related to the legislative amendment of NCCD's prerogatives, following the constitutionality control. (Decision no. 997/2008).

II. Complaints filed to NCCD under discrimination forbidden by Directive 2000/43/EC

83. From all **4260** complaints filed to NCCD (2002-2010) about **823** complaints (**app. 20%**) concern discrimination on the criterion of racial or ethnic origin, under Directive 2000/43/EC. About **528** complaints concerned discrimination on the **criterion of ethnic origin**, **242** on the criterion of national origin²², **46** complaints on the criterion of national minorities language and about **7** complaints on the racial origin criterion.

Figure 2	Complaints filed to NCCD under Directive 2000/43/EC										
	2002	2003	2004	2005	2006	2007	2008	2009	2010		
Criterion											
Racial origin	0	0	1	1	2	0	0	2	1		
Ethnical origin	34	66	45	85	69	82	62	62	23		
National origin	1	12	21	39	20	39	54	28	28		
Language of minorities	0	2	1	2	2	7	11	13	8		
Total complaints	35	80	68	127	93	128	127	105	60		

84. From the total number of complaints annually filed to NCCD, a significant percentage is held by complaints concerning discrimination on ethnic origin, percentage that holds in average 10-12% of cases. The complaints regarding discrimination based on national origin²³, make up a percentage of 4-5%, slightly increased, followed by complaints regarding discrimination based on language of national minorities (towards 2%)²⁴. The complaints regarding discrimination on the racial origin criterion are extremely low in number, reaching a maximum of 2 complaints per year, in some cases.

Figure 3	Percentage of complaints filed to NCCD under Directive 2000/43/EC										
	2002	2002 2003 2004 2005 2006 2007 2008						2009	2010		
Criterion											
Racial origin	0%	0%	0,28%	0,26%	0,46%	0%	0%	0,37%	0,35%		
Ethnic origin	25,37%	13, 5%	12,74%	22,25%	15,97%	9,80%	7,40%	11,74%	8,07%		
National origin	0, 74%	2, 53%	5, 94%	10, 20%	4,62%	4,66%	6,45%	5,30%	9,82%		
Minorities' language	0%	0,42%	0,28%	0,52%	0,46%	0,83%	1,31%	2,46%	2,80%		
Total	134	473	353	382	432	836	837	528	285		

²²National origin should not be confused with citizenship in the statistical data processed and construed by NCCD. This regards situations in which persons who felt discriminated declared their affiliation to a minority, considering that they are discriminated based on this criterion. For example: Russian-Lipovans, Romanian, Turkish, Tatars, Hungarian, Csango, etc.

 $^{\rm ^{23}}$ It shall not be confused with citizenship. See the previous footnote.

²⁴In general, cases which require knowing a certain language for filling a position, publishing of certain information of public interest in a certain language.



III. Solutions of admitting complaints under discrimination forbidden by Directive 2000/43/EC

85. In relation to the number of **823** complaints which concerned discrimination on the racial and ethnic origin criterion, under Directive 2000/43/EC, the National Council for Combating Discrimination ascertained discrimination in about **129** cases. In **103** cases it ascertained discrimination on the ethnical origin criterion, in **22** cases discrimination on the national origin criterion and in 2 cases on the ethnic and national origin criterion and in **2** cases on the racial origin criterion.

Figure 4	NCCD's complaints and ascertainments under Directive 2000/43/EC										
	2002	2003	2004	2005	2006	2007	2008	2009	2010		
No. of complaints	35	80	68	127	93	128	127	105	60		
No. of ascertainments	_ [25]	22	9	27	12	8	22	20	9		
Percentage		27,5%	13,23%	21,25%	12,90%	6,25%	17,32%	19,04%	15%		

In relation to the number of complaints regarding racial or ethnic origin, on average, in 16.5% of the cases there was a violation of anti-discrimination law.



86. In 2003, discrimination was ascertained in **27.5%** complaints, in 2004 in **13.23%**, in 2005 in **21.25%** and in 2006 in **12.90%**, in 2007 in **6.25%**, in 2008 in **17.32%**, in 2009 in **19.04%** and in 2010 in **15%** complaints.

²⁵NCCD became operational in August 2002 by appointing the Steering Committee. In 2002, no decisions were adopted to ascertain discrimination.



IV. Discrimination criteria in ascertaining cases under Directive 2000/43/EC

87. As regards the criteria which underlined the 129 discrimination cases ascertained by NCCD, these can be followed in the table below:

Figure 5		Discrimination criteria in ascertaining cases under Directive 2000/43/EC								
	2002	2003	2004	2005	2006	2007	2008	2009	2010	
Criterion										
Roma		22	5	18	9	8	13	13	9	
Hungarian		0	1	2	1	0	0	2	0	
Jews		0	1	1	0	0	3	2	0	
Lipovan Russians		0		1	0	0	0	0	0	
Lipovan Ukrainian		0	0	0	1	0	0	0	0	
Tatars Turkish-Muslims		0	0	0	0	0	1	0	0	
Romanians		0	1	2	0	0	2	0	0	
Minorities' language		0	1	2	0	1	3	3	0	
Race/colour		0	0	1	1	0	0	0	0	
Total		22	9	27	12	8	22	20	9	

V. Forms of discrimination in cases ascertained by NCCD

88. In the **129** cases, NCCD ascertained various forms of discrimination, including direct, indirect, multiple discrimination, the instruction to discriminate and harassment. Also, according to national law it is found the active or passive behaviour by which a group of persons is unreasonably disfavoured or dignity is offended.

Figure 6	Discrimination forms in cases under Directive 2000/43/EC								
	2002	2003	2004	2005	2006	2007	2008	2009	2010
Form									
Direct discrimination	7	1	13		10	7	16	10	4
Indirect discrimination	-	1	2		1	1	-	1	2
Instruction to discriminate	4	-	1		1	-	1	-	-
Multiple discrimination	7	-	2		-	-	-	-	-
Harassment	-	-	-		-	-	5	9	3
Victimization	-	-	-		-	-	-	-	-
Active or passive behaviour which disfavours	4	7	9		-	-	-	-	-
Total	22	9	27		12	8	22	20	9



VI. Fields in which discrimination was manifested in cases ascertained by NCCD

Figure 7	Fields of discrimination in cases under Directive 2000/43/EC									
	2002	2003	2004	2005	2006	2007	2008	2009	2010	
Fields										
Employment		7	1	3	-	-	3	2	1	
Private services (club, bar etc)		7	-	4	1	1	4	2	2	
Real estate services		3	-	2	1	-	-	-	-	
Public services		-	-	2	1	2	2	2	-	
Judicial services		-	-	1	-	-	-	-	-	
Religious services		-	-	1	-	-	-	-	-	
Education		1	-	-	2	2	4	2	-	
Personal dignity		4	8	14	7	3	9	12	6	
Total		22	9	27	12	8	22	20	9	

89. As can be noted in Figure 7, most cases of discrimination concern the offence to personal dignity, due to ethnic or racial origin and discrimination in access to goods and services made available to the public by private and public providers. It relates to the access to restaurants, shops, clubs, cafes, bars and other issues which concern the rent, sale or purchase of a house. At the same time it is about cases which relate to public administrative services related to the leasing of pieces of land for commercial activities, the displacement of persons, the regime of some buildings or restricting the access to public interest information in Romanian. The field of employment and education distinguish discrimination manifestations as regards conditions of access and separation of Roma children in the school system.

VII. Sanctions enforced in discrimination cases ascertained by NCCD

Figure 8	Discrimination fields in cases under Directive 2000/43/EC								
	2002	2003	2004	2005	2006	2007	2008	2009	2010
Fine		7	-	16	4	-	5	3	-
Warning		13	9	12	6	4	11	5	6
Recommendation		-	-	2	4	5	5	13	4
Only ascertaining		2	-	1	1	-	1	-	-

90. As can be noted in Figure 8 and table, most sanctions enforced by NCCD were contraventional warning, followed by contraventional fine and recommendations.



Sanctions in ascertaining cases under Directive 2000/43/CE



VIII. Ascertaining solutions issued in 2003

91. Statements. Ethnic origin. Roma. Personal dignity. I.G. complained about the statements of the President of the County Council published in the local press, referring to persons belonging to the Roma community, i.e. associations with the "characteristic misery", "the effort of leaders (…) to seize water, soap, school (…) and in their transition to the civilized world", the use of the designations "he is either a Gypsy, or a Romanian". Through decision **no. 9 of 04.02.2003**, the Committee set down that the deeds notified are **direct discrimination** and offend the dignity of persons belonging to the Roma community. It was also decided to sanction the defendant by contraventional **fine** amounting to 20.000.000 lei (art. 2 par. 1, art. 19 of G.O. no. 137/2000).

92. Statements. Ethnical origin. Roma. Personal dignity. Romani CRISS complained about the public statements of the Prefect by which he stated his intention to allow future access in public institutions of Roma origin persons in groups "of maximum 5 persons". Through decision **no. 65/25.02.2003**, the Committee set down that the notified deeds are **direct discrimination** and they offend the dignity of persons belonging to the Roma community. (art. 2 par. 1, art. 19 of G.O. no. 137/2000).

93. Press article. Ethnic origin. Roma. Personal dignity. Several persons and associations complained about a press article written by L.L.E. regarding the situation and behaviour of Romanian citizens of Roma origin abroad. Through decision **no. 74/11.03.2003**, the Committee set down that the notified deeds are direct discrimination and they offend the dignity of persons belonging to the Roma community and it decided to sanction the defendant by **fine** of 2.000.000 lei (art. 2 par. 1 and 2, art. 19 of G.O. no. 137/2000).

94. Access to goods and services. Ethnic origin. Roma. Personal dignity. County Police Inspectorate notified the fact that at the entry in the cafe-bar belonging to the company S.C. Beni-Carmen S.N.C. was posted a notice with the text "Roma access denied". Through decision no. 96/08.04.2003, the Committee set down that the notified deeds are discrimination and they offend the dignity of persons belonging to the Roma community and it decided to sanction the defendant by contraventional fine amounting to 4.000.000 lei (art. 2 par. 2, art. 10 lett. f, art. 18. art. 19 of G.O. no. 137/2000).

95. Access to goods and services. Ethnical origin. Roma. Personal dignity. Romani Criss complained about the posting at the entry in the cafe-bar "Casablanca" of a notice with the text "Roma access denied". Through decision no. 97/08.04.2003, the Committee set down that the notified deeds are discrimination and they offend the dignity of persons belonging to the Roma community. It decided to sanction the defendant by contraventional fine amounting to 2.000.000 lei (art. 2 par. 2, art. 10 lett. f, art. 18, art. 19 of G.O. no. 137/2000).

96. Access to goods and services. Prohibition. Ethnical origin. Roma. NCCD was self-notified regarding the banning of



access of certain persons of Roma origin inside the club "Karma". Through decision **no. 118/07.05.2003**, the Committee set down that the notified deeds are **discrimination** and it decided to sanction the defendant by contraventional **fine** amounting to 5.000.000 lei (art. 2 par. 2, art. 10 lett. f, art. 18 of G.O. no. 137/2000).

97. Access to goods and services. Prohibition. Ethnic origin. Roma. NCCD and Romani Criss notified the banning of access of certain persons of Roma origin inside the Club "Vox. Through decision no. 126/13.05.2003, the Committee set down that the notified deeds are **discrimination** and it decided to sanction de defendant by **warning**. (art. 10 lett. f of G.O. no. 137/2000).

98. Announcements. Employment conditions. Ethnical origin. Roma. Romani Criss notified the publishing in the newspaper "România Liberă", at the heading "Real estate announcements" – Rent offers" of an announcement with the following content: "Private person, I rent a furnished studio, 60\$ per month, payment for 1 year, Roma excluded". Through decision no. **146/23.04.2003**, the Committee set down that the notified deeds are **discrimination** (art. 10 lett, c. of G.O. no. 137/2000).

99. Access to goods and services. Prohibition. Ethnical origin. Roma. Romani Criss notified the banning of access of certain persons of Roma origin inside the discotheque "Number One" whose control staff specified that "the owner disposed to refuse crows". Through decision no. **155/15.05.2003**, the Committee set down that the notified deeds are **discrimination** and it decided to sanction the defendant by **warning** (art. 10 lett. f of G.O. no. 137/2000, warning).

100. Access to goods and services. Ethnical origin. Roma. Personal dignity. Romani Criss notified the posting at the entry in the cafe-bar "Complex Moldova" of an announcement with the text: "We reserve the right choose our clients! and "We don't serve Roma!". Through decision no. **165/27.05.200**3, the Committee set down that the notified deeds are **discrimination** and they offend the dignity of persons belonging to the Roma community and it decided to sanction the defendant by contraventional **fine** amounting to 8.000.000 lei (art. 2 par. 2, art. 10 lett. f, art. 19 of G.O. no. 137/2000).

101. Classified ads. Employment condition. NCCD was self-notified regarding the announcements – job offers published in the newspaper "România Liberă" (during 1 - 23 June 2003) concerning the restraining of taking part in a contest on certain criteria (age, gender, affiliation with an ethnic group or a minority, etc). Through decision no. **188/10.06.200**3, it set down that the notified deeds are **discrimination** and it decided to sanction the defendant by **warning**. (art. 2 par. 2, art. 7 par. 2 of G.O. no. 137/2000)

102. Classified ads. Employment condition. NCCD was self-notified regarding the ads – job offers published in the newspaper "National" (during 1 – 23 June 2003) related to restraining the participation in a contest on certain criteria (age, gender, affiliation with an ethnic group or a minority, etc). Through decision no. **189/10.06.2003** it set down that the notified deeds are **discrimination** and it decided to sanction the defendant by **warning** (art. 2 par. 2, art. 7 par. 2 of G.O. no. 137/2000).

103. Classified ads. Employment condition. NCCD was self-notified regarding the ads-job offers published in the newspaper "Evenimentul Zilei" (during 1 - 23 June 2003) related to restraining the participation in a contest on certain criteria (age, gender, affiliation with an ethnic group or a minority, etc). Through decision no. **190/10.06.200**3 it set down that the notified deeds are **discrimination** and it decided to sanction the defendant by **warning**. (art. 2 par. 2, art. 7 par. 2 of G.O. no. 137/2000).

104. Classified ads. Employment condition. NCCD was self-notified regarding the ads-job offers published in the newspaper "Monitorul de Bucureşti" (during 1 – 23 June 2003) related to restraining the participation in a competition on certain criteria (age, gender, affiliation with an ethnic group or a minority, etc). Through decision no. **191/10.06.2003** it set down that the notified aspects are **discrimination** and it decided to sanction the defendant by **warning** (art. 2 par. 2, art. 7 par. 2 of G.O. no. 137/2000).

105. Classified ads. Employment condition. NCCD was self-notified regarding the ads-job offers published in the newspaper "Adevărul" (during 1 – 23 June 2003) related to restraining the participation in a competition on certain criteria (age, gender, affiliation with an ethnic group or a minority, etc). Through decision no. 192/10.06.2003, it set down that the notified deeds are **discrimination** and it decided to sanction the defendant by **warning** (art. 2 par. 2, art. 7 par. 2 of G.O. no. 137/2000).



106. Classified ads. Employment condition. NCCD was self-notified regarding the ads-job offers published in the newspaper "Ziarul" (during 1–23 June 2003) related to restraining the participation in a competition on certain criteria (age, gender, affiliation with an ethnic group or a minority, etc). Through decision no. 193/10.06.2003, it set down that the notified deeds are **discrimination** and it decided to sanction the defendant by **warning**. (art. 2 par. 2, art. 7 par. 2 of G.O. no. 137/2000).

107. Classified ads. Employment condition. NCCD was self-notified regarding the ads – job offers published in the daily newspaper "Ziua" (during 1 – 23 June 2003) related to restraining the participation in a competition on certain criteria (age, gender, affiliation with an ethnic group or a minority, etc). Through decision no. 194/10.06.2003 it set down that the notified deeds are **discrimination** and it decided to sanction the defendant by **warning** (art. 2 par. 2, art. 7 par. 2 of G.O. no. 137/2000).

108. Classified ads. Ethnical origin. Roma. Romani Criss notified the publishing in the newspaper " Piața de la A la Z", section Rent of a real estate ad with the following content: "2 chambers in villa, separate entry, basin and water in the room, without bathroom, WC in the yard, Roma excluded (..)". Through decision no. **208/01.07.2003, the Committee** set down that the ad has a **discriminatory** character and it decided to sanction the defendant by **warning**". (art. 2 par. 2, art. 10 lett. c of G.O. no. 137/2000).

109. Press article. Ethnic origin. Roma. Personal dignity. Romani Criss notified the publication of a press article for the newspaper "24 Ore mureşene" regarding the situation and behaviour of Roma origin persons, which comprised stereotyped characterizations "bandits, crooks, thieves, bribe givers, crows, aggressiveness, injurious croaking" etc. Through decision no. **215/14.07.2003**, the Committee set down that the article has a **discriminatory** character and that is offends the dignity of persons belonging to the Roma community. It decided to sanction the defendant by contraventional **fine** amounting to 2.000.000 lei (art. 2 par. 2, art. 19 of G.O. no. 137/2000).

110. Education. Segregation. Separate classes. Ethnic origin. Roma. Romani Criss notified the placing of Roma origin children in separate classes in a separate annex of the main building of the school in Cehei, with different study conditions for the Roma children compared to non-Roma ones. Through decision no. **218/23.06.2003**, the Committee set down that the notified deeds are **discrimination** and it decided to sanction the defendant by **warning** (art. 2 par. 2 of G.O. no. 137/2000).

111. Classified ads. Ethnic origin. Roma. NCCD and Romani Criss notified the publishing of a real estate ad in the newspaper, Monitorul de Vrancea", with the following content: "I sell a house (...) 283 sq m (..) We do not sell to Roma". Through decision no. **262/25.08.2003**, the Committee set down that the ad has a **discriminatory** character and it decided to sanction the defendant by **warning**. (art. 2 par. 2, art. 10 lett. c of G.O. no. 137/2000).

112. Access to goods and services. Prohibition. Ethnic origin. Roma. NCCD was self-notified regarding the banning of access of a group of persons of Roma ethnic origin inside the club Guinness Pub and Green Club. Through decision no. **287/28.08.2003**, the Committee set down that the notified deeds are **discrimination** and it decided to sanction the defendant by **warning** (art. 10 lett. f of G.O. no. 137/2000).

IX. Ascertaining solutions issued in 2004

113. Press article. Ethnic origin. Personal dignity. R.D. complained about a press article written by C.M. referring to the situation and behaviour of Romanian citizens of Roma origin which contained stereotyped characterizations like "grimy", "loyal customers of police (...) and of dermatologists", "terrorize (...) the area with thefts and scandals" etc. Through decision no. **31/17.02.2004** the Committee set down that the notified deeds are **discrimination** and they offend dignity of persons belonging to the Roma community. Also, it was decided to sanction the defendant by **warnin**g (art. 2 par. 3 and art. 19 of G.O. no. 137/2000).

114. Statements. National origin. Personal dignity. P.A. complained about the statements of K.G. published in the local
press regarding the fact that he is against the appointment of a Romanian director in high-school: "I am against the only member of Romanian nationality becoming director". Through decision no. **145/19.05.2004**, the Committee set down that the statements have a **discriminatory** character and they offend the petitioner's dignity and it decided to sanction the defendant by **warning** (art. 2 par. 3, art. 19 of G.O. no. 137/2000).

115. Press article. Statements. National origin. Hungarians. Personal dignity. Pro Europa League complained against B.A. regarding the article that concerned the situation of the Hungarian community and the generation and of a hostile and adverse environment on grounds of national affiliation. Through decision no. **146/21.05.2004**, the Committee set down that the notified deeds are **discrimination** and they offend the dignity of the Hungarian community and it decided to sanction the defendant by **warning**. (art. 2 par. 3, art. 19 of G.O. no. 137/2000).

116. Press article. Statements. National origin. Jews. Personal dignity. R.F. complained against N.M.F regarding a press article referring to the national origin of the petitioner and the stating of stereotypes like "Jews don't like to work, F.B. is Jew, didn't you know?". Through decision no. **148/21.05.2004** the Committee set down that the notified deeds are **discrimination** and they offend the dignity of the Jew community and it decided to sanction the defendant by **warning**. (art. 2 par. 3, art. 19 of G.O. no. 137/2000).

117. Political declarations. Statements. Ethnic origin. Roma. Personal dignity. The Party of Social Democrat Roma complained against D.B.A. regarding his statements taken by the local press referring to the community of Roma, in the case "honourable occupations of the crows (such as prostitution, protection tax)". Through decision no. 167/31.05/2004, the Committee set down that the notified deeds are discrimination and they offend the dignity of the Roma community and it decided to sanction the defendant by **warning** (art. 2 par. 3. art. 19 of G.O. no. 137/2000).

118. Press article. Ethnic origin. Roma. Personal dignity. Romani CRISS complained against M.T. regarding a press article he wrote referring to persons belonging to the Roma community and its specific music. Through decision no. **169/07.05.2004**, the Committee set down that the notified deeds are **direct discrimination** and they offend the dignity of persons belonging to the Roma community and it decided to sanction the defendant by **warning** (art. 2 par. 1, par. 3 and art. 19 of G.O. no. 137/2000).

119. Public statements. Ethnic origin. Roma. Personal dignity. NCCD was self-notified regarding the statement of I.B. taken by the sports' press referring to the ethnic origin of a person. Through decision no. **191/13.07.2004**, the Committee ascertained that the statement has a **discriminatory** character and it offends the dignity of persons belonging to the Roma community and it decided to sanction the defendant by **warning**. (art. 2 par. 3 and art. 19 of G.O. no. 137/2000).

120. Employment conditions. Imposing the residence and the knowledge of Hungarian language. National affiliation. The Prefecture of Covasna notified the restraining of filling the position of caretaker, maintenance worker within the City Hall Sfantu Gheorghe by the permanent residence in Sf. Gheorghe and the knowledge of Hungarian language. Through decision no. **281/21.09.2004**, the Committee set down that the notified deeds are **indirect discrimination** and it decided to sanction the defendant by **warning** (art. 7 par. 2 of G.O. no. 137/2000).

121. Statements. Ethnic origin. Roma. Personal dignity. B.F. complained about the statements of B.G., insults referring directly to the Roma ethnic group. Through decision no. **373/02.09.2004**, the Committee set down that the notified deeds are direct **discrimination** and they offend the Roma community and it decided to sanction the defendant by **warning**. (art. 2 par. 1 and art. 19 of G.O. no. 137/2000).

X. Ascertaining solutions issued in 2005

122. Press article. Statements. National origin. Lipovan Russians and Lipovan Ukrainians. Personal dignity. The community of Lipovan Russians of Romania complains about the publishing of an article which contains defamatory



statements which concern two ethnic minorities: Lipovan Russians and Lipovan Ukrainians. The Committee set down that the article promotes an adverse image for the two ethnic groups mostly living in The Delta of Danube, because the author eliminates references to the building of the Bistroe Channel, a controversial and disputed matter, both domestically and internationally. The author of the article creates a hostile, degrading, humiliating and offensive environment against the two minorities, referring to the dishonest attitude of their members, considering it to be a specific feature of the two nations from which those persons originate. The two ethnic minorities are accused of having allowed and encouraged during and after the second world war the access of "Bolshevik spies" on the Romanian territory. Through **decision no. 1 of 06.01.2005** the Committee ascertained that the notified deeds are **discrimination** and it decided the sanctioning by **fine** amounting to 1000 RON (art. 2 par. 1 and par. 2, art. 19 of G.O. no. 137/2000, with approvals and amendments).

123. Access to goods and services. Prohibition. Instruction to discriminate. Ethnic origin. Association with Roma. M.C., of Turkish ethnic origin notifies the fact that together with a delegation made up of 10 persons he went to the Terrace S.C. N S.R.L. where their serving was refused "on reason that they are Gypsies". The defendant denied the facts charged, specified that he did not receive instructions from the owner to apply a differentiated treatment to certain persons and the conflict was due to the fact that persons who accompanied M.C. were warned that they were too noisy. Through **decision no. 21 of 09.02.2005**, the Committee ascertained that the notified deeds are **direct discrimination** and it decided the sanctioning by warning. (art. 2 par. 1. art. 10 lett. f of G.O. no. 137/2000).

124. Access to goods and services. Prohibition. Ethnic origin. Roma. Romani Criss and Press Monitoring Agency, Academia Catavencu notify the fact that a group made up of young Roma wanted to enter into the club "Bamboo" with the purpose of celebrating an event related to concluding a course. The young Roma were refused on ground that they don't have appropriate dressing and that the club is private and it reserves the right to choose its customers and Roma are not allowed. However, the members of the groups of persons with a pale skin had no difficulties to enter. Through decision no. **26 of 11.01.2005**, the Committee ascertained that the notified deeds are direct discrimination and it decided to sanction the defendant by warning. (art. 2 par. 3 and art. 18 of G.O. 137/2000).

125. Access to goods and services. Real estate ads. Ethnic origin. Roma. Romani CRISS complained about the publishing in the newspaper "Anunțul telefonic" at the section "Various houses rent offers", position 86, page 62 of 28 February 2005 of a rent ad which forbade persons of Roma origin from renting the house. Through decision no. 37 of 07.03.2005, the Committee ascertained that the notified deeds are discrimination and it decided to sanction the defendant by fine amounting to 700 lei (art. 2 par. 3 and art. 10 lett. c of G.O. no. 137/2000).

126. Statements. National origin. Jews. Personal dignity. Pro Europa League complained about the statements of the defendant comprised in the public speech and taken by the local press, among others: "In Hungary live 10 million people, but their number indicates something else. I must say (...) Hungary is the only country where (...) look please, Germany is led by Germans, Poland is led by Polish, Slovakia by Slovaks, Hungary is the only country that step by step becomes a second Israel". Through decision no. 38 of 09.03.2005 the Committee ascertained that the notified deeds are discrimination and it decided sanctioning by fine amounting to 500 lei (art. 2 par. 3 and art. 19 of G.O. no. 137/2000).

127. Statements. Chanting. Sports manifestations. Ethnic origin. Roma. Personal dignity. The Steering Committee of NCCD was self-notified regarding the chanting during the football match F.C. Steaua București - UFC Rapid București. The Agency of Community Development "Impreuna" complained also about the attitude of Mr. G.S. to the coach of the team UFC Rapid București, Mr. R.L. The football gallery of FC Steaua București chanted among others: "death to gypsies, d...to gypsies, we always had and will always hate them, when Antonescu was alive he was killing them, we p...on them to infinity, ...to Rapid, one more crow has died" (slogan used when a player of Rapid team was fouled). The Committee ascertained that the statements of the gallery of supporters of the Steaua club generated a hostile, degrading, humiliating and offensive environment against the supporters of the opposite team, by frequently using with a negative meaning the term "gypsies" associated to slogans like "death...", "Antonescu was alive and he killed the gypsies" which resulted in offending the dignity of persons belonging to the Roma minority. The same effect was ascertained in the case of statements of Mr. G.S. to the coach of the team Rapid, Mr. R.L. "gypsy bastard". Through **decision no. 63 of 19.04.2005**, the Committee ascertained that the notified deeds are **direct discrimination** and it decided to sanction the Club Steaua Bucuresti by **fine** amounting to 4000 lei and Mr. G.S. with 2000 lei. Also, it was decided to issue a **recommendation** (art. 2 par. 1 and par. 3 and art. 19 of G.O. no. 137/2000).



128. Statements. Racial origin. Colour. Personal dignity. The Steering Committee of NCCD was self-notified as regards the statements of Mr. A.S. regarding the football players of African origin being part of the football team Universitatea Craiova. Mr. A.S., in an interview broadcasted within the news program of Realitatea TV station stated: : with the players on the internet and on all these crows, if I bring them to the zoo and show them to the children...look, the monkey! there is no distinction (...)". The Committee set down that the statements of the defendant promote an unfavourable image for the African players being part of the football team Universitatea Craiova and they generate a hostile, degrading, humiliating and offending environment against them. Through decision no. 73 of 26.04.2005, the Committee ascertained that the notified deeds are **direct discrimination** and it decided the sanctioning by **fine** amounting to 1000 lei (art. 2 par. 1 and 3, art. 19 of G.O. no. 137/2000, subsequently amended and supplemented).

129. Statements. Ethnic origin. Roma. Personal dignity. The Press Monitoring Agency Academia Caţavencu complained about the statements made by G.P. and E.N. during the broadcast "Checkmate" referring to persons of Roma origin who injure the image of Romania through their behaviour outside the borders. Thus, these states that "the members of the Roma ethnic group are more coloured ambassadors who embarrassed us in Europe or people outside the law". The defendants underlined the fact that "crime is "n" times higher among this ethnic group" or that "instead of being compared with a Latin nation (...), we are being compared with a nation originating from across India (...)". Through **decision no. 75/19.04.2005**, the Committee ascertained that the presented deeds are **direct discrimination** and they offend the dignity of persons belonging to the Roma ethnic minority. Also, it decided to sanction the defendant by **warning** (art. 2 par. 1 and 3, art. 19 of G.O. no. 137/2000).

130. Access to public educational institutions. Refusal. Ethnic origin. Roma. The Community Development Agency "Împreună" notifies the fact that two young Roma, students of the Social Assistance Faculty were expelled from the Headquarters of the Academy of Economic Studies. The two young men wanted to post to the Faculty notice board posters advertising a training program on a voluntary basis for Roma students within some non-governmental organizations. The young men were stopped by the security guard, who did not allow their access inside the institution. Through **decision no. 89 of 10.03.2005**, the Committee ascertained that the notified deeds are **discrimination** and it decided to sanction the defendant by **warning**. (art. 2 par. 1 and par. 3, art. 18).

131. Press article. Ethnic origin. Roma. Personal dignity. Romani Criss complained about the publishing of the article "The influx of Romanian beggars in the West, an issue of morality of public notaries". The Committee set down that the content of the article introduces an association between the image of the Roma community and immoral and illegal activities, which could generate a hostile, degrading, humiliating or offensive environment for the whole Roma community. Through **decision no. 93 of 01.04.2004**, the Committee decided that the notified deeds are **discrimination** according to the provisions of art. 2 par. 3 and art. 19 of Government Ordinance 137/2000 and it decided to sanction the defendant by **warning**. (art. 2 par. 3 and art. 19 of G.O. no. 137/2000).

132. Access to labour. Ads. Ethnic origin. Roma/Age. Multiple differentiation. Romani CRISS complained about the online publishing by S.C. Adrasim S of some employment ads on a specialized site. Two employment announcements were published: "I employ auto-mechanic with experience, age 30-40 years (Roma excluded)" and "manufacturers, dressmakers, Roma excluded". Through decision no. 97 of 17.05.2005, the Committee ascertained that the notified deeds are direct discrimination and it decided to sanction the employer company by fine amounting to 2000 lei and the company owner of the specialized site by fine amounting to 400 lei. (art. 2 par. 1 and par. 3, art. 7 par. 1 and 2 of G.O. 137/2000).

133. Statements. National origin. Hungarians. Personal dignity. M.V. complained about him being attacked in the public by B.S.during work hours. The defendant used insulting phrases referring to the Hungarian ethnic origin of the petitioner and forbade him to speak in front of him until he learns the Romanian language. Through decision no. 125 of 19.04.2005, the Committee found that the notified deeds were confirmed by the petitioner's work colleagues, as through references to nationality his personal dignity was injured, according to art. 2 par. 3 and art. 19 of G.O. no. 137/2000. The Committee ascertained the **discrimination** deeds and it decided to sanction the defendant by **warning**. (art. 2 par. 1 and 3, art. 19 of G.O. no. 137/2000, subsequently amended and supplemented).

134. Statements. Chanting. Sports manifestations. National/ethnic origin. Personal dignity. K.A. notified NCCD regarding the chanting of supporters of the hockey team Steaua Bucuresti during the match fought with S.C. Miercurea Ciuc. The chanting refer to the message "Hungarians out, out of the country!". Through **decision no. 135 of 02.06.2005**, the



Committee ascertained that the notified deeds are **discrimination**, as such messages could generate a hostile, offensive and humiliating environment for the members of the Hungarian community. It was decided to sanction the defendant by **fine** amounting to 500 lei (art. 2 par. 1, art. 19 of G.O. no. 137/20000, subsequently amended and supplemented).

135. Statements. Ethnic origin. Roma. Personal dignity. Several non-governmental organizations complained and the Steering Committee of NCCD was self-notified regarding the statements of Mr. A.S. published in the newspaper "Gardianul". Within the interview, the defendant states, among others: "It is true that I am in a war with the Gypsies in Craiova because they have no additional right", "I don't live in the same house with the Gypsies" and about Mr. V.N. he indicates that he is a "despicable, loathsome Gypsy", namely "jerks and tramps". The Committee set down that the language used generates a hostile, degrading and offensive environment against the Roma "ethnic group". Through decision no. 136 of 14.06.2005, the Committee ascertained that the notified deeds are **discrimination** and it decided to sanction the defendant by **fine** amounting to 1500 lei (art. 2 par. 1 and par. 3 and art. 19 of G.O. no. 137/2000, subsequently amended and supplemented).

136. Statements. Ethnic origin. Roma. Personal dignity. Ms. R.M. complains about the fact that some of her neighbours express insulting words towards her specifically referring to her ethnic affiliation and that of her children. (Roma ethnic group). Through **decision no. 144 of 11.05.2005**, the Committee ascertained that the notified deeds are **discrimination** and it decided to sanction the defendant by **warning**. (art. 2 par. 1 and par. 3 and art. 19 of G.O. no. 137/2000).

137. Press article. Ethnic origin. Roma. Personal dignity. Romani Criss complained about the content of the article entitled "Failed Gypsy putsch" regarding the behaviour of Roma ethnic origin persons. The article states that: "meeting the tanned minority left heavy traces on the premises of the Town Hall, worthy of a modern chemical-bacteriological attack. The chemical componency was given by the smell of a hundred or so Roma which forced the local administration officials to work with the windows open until the end of the program. The bacteriological attack was caused by the huge number of fleas and lice remained after the session in the Town Hall room". The Committee set down that through the references associated with the Roma origin persons their dignity was offended based on ethnical origin. Through decision no. 154 of 11.05.2005, the Committee ascertained that the notified deeds are **discrimination** and it decided sanctioning by **warning** (art. 2 par. 1 and par. 3 and art. 19 of G.O. no. 137/2000).

138. Statements. Chanting. Sports manifestations. National/ethnic origin. Personal dignity. NCCD was self-notified regarding the chanting of the supporters of the hockey team S.C. Miercurea Ciuc during the match fought with Steaua Bucuresti. The chanting refer to the message " stinking Romanians"., "Out, gypsies out of the country!". Through **decision no. 182 of 22.07.2005** the Committee ascertained that the deeds constitute **discrimination**, as such messages could offend the dignity of some communities of persons. It was decided to sanction the club with fine amounting to 500 lei. (art. 2 par. 3, art. 19 of G.O. no. 137/2000, subsequently amended and supplemented).

139. Access to employment. Competition conditions. Hungarian language. Residence. The Committee was selfnotified regarding the ad published in the local press for a competition of mechanics-tractor-driver, house painter, mechanic and doorman. Among the conditions for enrollment in the competition was imposed the knowledge of the Hungarian language and for the position of doorman the condition of permanent residence in the town. The Committee set down that under the law regarding local public administration, the knowledge of the national minorities' maternal language by employees may be required for positions which suppose relations with the public. For other positions, such a condition is not necessary. The residence condition is prohibitive and could restrict the labour right. In this context, the restriction of participation in the contest of persons who do not know the Hungarian language is clear and the existence of two restrictions is an aggravating circumstance, under art. 2 par. 4 of G.O. no. 137/2000. Through decision no. 183 of 22.07.2005, the Committee ascertained that the stated deeds are direct discrimination and it decided to sanction the defendant by fine amounting to 500 lei. (art. 2 par. 1 and art. 7 par. 2 of G.O. no. 137/2000 subsequently amended and supplemented).

140. Access to goods and services. Prohibition. Ethnic origin. Roma. Pro Europa League complained about the prohibition of access of Roma origin persons inside the shop Rich Life by posting the following ad at the entry: "Entry of Roma prohibited". Through decision no. 207 of **11.07.2005**, the Committee ascertained that the notified deeds are **direct discrimination** and it decided to sanction the defendant by **fine** amounting to 1500 lei (art. 2 par. 1 and par. 3, art. 18 of G.O. no. 137/2000, republished).

141. Access to goods and services. Real estate ads. Ethnic origin. Roma. Romani Criss complained about the on-line



publishing of real estate ads containing references to the ethnic structure of the area (expressions "zone without Gypsies", "village without Gypsies"). The Committee set down that by using the expressions in question there is an association between the Roma minority and the idea of disturbing the public order or that of increased risk. Through **decision no. 220 of 30.08.2005**, the Committee ascertained that the notified deeds are **discrimination** and it decided to sanction the authors of the ads by **fine** amounting to 400 RON (art. 2 par. 3, art. 19 of G.O. no. 137/2000, subsequently amended and supplemented).

142. Labour relationships. Appointment to public office. National origin. Romanians. Mr. G.C. complained against the mayor regarding the pressures made on the general director and inspector of the school against his appointment as deputy of the school. The petitioner claims that there was pressure regarding the revision of the decision in order to appoint a person of Hungarian nationality on the position of deputy director of the school and not a Romanian nationality person. The Committee set down that apparently neutral reasons were stated in the case regarding the suppressing of the position, however the effect generated put at disadvantage persons in comparable situations, namely the Romanian community. Through decision no. 222 of 07.04.2005, the Committee ascertained that the notified deeds are indirect discrimination and it decided to sanction the defendant by warning. (art. 2 par. 2 and par. 3, art. 6 lett. d of G.O. no. 137/2000).

143. Press article. Ethnic origin. Roma. Personal dignity. The National Museum of Agriculture complained about the publishing of the article "What the bald misses, a pearl cap" which contains generic references to ethnic minorities. Among others it is stated that: "It is not enough that Gypsies are everywhere around us and because of them doors are closed before us (...)", "as if the Gypsy has ever known what is agriculture or what it is made up of", "Well, if the Gypsy teaches us agriculture", etc. The Committee set down that through the statements charged the dignity of Roma citizens is offended, generating a hostile and offensive environment against them. Through **decision no. 238 of 31.08.2005**, the Committee ascertained that the notified deeds are **discrimination** and it decided to sanction the defendant by **fine** amounting to 1000 lei (art. 2 par. 3 and art. 19 of G.O. no. 137/2000 subsequently amended and supplemented).

144. Public administrative services. Evacuation. Ethnic origin. Roma. The petitioners complained about their evacuation from the market, from a field surface leased by the town hall, because of their ethnic affiliation. The Committee set down that as regards the termination of lease contracts, this was directed primarily against persons of Roma origin compared to other persons whose contracts were not terminated. Although apparently neutral reasons were stated, the measures touched petitioners of Roma origin. Through **decision no. 250 of 14.06.2005**, the Committee ascertained that the measure implemented by the defendant had **discriminatory** effects. It was decided to sanction the defendant by **warning**. (art. 2 par. 1, par. 2 and 3, art. 5 of G.O. no. 137/2000).

145. Officiation of religious services. Maternal language. Refusal. National minorities. The Association Sfântul Ștefan Pustiana complained about the fact that it notified several times the Episcopate of Iași regarding the officiation of services in maternal language, but they were refused. In this regard, it is shown that for the request of officiating the funeral services in the maternal language (Hungarian), this request was not fulfilled. The Committee set down that the right to religious expression of persons belonging to the national minority was restricted, which may lead to unwanted effects regarding the preservation of essential elements of identity, religion or language. The Committee ascertained that the statutes of the cult promote the principle of use of the maternal language in pastoral services, without obstacles as to the use of the maternal language, being up to the bishop of priest to decide, as appropriate. Through **decision no. 278 of 27.10.2005**, the Committee ascertained that by refusing to officiate religious ceremonies in the maternal language a differentiated treatment is applied and the right to the religious expression of persons belonging to national minorities is restricted. (art. 2 par. 1 of G.O. no. 137/2000, subsequently amended and supplemented).

146. Press article. Ethnic origin. Roma. Personal dignity. The Committee was self-notified regarding the content of the article entitled "Don't discriminate Gypsies". The article contain references to the Roma ethnic group, making an association between the image of the Roma community and activities which break law and morals, such as theft, laziness, filth, association which generates a hostile, degrading, humiliating and offensive environment against a community. Through **decision no. 316/23.08.2005**, the Committee ascertained that the retained deeds are **discrimination** and it decided to sanction the perpetrator by **fine** amounting to 500 lei (art. 2 par. 3 and art.19 of G.O. no. 137/2000, subsequently amended and supplemented).

147. Publishing of statistical data. Mention of ethnic origin. Roma. Crimes. Gazeta Văii Jiului and Romani CRISS



complained about the publishing on the site of the County Police Inspectorate H. of certain notices regarding crimes, which mention the ethnic origin of certain perpetrators as compared to others, whose ethnic origin is not mentioned. The Committee set down that by publishing unverified information and with strict reference to the ethnic affiliation of some perpetrators only, a negative image of the Roma community was generated. Through **decision no. 351 of 14.11.2005**, the Committee ascertained that the notified deeds are **discrimination** and it sanctioned the defendant by **warning**. (art. 2 par. 3 and art. 19 of G.O. no. 137/2000 subsequently amended and supplemented).

148. Evacuation. Displacement and location of houses near the water purifying station. Ethnic origin. Roma. A.I. complained on behalf of several Roma families regarding the fact that following evacuation from a building in a state of degradation, they were displaced immediately near the water purifying stations, in improper conditions in terms of environment and housing. The Committee set down that the right of those families to a healthy environment was interrupted, as the authorities could have found an alternative to the area where the location was settled. Through **decision no. 366 of 23.08.2005**, the Committee set down that the notified deeds are **discrimination** and it decided to sanction the defendant by **fine** amounting to 4000 RON (art. 2 par. 1,2 and 3, art. 17 of G.O. no. 137/2000, with amendments and additions).

XI. Ascertaining solutions issued in 2006

149. Political statements. Ethnic origin. Roma. Personal dignity. European Center for Roma Rights complained about the public statements made by Mr. C.V.T. during a broadcast by Radio Romania, which were printed by the newspaper Romania Mare and available on the website of the publication. Among others, were issued opinions on persons belonging to the Roma community, in comparison with the majority population: "the gypsies, thieves and rapists threaten", "if some Romanians defended their honour and did not allow some beasts with human face to slaughter them, beasts who always robbed them and abused them, they must also leave their villages, where their parents and ancestors lived", "who defends people with fear of God from some beasts who would immediately grab a knife, an axe or a ninja-sword"? "Romanians, defend your brothers from the wounded heart of Romanian Transylvania!". Defend them both against Gypsy attacks and raids and against the abuses of a political regime willing to leave death bodies behind hoping to be praised by some slyboots who do nothing in a Europe where, because of this extremely corrupt regime, we will not be accepted...". The defendant claimed that his statements express a political opinion, formulated in his capacity of representative of the Parliament. The Committee set down that the statements under analysis emphasize references to persons in which a distinction is made on the criterion of ethnic origin. The assessment, approach and presentation of the people's situation is diametrically opposite, thereby infringing the dignity of persons belonging to the Roma community. On the other hand, the Committee set down that the statements were made as a senator, as a representative of a political party within a radio broadcast of a political nature, being restricted to supporting the political platforms of parties, thus it was not decided to apply a contraventional sanction. Through decision no. 9 of 17.01.2006, the Committee set down that the notified deeds cumulatively meet the elements of direct discrimination (art. 2 par. 1 and 3 and art. 19 of G.O. no. 137/2000, republished).

150. Statements. Racial origin. Colour. Personal dignity. N.I.C complained about the statements made by the building manager to her husband, Mr. N.A. In a discussion in which there was a witness, a co-habitant with Ms. N.I., the building manager used insulting words against the husband of the petitioner, such as " crow fallen from the tree who came to establish order in his building" or "this nigger came to establish order in my building". Following the investigations and affirmative statements of the parties that there was a verbal conflict with racist meaning from Mr. S.I., through decision no. **42 of 09.02.2006,** the Committee ascertained that the statements in question are a **direct discrimination** and they offend personal dignity. Also, it was decided to sanction the defendant by **warning** (art. 2 par. 1 and art. 19 of G.O. no. 137/2000, republished).

151. Press articles. National origin. Lipovans. Ukrainians. Personal dignity. D.N. complained about the publishing of certain articles which concern his situation or that of Romanian citizens of Ukrainian nationality which use defamatory statements or comments. The articles entitled: "C.I. accuses N.M. of murder", "C.I. sued the poet N.D. for slander", "After elections: from animal to a people of jerks is just a step" comprise, among others references like: "A Lipovan or an Ukrainian



or a Kalmyk from lasi (...), a double for "marcutizați" like them who speak and write the Kalmyk language at home, a Lipovan animal, this person who is from a violent minority, a Lipovan from Northern Moldavia, a second hand minority". Analyzing the articles and charged statements, through **decision no. 46 of 19.01.2006**, the Committee set down that these have a **discriminatory nature**, resulting in offending the personal dignity, based on national origin. The defendant of this case was sanctioned by **warning**. (art. 2 par. 1 and 3 and art. 19 of G.O. no. 137/2000, subsequently amended and supplemented).

152. Education. Segregation. Ethnic origin. Roma. NCCD was self-notified following the publishing of a press article reporting on the establishment of separate classes for Roma children in a school in Tulcea county. Following the investigations, it was found that the distribution of Roma children was uneven, with imbalances between the majority children and minority Roma children. The parents of Roma children expressed their discontent regarding the situation generated by the management of the school and as a result of defective management, the school director was dismissed. The Committee set down that through the measures taken by management, by establishing separate classes, the Roma children were disfavoured and thus an indirect discrimination occurred. Through decision no. 75 of 02.03.2006, the Committee ascertained that the notified deeds are discrimination and it decided to sanction the management of the school by warning. (art. 2 par. 2, art. 2 par. 3 of G.O. no. 137/2000, subsequently amended and supplemented).

153. Tenancy. Structure building. Ethnical origin. Pro Europa League, Miercurea-Ciuc Office complained about the existence of a concrete wall on street Varadi Jozsef of Sf. Gheorghe, built at the end of the 80s, which separates persons who live in the two buildings built in that area of the town, namely Romanians and Hungarians from Roma. The City Hall argued in favour of maintaining the position of the wall, with the purpose of maintaining peace and security for the inhabitants of neighbouring buildings. After investigating the notified issues and following the presentation of the contradictory allegations of the parties, the Committee retained that the purpose of building a concrete wall was to separate the majority population from the Roma citizens from the area. Through decision no. 108 of 28.02.2006, the Committee ascertained that the notified deeds are **direct discrimination** and the presence of the wall which separated the buildings in question could offend the dignity of persons based on ethnic origin. NCCD recommended that the defendant undertake all measures to eliminate the ascertained **discriminatory situation** (art. 2 par. 1 and par. 3 of G.O. no. 137/2000, subsequently amended and supplemented).

154. Education. Teaching methodology. Capacity certificate and school graduation. Equality. National minorities. Hungarians. H.P. and others, the Hungarian Civic Union, Commission of Parents of Mikes Kelemen High School, the Parliamentary Group of UDMR (Union of Democrat Magyars of Romania) from the Chamber of Deputies complained about the methodology of teaching Romanian language for the members of national minorities and regarding the capacity and baccalaureate exams compared to the pupils who attend Romanian language teaching schools. Setting down the aspects notified by the parties and the statements of the Ministry of Education, the Committee appreciated that the pupils belonging to national minorities and the majority ones are in sensibly different situations in the educational process. The pupils belonging to national minorities are not native speakers of the Romanian language and outside the educational system, they have no possibility to exercise and use the official language like the citizens native speakers of Romanian language. Taking into account the results and statistics which show a low average of passing the exam among pupils belonging to national minorities, it is found that there can be negative consequences and it is necessary to establish an optimum methodology of teaching Romanian language to national minorities and of assessing their knowledge. Through decision no. 126/05.05.2006, the Committee recommended that the Ministry of Education set up a specialized commission to draw up proposals of measures to provide the learning of the official language of the state under equality conditions for Romanian citizens belonging to national minorities. (art. 16 par. 1 of the Constitution in conjunction with art. 120 par. 1 of Law no. 84/1995).

155. Musical composition. Ethnical origin. Roma. Personal dignity. The Press Monitoring Agency and Romani Criss complained about the lyrics of a song composed by a festivity music interpreter. The chorus of the song was broadcasted in the press, on the website of Gazeta Sportului and on various TV stations. In essence, the song includes references to the ethnical affiliation of the Roma community, using phrases like "crow". The defendant showed that this phrase did not refer to the Roma group, but to the whole gallery of the football club Rapid Bucuresti. Through **decision no. 168 of 07.07.2006**, the Committee ascertained that the lyrics of the song broadcasted on various TV stations have a **discriminatory content**, based on ethnic origin and could result in offending the dignity of Roma origin persons. In this case the contraventional sanction was not decided, considering the lack of public character, in first instance of broadcasting the song. The Committee decided to issue a **recommendation** to the defendant (art. 2 par. 1 and par. 2 of G.O. no. 137/2000, subsequently amended and supplemented).



156. Public statements. Association with ethnic origin. Roma. Personal dignity. NCCD was self-notified regarding the statements of Mr. C.N. made in the press against Mr. M.V: (...) I don't think that a crow, namely M.V. can be a spokesman for our party (...)". The defendant showed that the use of the term "crow" was unfortunate, as the idea he wanted to express is that a person who "migrates" cannot subsequently become a spokesman of the party, without harming its image". The Committee set down that through the statements in question are implicitly made distinctions on the criterion of ethnic origin by association. The person subject to the statements in question enjoys fame in the public and political life and regarding his possible ethnic affiliation, he did not consider it was necessary to justify it, despite speculations published in the press. It is everyone's right to self-identify as belonging to an ethnic or national group and others have no prerogative to acknowledge that a person belongs to a certain ethnic group or another. On the other hand, in the public space, the use of the phrase "crow" is obviously associated with ethnic, racial affiliation or colour of certain categories of persons. In its case-law, NCCD found that the use of this phrase offends personal dignity, based on ethnic origin and constitutes discrimination. Through **decision no. 251 of 07.06.2006**, the Committee set down that the notified deeds are **direct discrimination** and through the effect generated they offend personal dignity (art. 2 par. 1 and art. 19 of G.O. no. 137/2000, subsequently amended and supplemented).

157. Articles. Statements. Ethnic origin. Roma. Personal dignity. Romani Criss complained about the content of some articles posted on the website of Noua Dreapta, considering that that they promote a behaviour which aims to offends dignity and create a degrading and offensive environment against the Roma minority. The defendants did not formulate points of view. The Committee set down that through the articles mentioned the persons belonging to the Roma community are generically classified as violent, aggressive, illiterate, offenders, etc, identifying the Roma community as a whole with Mafia clans, with prostitution, usury, drug trafficking and other illegal and anti-social activities, inciting to racial hatred. It was set down that through the expression used in the articles, personal dignity was offended, based on ethnic origin. Through decision no. 271 of 12.09.2006, the Committee set down that the notified deeds are direct discrimination and it decided to sanction Mr. T.I. by fine (1000 RON) and Mr. N.C. (1500 RON), Mr. P.V.M. by warning and it also sanctioned Noua Dreapta organization, through representative for publishing on its website articles with discriminatory content, by fine (2000 RON). (art. 2 par. 1 and par. 3, art. 19 of G.O. no. 137/2000, subsequently amended and supplemented).

158. Access to goods and services. Real estate ads. Ethnic origin. Roma. Romani Criss complained about the publishing on the internet, on advertising websites or specialized newspapers, to the section real estate ads, rent or sale of houses of certain ads referring to ethnic origin. The ads regarding the renting or selling of spaces or houses comprised references to the condition of buildings, namely "Building without Roma" or " peace without Roma" or renting interdictions " no Roma". The defendant endeavoured to eliminate ethnic references. Through **decision no. 306 of 14.11.2006**, the Steering Committee found that the ads had a **discriminatory nature** based on ethnic origin and it **recommended** that further efforts be made to avoid the publishing of this kind of ads on the site (art. 2 par. 1 and 3 and art. 19 of G.O. no. 137/2000, republished).

159. Statements. Ethnic origin. Roma. Personal dignity. B.A., local counsellor, representative of Roma complained about the fact that one of his colleagues, V.E. insulted him, using terms like "crow" "stupid Gypsy", "animal", etc. within a meeting attended by several people. The defendant denied the allegations in question, still admitting that he would have said "we are worse than the Gypsies" because of repeated quarrels. Following the investigation and the statements of persons attending the session in question, the Committee ascertained that the statements were alleged by the defendant. The terms used for based on and promoted stereotypes and prejudices about the Roma ethnic group and their use in the public space generated a hostile, degrading and offensive image of it. Through decision no. 309 of 14.11.2006, the Committee ascertained that the notified deeds are **direct discrimination** and it decided sanctioning by **warning** (art. 2 par. 1 and 3 and art. 19 of G.O. no. 137/2000, republished).

160. Access to goods and services. Prohibition. Instruction to discriminate. Ethnic origin. Roma. Romani Criss complained about Mr. B.N. being refused to be served in a bar because of his membership to the Roma group. In this regard, it was shown that at the bar entry a notice was posted which contained the following: "pupils, minors, Roma, homeless will not be served in this bar". The Committee retained that in this case a restriction was imposed related to the membership of the Roma group of one person and the notice posted at the bar entry is an instruction to forbid access to the bar and refusal to provide services, which constitute direct discrimination. Through decision no. 317 of 28.11.2006, the Committee set down that the notified deeds are discrimination deeds and it decided to sanction the defendant company by fine amounting to 1000 RON (art. 2 par. 1 and par. 2, art. 10 lett. f, art. 19 of G.O. no. 137/2000 subsequently amended and supplemented).



XII. Ascertaining solutions issued in 2007

161. Access to public interest information. National origin. Language. Romanians. The Civic Forum of Hungarians from Harghita and Covasna complained about the editing and publishing by the City Hall of Sf. Gheorghe, from public funds and only in the Hungarian language of a monthly public information magazine. They consider that the Romanian citizens in the city were deprived of their right of access to public information and the possibility to be informed on the activity and decisions adopted by the authorities of the local Government. The defendant showed that the public information included in the magazine can also be accessed on the webpage of the authority and through the weekly conferences of the mayor. The Steering Committee set down that the magazine published in Hungarian language includes, besides Decisions of the Local Council Sfântu Gheorghe, other public interest information. In the case it was set down that a distinction was made between persons in comparable situations, Romanian citizens of Romanian nationality and Romanian citizens of Hungarian nationality by which is perturbed the right of access to public interest information. Through **decision no. 26/09.02.2007**, the Committee ascertained the existence of a **direct discrimination** deed and it decided the sanctioning by **warning**, to issue a **recommendation** in order to endeavour to publish the magazines in a bilingual version (art. 2 par. 1 and 3 of G.O. no. 137/2000, on the prevention and sanctioning of all forms of discrimination, republished).

162. Statements. Ethnic origin. Roma. Personal dignity. Romani CRISS, The European Forum of Roma and Travellers complained about the statements made by President T.B. against journalist A.P. "Hey, chick, don't you have anything to do today?" and "How aggressive was this stinking gypsy". With regard to the statements which refers to ethnic origin, the Committee retained that the phrases forming the content of the statement are offensive per se and have a humiliating effect, being an insulting appreciation tightly related to a stereotyped perception associated to an ethnic group, i.e. the Roma, similarly to generalized subjective perceptions of discriminatory nature, the kind with which this ethnic group is associated. The Committee considered that the decision to issue a private conversation falls within the right of information as part of the freedom of expression, to the extent the content of the private conversation is of public interest. The Committee did not question the good faith of T.B., but it found that the use without intention of language with discriminatory effects in the private space could have negative effects in the society by generating and unfair or degrading treatment for a community, when these formulations are made public. The Committee set down that the use of a language with discriminatory effects in the private space, without intention to discriminate, but that is subsequently made public has negative effects in a society in which the image of persons belonging to the Roma community is negative among the majority population. The Committee set down the application of the principle" Nobody is allowed to rely on his own incorrectness to obtain the protection of a right". Through decision no. 92 of 23.05.2007, the Committee ascertained that the notified deeds regarding ethnic origin are direct discrimination and it decided sanctioning by warning and by issuing a recommendation. (art. 2 par. 1 and par. 4 of G.O. no. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished).

163. Education. Segregation. Ethnic origin. Roma. Romani CRISS complained that within the Auto High School, the pupils of Roma origin were separated from the majority pupils. In the same regard it emphasizes the non-involvement of teachers who lecture in classes composed only of Roma pupils, which is why Roma children don't know how to write and read. The defendant argued that in the school there are no classes formed on the ethnic criterion. Analyzing the issues raised by the petitioner, the Committee found that in the structure of the school year there were two classes made up exclusively on the criterion of ethnic affiliation. This is a form of discrimination, in terms of setting up and maintaining classes composed of children of certain ethnic origin. Through decision no. 103 of 25.05.2007, the Committee set down that the notified deeds regarding the maintenance of separate classes is direct discrimination and it recommended that the management of the school and School Inspectorate adopt the required measures so that the desegregation process ends as rapidly as possible. (art. 2 par. 1 and 3 of G.O. no. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished).

164. Statements. Comments. Internet postings. Ethnic origin. Roma. Personal dignity. The Institute for Public Policies complained about the fact that on the websites of newspapers Adevărul and Cotidianul the readers were allowed to post insulting comments against the Roma ethnic group, in response to certain articles published by the two newspapers. The publications endeavoured to eliminate messages with insulting content and introduced filters to eliminate certain phrases like: crows, bozgor (i.e. jargon for Hungarian), Jew, filthy Jew, etc. Through decision **no. 300 of 15.08.2007**, the Committee set down that the opinions expressed and posted on the forums of newspapers Adevărul and Cotidianul have a **discriminatory** (direct) nature and it recommended that the management of the two publications endeavour to ban the posting of such



comments (art. 2 par. 1 of G.O. no. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished).

165. Access to goods and services. Prohibition. Instruction to discriminate. Ethnic origin. Roma. Romani CRISS complained about the fact that a group of persons of Roma origin was denied access in a discotheque. A group of five young Roma with a dark complexion and another two persons, also of Roma origin, but with a pale complexion wanted to enter into Bavaria club. The first group was stopped by the security personnel who told 5 young men that they cannot enter and asked their student cards. The two persons with a pale complexion entered into the discotheque without being requested to submit the student cards. As the members of the first group insisted to find the reason why their access is not allowed, the security personnel specified that "the owner supports racial hatred". Asking if this means that the Gypsies are not allowed to enter, the answer was affirmative. The Committee retained the breach of access to the public places due to affiliation with the Roma ethnic group, through the prohibition the Roma group was subjected to in comparison to the other youngsters, generating a disadvantageous situation. Through decision no. 307 of 28.09.2007, the Committee decided that the notified deeds are direct discrimination and it decided to sanction the defendant by warning (art. 2 par. 1, art. 10 and art. 14 of G.O. no. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished).

166. Education. Segregation. Ethnic origin. Roma. Romani CRISS complained about the fact that within the high school, R., the Roma origin pupils were separated from the majority ones. In the school year 2003-2004, the County Inspectorate has established a class of learning only for Roma children under the management of the Special School. Subsequently, in the school years 2004-2005 and 2005-2006 the establishment of classes only for Roma children was continued and 3 rooms were arranged for each class and a room for the kindergarten room. School no. 3 was merged in September 2006 with High School R and was administered by the latter. For pedagogical reasons and of peculiarity of children concerned, differences from educational, cultural perspectives, due to the principle of continuity in the class, the management of the school, in agreement with the teachers of the school decided that pupils of Roma origin of classes II, III and IV remain in their initial classes until the end of the primary cycle. The Committee set down the specific regulations of the Ministry of Educations that forbade the segregation of Roma children. It set down that in analyzing some specific situations, such as those regarding Roma pupils, one must take into account the specific interests of children, the educational process and non-discrimination principles. In this regard, it must be ensured a fair balance between the interests of the school and those of the pupils, but pedagogical or continuity principles should not separate children of a certain ethnical origin, but ensure effective equality in the educational process. Through decision no. 338 of 03.09.2007, the Committee set down that the notified deeds, in this case the establishment of separate classes, their maintenance and displacement in the same structure in terms of ethnical composition, as regards the effect created assume a discriminatory treatment. The Committee recommended that the defendants endeavour to prevent and eliminate segregation according to the Order of the Minister of Education no. 1540 of 19 July 2007 regarding the prohibition of school segregation of Roma children (art. 2 par. 1 of G.O. no. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished).

167. Economic activity. Roma. Impeding the legitimate commercial activity. S.C. Micii comercianți complained that it is discriminated on the ethnical criterion by the Town Hall and the Local Council since, over a year they have been delaying assigning the surface that the 28 members of Roma origin together with other traders used at that time to carry out legal commercial activities. The defendant showed that the surface referred to by the petitioner is in the public domain and the refusal to lease the required surface is related to the crisis of parking places. Through decision no. 396 of 12.11.2007, the Committee set down that the notified deeds constitute **indirect discrimination** and it **recommended** the assignment of a proper space in order to carry out the trade activity for the Roma citizens (art. 2 par. 3, par. 4 in conjunction with art. 2 par. 1 of G.O. no. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished).

168. Press article. Ethnic origin. Roma. Personal dignity. H.M., C.A. and Asociația Romilor Ursari complained about the statements of the author made in an article published in newspaper "Flacăra Iașului" in which an anti-social behaviour is collectively assigned to "Gypsies", about which, among others it is stated that they "infect cities" and are "abortions of society". The Committee retained that the notified deeds infringe the right to dignity of persons belonging to the Roma community. Through **decision no. 416 of 28.11.2007**, the Committee ascertained that the notified deeds are **discrimination** deeds and it decided to sanction the defendant by **warning** (art. 2 par. 1 and par. 4, art. 15 of G.O. no. 137/2000, republished).



XIII. Ascertaining solutions issued in 2008

169. Press article. Statements. Ethnical origin. Roma. Personal dignity. C.A, Asociația Romilor Ursari, Romani CRISS, Asociația Tinerilor și Studenților Romi "Romanitin, Asociația "Şansa Romani", Fundația "Hope", Asociația Comunitară "Amaroilo", Asociația Culturală "Barbu Lăutaru", Asociația "Interconcordia" complained about the content of the article published by D.S. in newspaper "Flacăra lașului" regarding persons belonging to the Roma community. The petitioners considered that the defendant developed two ideas, namely that crime is a defining feature of the Roma ethnic group and that the use of violence against Roma is the solution to this problem. The author of the article stated that he did not discriminate anyone, considering that only education, decency and common sense could save the Roma from the troubled image they have among the majority population. Through **decision no. 91 of 18.02.2008**, the Committee established that the notified deeds, namely the content of the article with references, among others to "stinking Gypsies", "Gypsies giver birth like rabbits, only to grab with their stinking paw the allowance of some poor children", "snotty child attached to a wretched, floral, stinking skirt (...)", "I know Gypsies (...) they make big hits and leave no traces", "the other fools play adultery, they really stress us, they exasperate us (...)" etc, breach the right to dignity of persons belonging to the Roma community and it sanctions the defendants by **warning** (art. 2 par. 1 and par. 4, art. 15 of G.O. no. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished).

170. Statements. Ethnical origin. Roma. Personal dignity. N.I and N.I. showed that defendants V.L., N.L. and A.L. addressed to them words like: "dirty Gypsy", "you damn Gypsy" "Gypsies, soiled, dirty, thieves, bandits, crows, caw-caw". The defendants claimed that they are in an older state of conflict with the petitioners related to aspects of using the property utilities. The Committee set down that the charged statements have a content based on ethnical associations related to a reprehensible behaviour which could offend, based on a stereotype perception associated with an ethnic group, of discriminatory nature. Through decision no. 101 of 18.12.2008, the Committee found that the notified aspects are direct discrimination and it decided sanctioning by warning. (art. 2 par. 1 in conjunction with art. 14 of G.O. no. 137/2000, republished).

171. olitical statements. Statements. National origin. Jews. Personal dignity. C.D. complained against B.N. on anti-Semitic accusations brought during the session of the local council. The defendant stated among others that the "petitioner belongs to an extremely naughty and virulent minority" that he "suspects him (...) of hatred against humankind or let's say against Romanian people, considering himself a counsellor much above the humble person, it's a word I really want to say about the simple humble man who belongs to the people (...)". The Committee set down that the charged statements, in a context in which the petitioner's ethnicity was notorious (Jew) allowed to retain the idea that it was all about his nationality. Through **decision no. 103 of 18.02.2008**, the Committee ascertained that the statements of the defendant are acts of **discrimination (harassment)** and it decided sanctioning by **warning** (art. 2 par. 5 of G.O. no. 137/2000, republished).

172. Statements. Ethnical origin. Roma. Personal dignity. C.C. notified the fact that the director of the Cultural Center requested local counsellors and the mayor to assign a sum of money for the repairment of the roof, since a cultural event was supposed to be held, but the authorities did not make available the required money, instead they allowed the events to be organized in the hall of the new premises of the Town Hall. The mayor asked that the Roma persons do not have access to the cultural act, since they destroy and soil the room ("Don't bring me all Gypsies here. I'll tell you how we stay, I don't want to destroy here Madame, let's organize something organized (…), not with seeds and football (…)". The Committee retained that the attitude of the defendant was based on a stereotype perception associated with the Roma ethnic group, with an obvious negative connotation related to a certain reprehensible behaviour extended to the whole community. Through **decision no. 146 of 27.02.2008**, the Steering Committee decided that the statements of the defendant have a **discriminatory (direct) nature** and it decided sanctioning by **warning** (art. 2 par. 1 and par. 5 in conjunction with art. 15 of G.O. no. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished, warning).

173. Statements. Ethnical origin. Roma. Personal dignity. C.E. complained about the fact that the local mayor decided to sell the land under the house and demolish the building where she lived and it also attributed certain statements to him ("kill the Gypsies, demolish houses over the herd of Gypsies, because you've been paid so that no stone remained and no Gypsy"). The defendant showed that the through the social policy promoted is guaranteed the effective access to a workplace, to a house, to social assistance, to education. On the street where the petitioner lived, the Town Hall had a number of buildings



intended for social use. These houses had high levels of degradation and for that reason the local council decided to sell the land and ensure sanitary living conditions to the tenants. Through **decision no. 162 of 11.03.2008**, the Committee decided that the acts that aimed to evict the petitioner and the members of her family are not discrimination deeds. As regards the statements invoked, it was set down that these are offensive and they could offend dignity, being tightly related to the ethnic origin of the petitioner. The Committee ascertained that the statements are **discriminatory (harassment)** and it decided to sanction the defendant by **warning** (art. 2 par. 5 of G.O. no. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished).

174. Access to goods and services. Prohibition. Instruction to discriminate. Ethnical origin. Roma. H.C. complained about the prohibition of the access of Roma to an internet cafe. The petitioner showed that at the entry to the place was posted a notice which specified as follows: "Starting from the date of (...)Roma have no access to this internet cafe because we had many problems with them, every night they create scandals and beat (...)". The Committee set down that through the said notice was carried out a differentiated treatment based on ethnic origin, displayed in the public, by posting at the entry in the space designed for the general public of the instruction of not allowing access of persons of Roma origin. Through decision no. 180 of 18.02.2008, the Committee decided that the notified deeds are direct discrimination and instruction to discriminate and it applied the sanction of fine amounting to 600 RON to the defendant (art. 2 par. 1 and 2 in conjunction with art. 14 of G.O. no. 137/2000, on the prevention and sanctioning of all forms of discrimination, republished).

175. Press article. Statements. National origin. Jews. Personal dignity. Liga Pro Europa complained about the publishing of certain articles and cartoons in the number 8/2007 of the weekly magazine Európai Idö, by which is offended the right to personal dignity of the Jew community. The Committee set down that although the articles dealt with matters of general interest, they concerned the Hebrew community as a whole, blamed for the historical sufferings of the Hungarian nation, in conjunction with denial of the Holocaust and of methods used to exterminate the Jews. The characterization of the Jew minority such as "parasitism, greed, disgusting, domination, contempt, parasite fungus" for which the solution would be to retain it in its own state offend its dignity. Through decision no. 208 of 20.02.2008, the Committee decided that the deeds notified in the article "Who are the real anti-Semitic" are acts of **discrimination (harassment)** and to sanction the author by **warning (**art. 2 par. 5 of G.O. no. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished).

176. Education. Statements. Ethnic origin. Roma. Personal dignity. Asociația Roma ACCESS Tomis Constanța complained about the fact that the pupils of VIth class within the I.N.R. High School were addressed comments regarding their ethnic origin by teachers. Thus, it is shown that they were told: "Get into the classroom, filthy Gypsy who stank the hall. Close the door and the window so that you don't stink others and you die and we get rid of you because we had enough". The defendant denied the charged statements. As a result of investigations and evidence submitted **at the file, through decision no. 298bis of 27.05.2008, the Committee ascertained that the notified deeds are** discrimination and they breach the right to dignity of Roma persons and it decided sanctioning by **warning** (art. 2 par. 1 and par. 4, art. 15 of G.O. no. 137/2000, republished).

177. Education. Segregation. Ethnic origin. Roma. NCCD was self-notified as regards the separation of Roma origin children from the majority ones in various educational structures (schools and kindergartens) in Satu Mare county. The defendants did not dispute the fact that certain situations have led to de facto circumstances regarding Roma children. The Committee set down that the effect of establishment of schools, classes or groups composed exclusively of Roma children, their maintenance or compact displacement from one location to another, in the same ethnical composition gives rise to a circumstance of different treatment in terms of a direct discrimination. In this case it was noted that the school institutions made efforts to apply desegregation measures. They were unable to ignore the fact that the parents of Roma children, in some cases have preferred the enrollment of pupils to educational institutions placed in the Roma communities, as opposed to those established at significant distances from the community, to kindergartens with extended hours as opposed to those with normal hours, because of the limited financial resources or to special groups, because of the distribution of a food supplement for children. In the analysis of these cases, the best interest of the child and parents must be considered, given the membership to the Roma minority concurrently with the principle of non-discrimination, in order to achieve a fair balance between the interests of the school and those of children. Through decision no. 306 of 13.05.2008, the Committee ascertained that the separation de facto of Roma children in some schools is direct discrimination under art. 2 par. 1 of G.O. no. 137/2000 republished, but with reference to this situation it found that were drawn up and developed plans and measures of desegregation in order to ensure full equality of opportunities of Roma children in their access to education. Also, it was recommended endeavouring in order to prevent and eliminate school segregation (art. 2 par. 1 of G.O. no. 137/2000).



178. Education. Segregation. Ethnic origin. Roma. Romani CRISS complained about the separation of Roma children in 2 classes in the General School classes I-VIII K.M. and the establishment of a class exclusive for Roma children. The defendants indicated measures which were taken in order to correct the situation subject to analysis. Following the analysis of the documents of the file, the Committee found that the school made efforts to reduce school drop outs and ensure an appropriate average level through inclusive education, but also considered that fact that the CSI (County School Inspectorate) has recognized that Roma children were segregated. Through decision no. 330 of 27.03.2008, the Committee ascertained that the constitutive elements of a direct discrimination deed were met and it recommended that the school endeavour to desegregate classes formed of Roma children (art. 2 par. 1 and art. 2 par. 4 of G.O. no. 137/2000, republished).

179. Publication. National origin. Jews. Personal dignity. F.L. complained about the fact that his son was presented in a local publication on the first page associated with an ultra-Orthodox Jew. In the following number of the publication, this was associated with an officer wearing a Nazi uniform, named "the Dictator of the press" in conjunction with the title "Read in the next number shocking revelations about how F. tried to send some journalists in the "camp". Through **decision no. 338 of 04.06.2008**, the Committee ascertained that the deeds presented in the local publication, Buletin de Tecuci are **direct discrimination**, as they breach the right to dignity guaranteed by art. 15 of the persons belonging to the Jewish community and it decided sanctioning by **fine** amounting to 1000 RON (art. 2 par. 1 and par. 4, art. 15 of G.O. no. 137/2000, republished).

180. Access to goods and services. Refusal. Ethnic origin. Roma. Personal dignity. T.I. complained about the fact that he entered into the food store of defendant P.A. who forbade his access and addressed to him insulting expressions related to his ethnical affiliation. Thus, the petitioner claimed that the defendant attacked his son and nephew aged 8 and 9 years, addressing the following words: "F.you crows, get out!". When asked by the petitioner what is the problem about the children, he answered: "So what if they are with you? All crows out! Me and my brother will do so as not to catch a Gypsy around here!". Through decision no. 470 of 22.07.2008, the Committee set down that the deeds presented are direct discrimination in accordance with the provisions of art. 2 par. 1 and 4 of G.O. no. 137/2000, republished, breaching the right to dignity of Roma origin persons, guaranteed by art. 15 of the Ordinance, at the same time breaching the right of access to public places according to art. 10 lett. f and art. 14 and it decided to sanction the defendant by contraventional fine amounting to 1000 RON. (art. 2 par. 1 and par. 4, art. 15, art. 10 lett. f and art. 14 of G.O. 137/2000, republished).

181. Access to goods and services. Refusal. Ethnic origin. Roma. Personal dignity. Romani CRISS complained about the fact that a group of young people (with dark complexion) were forbidden from entering in a discotheque due to their ethnical affiliation, while a group made up of 4 persons with a pale complexion (of Romanian nationality) were allowed to enter. The first group of young people (dark complexion) was stopped by the bodyguards and it was explained to them that they cannot enter the premises of the club since it was let for the entire night. After the young people addressed repeated questions, one of the discotheque's employees mentioned that the owner decided that darker people not enter into the disco and that the only Gypsy who is allowed to enter is Mr. F. Meanwhile the other group of people with pale complexion entered without experiencing problems. Through decision no. 509 of 03.09.2008, the Committee ascertained the existence of a discriminatory treatment (direct discrimination) according to the provisions of art. 2 par. 1 and 4 and it decided to sanction the defendant by a civil penalty amounting to 1000 lei (art. 2 par. 1 and par. 4, art. 10 lett. f of G.O. no. 137/2000, republished).

182. Roma ethnicity. Discriminatory messages. N.D. complains about the statements taken by the defendant and published in the local press, namely articles which refer to the ethnicity of the petitioner and lack of involvement in community service, such as: "We do not want illiterate, drunken and Gypsies at the City Hall!", "If you want to be led by a Gypsy and a drunken, still vote the cross on the 15 June!!!", ,Vote O.Z. if you do not want to be led by King Misu Scrap Iron!". Through **decision no. 575 of 15.10.2008**, the Committee ascertained that the notified deeds fall under the provisions of art. 2 par. 1 (**direct discrimination**) and it decided to sanction the defendant by **warning** (art. 2 par. 1 of G.O. no. 137/2000, republished).

183. Regulatory provisions. Distribution of magistrates. Deciding between the positions of judge and prosecutor, at equal averages. National minorities. A.M. notified an alleged discrimination regarding the separation of candidates for the positions of judges and prosecutors based on ethnical affiliation. The petitioner argued that the application of art. 30 par. 6 of Law no. 303/2004 sets the prerequisites for a segregation of magistrates on ethnical grounds, limiting the rights of Romanian magistrates. The petitioner indicated that although the Romanian magistrates know a broadly used foreign language – English, French, etc. if they don't know languages of other cohabiting ethnic groups, they are discriminated and it



comes to a situation in which a person belonging to a national minority benefits of a privilege to the detriment of the majority. The Ministry of Justice mentioned that the provision in question is a separation criterion, additional, secondary of deciding between candidates who obtained equal average at the capacity certification, although these situations are rare in practice. The separation criteria are in sequence: the candidate should have worked at the court or prosecutor's office he chose and higher seniority in magistracy. Only if following the application of these two criteria candidates remain in equality, the third criterion will function, that of knowing the language of that minority. Through **decision no. 578 of 27.08.2008**, the Committee set down that the judicial proceedings in Romania take place in Romanian language and the parties are able to use their maternal language through a certified translator. The establishment of preferences, at equal averages for magistrates who know the language of a national minority has discriminatory effects in accordance with art. 2 par. 1 and par. 3 (art. 2 par and 3 of G.O. no. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished).

184. Press article. Ethnic/national origin. Tatars/Turkish-Muslims. Personal dignity. A.A. and I.A. complained about the content of the article published by the defendant in a local newspaper, with the subtitle – "The Turkish – better than Hogea". The article refers to the ethnical origin of the petitioner and was published an anonymous letter of a citizen that rhetorically asks the questions" "cannot be the Turkish replaced with a laborious and gifted Romanian…? It is considered that the article is based on the existence of a vexation regarding the initiative to place locally, where there is a significant Turkish population, of the bust of the reformer of modern Turkey. The Committee set down that the charged article expressly refers to the ethnical affiliation of the petitioner, and the designation of a third source to reinforce the opinions in the article, without making a dissociation, highlight discriminatory aspects. Thus, a person's ethnical affiliation cannot be regarded as relevant related to how a person exercises a certain function or prerogative, since between the competence and the incompetence and ethnical affiliation there cannot be a causality link. Through decision no. 613 of 13.11.2008, the Steering Committee ascertained that the notified aspects are **discrimination (harassment)** and it sanctioned the defendant by **warning** (art. 2 par. 5 of G.O. no. 137/2000, republished).

185. Education. Segregation. Special schools. Ethnic origin. Roma. Romani Criss complained about the placing of Roma origin pupils in schools for children with special needs. It is shown that the Roma pupils represent a percentage of about 90% of the school pupils in this case and they are enrolled in the institution because of their repeated years, without a special need of these children. The Committee retained that in some cases, the parents of children turn up directly to the special schools to enroll the children, given the facilities that the children enjoy. In practice, the system of assessment of pupils for enrollment in special schools, the financial and material support given to children have discriminatory effects. Statistically, it was found that the Roma pupils are the overwhelming majority of children in these schools, without existing, in all cases a medical objective reason which could justify enrollment. Through **decision no. 733 of 11.06.2008**, the Committee decided that the deeds presented in the petition are **discrimination** and it **recommende**d that the Ministry of Education endeavour to ensure the principle of the equality of opportunity in schools as well as to adopt measures in view of eliminating the discriminatory treatment applied to Roma pupils who were displaced from the mass schools to special schools on grounds of socio-economic needs (art. 2 par. 1,3 and 4 of G.O. no. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished).

186. Access to public interest information. National affiliation. Language. Romanians. D.T. complained about the fact that the internet page of the local public authority (Town Hall) comprises information of public interest only in Hungarian language and therefore persons of Romanian nationality who do not know Hungarian language have no access to information of interest to the local community. Referring to its case-law, the Committee set down that it issued a decision that there was discrimination through decision no. 26/09.02.2007 by which it ascertained that the publishing of information of public interest only in Hungarian language is discrimination and similarly, through decision no. 131/21.06.2007 that the publishing of information of public interest only in Romanian language is discriminated compared to Hungarian citizens through the impossibility to ensure equal access to public interest information in Romanian language. Through decision no. **736 of 16.12.2008**, the Committee ascertained the existence of a differentiated treatment (direct discrimination) and it recommended endeavouring to ensure the same information in Romanian language. (art. 2 par. 1 and 4 of G.O. no. 137/2000, republished).

187. Local public authorities. Organization of events. National affiliation. Romanians. Personal dignity. The Civic Forum of Romanians complained about the activities organized by the County Council within the public events regarding *"*The meeting of Hungarians from Covasna everywhere" and development of promotional materials only in Hungarian



language. It considers that the right of persons of a different ethnicity than Hungarian to participate to the event was restricted. The defendant considered that the treatment that gives to a group of persons additional rights based on national origin or other reasons cannot be considered as discriminatory to other persons and that nobody was excluded from this event. Advertising was done in Hungarian due to the fact that the event was designed for the Hungarians in the county that represent 74% of the population, but it also benefitted from strong mediation in Romanian language. The Committee found that the notified aspects were based on ethnic-national associations tightly related to actions and manifestations which could offend the dignity of some categories of citizens, based on their national affiliation, being disadvantaged through the fact that they could not acknowledge in their official language manifestations organized at the level of the local community, of public interest. Through **decision no. 815 of 02.12.2008**, the Committee found that the notified deeds are **discrimination** and it decided to issue a **recommendation** (art. 2 par.1 and 4, in conjunction with art. 15 of G.O. no. 137/2000, republished).

188. Access to goods and services. Refusal. Ethnical origin. Roma. Personal dignity. P.C. and others, persons of Roma origin complained about the fact that their access is prohibited in several places opened for the public in the locality. Following the investigations made at various restaurants and cafe-bars mentioned in the complaint, the Committee set down that the access of the petitioners was forbidden to the restaurant Covorul Verde, Laguna and Club Megaloss based on ethnic origin. Through **decision no. 856 of 18.12.2008**, the Committee found the existence of a **direct discrimination** by prohibiting the access or serving the persons of Roma origin and it decided sanctioning by warning of the defendants. (art. 2 par. 1 and art. 10 lett. f of G.O. no. 137/2000, republished).

189. Access to labour. Conditions for filling a public office. Knowledge of Hungarian language. National origin. A.M. complained about the competing of 12 positions by the defendant (DGFP Harghita) and the publishing of notices in the local press. The conditions for filling the positions stipulated, among others, knowledge of the Hungarian language. Analyzing the documents of the case, the Committee ascertained that imposing the knowledge of the Hungarian language aimed at positions which related to both activities with the public and positions which did not suppose such an activity. The Committee considered that for the positions which do not involve activity with the public, the given condition is not objectively justified to attain a legitimate aim and the measure was not commensurate to the aim pursued in fact. Through decision no. 43 of 01.09.2008, the Committee set down that partly the notified deeds are direct discrimination and it decided sanctioning by fine amounting to 1000 RON of the defendant (art. 2 par. 1 and art. 7 par. 2 of G.O. no. 137/2000, republished).

190. Access to labour. Conditions for filling a public office. Knowledge of Hungarian language. National origin. D.T. complained about the conditions for filling the position of Director at the County Library, competed by the County Council Suceava, in this case imposing the condition to know the Hungarian language. According to the nature of the job duties, the Committee found that imposing that given condition is not objectively justified. Through decision no. 775 of 16.12.2008, the Committee ascertained that the notified deeds are direct discrimination and it decided sanctioning by warning of the defendant (art. 2 par. 1 and par. 5 of G.O. no. 137/2000, republished).

XIV. Ascertaining solutions issued in 2009

191. Labour relationship. Local expert on Roma issues. M.S. complained about the suppressing and non-budgeting of the position of local expert on Roma issues in 2009. Although employed on a non-determined period, the local counsellors adopted a decision whereby they decided to suppress the position and implicitly not budget it. The Committee retained that through the governmental policy in the field of improving the Roma situations (G.D. no. 430/2001, subsequently amended and supplemented) it was provided to employ experts on Roma issues at local level. These measures took into account the different situation (socio-economic) of the Roma community towards the majority and pursued to strengthen the capacity of cooperation between authorities and the local community in order to improve Roma's living conditions. Considering that in this case it could not result that the purpose of these affirmative measures was attained at the level of the defendant local authority, the suppressing of the position, in the absence of objective and reasonable justifications had discriminatory consequences. In fact, the courts considered that the suppressing of the position was unlawful. Through decision no. 393 of **02.07.2009**, the Committee ascertained that the notified deeds are **discrimination** and it decided to sanction the defendants by **warning** (art. 2 par. 1, art. 2 par. 4 and art. 6 lett. a of G.O. no. 137/2000, republished).



192. Access to places open for the public. Ethnical origin. Roma. B.C. and S.M. complained about the fact that trying to get into the local swimming pool, their access was denied because of their ethnical origin. The defendant showed that their exclusion was due to the uncivilized behaviour and the scandal they provoked. Following the investigation of the case and presentation of contradictory claims of the parties, the Committee set down that the evidence of the file reveal that the refusal (differentiated treatment) was motivated by the ethnicity of the petitioners. Through **decision no. 135 of 26.02.2009**, the Committee ascertained that the notified deeds are **discrimination** and it decided to sanction the defendant by warning. (art. 2 par. 1 and art. 10 lett. f of G.O. no. 137/2000, republished).

193. Access to places open for the public. Ethnical origin. Roma. B.R. complained about the fact that he was not served and he was removed from the restaurant due to his ethnic origin. At the time of the incident he requested the intervention of the police and the defendant mentioned that he refused serving three people because one of them provoked a scandal on another occasion. Previously, the defendant stated that the petitioner cannot be served, since he has problems of personal body hygiene and smells badly". Setting down the evidence of the file, the Committee found that the grounds invoked could not reverse the assumption of the refusal to serve the petitioner on reason of his ethnicity. Through decision no. 244 of 14.04.2009, the Committee ascertained that the notified deeds are direct discrimination and it decided to sanction the defendant by warning (art. 2 par. 1 and par. 4, art. 10 lett. f and art. 14 of G.O. no. 137/2000, republished).

194. Statements. Ethnical origin. Roma. Personal dignity. P.G. complained about neighbours B.T. and F.L. regarding the statements addressed against her with direct reference to her ethnic origin. Trying to enter the building where she lived she was accused that a " a Gypsy as disgusting and filthy as her has no place in the attic". Among others, she was accused that "they feel sick only when they think that they are neighbours with a filthy crow". Following the investigation and the contradictory allegations of the parties, through **decision no. 373 of 02.07.2009**, the Committee ascertained that the notified deeds are **harassment** and it decided to issue a **recommendation** to the defendants. (art. 2 par. 4, art. 15 of G.O. no. 137/2000, republished).

195. Statements. Ethnical origin. Roma. Personal dignity. M.S. complained about the statements made during a meeting of the local council against persons of Roma origin, classified as " paunchy Gypsies" and accused that "because of them are thrown rocking chairs and benches in ditches". The defendant showed that the statement was not made with the intention to discriminate, but to indicate the ethnic origin of persons in question. The Committee set down that mentioning the ethnicity, adding some generic characterizations and charging of facts based on stereotypes could create an intimidating environment, based on ethnic origin. Through **decision no. 558 of 19.11.2009**, the Committee ascertained that the notified deeds are **harassment** and it decided to issue a **recommendation** to the defendant (art. 2 par. 5 of G.O. no. 137/2000, republished).

196. Statements. Ethnical origin. Roma. Personal dignity. R.G. complained against D.D. regarding the statements addressed against him referring to his ethnicity. The petitioner showed that he developed an undertaking in the city and the director of the market told him: "you, crows, disappear from here until I come back from the City Hall". Following the investigation and submission of evidence at the file, the Committee set down that the expressions used could harm the dignity of the petitioner compared to other persons, taking into account the explicit references to his ethnicity. Through decision no. 268 of 28.04.2009, the Committee found that the notified aspects are **harassment** and it decided to sanction the defendant by **warning** (art. 2 par. 5, art. 15 of G.O. no. 137/2000, republished).

197. Statements. Ethnic origin. Roma. Personal dignity. Partida Romilor Pro Europa complained about the public statements which incited to racial hatred and violence against the Roma community, statements made during the meeting organized by Asociația Noua Dreaptă on 20.09.2008 in Timisoara. The Committee retained that the speeches made during the meeting were associating the Roma community with various crimes, using insulting phrases against the Roma community. Through **decision no. 400 of 22.07.2009**, the Committee set down that the notified deeds are **discrimination** and it decided to sanction the defendant by **warning** (art. 2 par. 5 and art. 15 of G.O. no. 137/2000, republished).

198. Statements. Ethnical origin. Roma. Personal dignity. NCCD was self-notified regarding the statements of Mr. G.B.: "These Gypsies of Rapid swear at me in Piatra Neamt, in Ploiesti and Bacau! No Rapid supporter will enter into Ghencea anymore, Gypsies should go home to swear!". The statements were completed: "If I look better, Copos is like them, a Gypsy. He is a little dark-haired and has a dark complexion". The Committee set down that the statements of the defendant were not public interest information, they did not contribute to any form of public debate which could bring progress to human



relationships, but they uselessly offended two communities of people: both the Roma community and the supporters of Rapid football team. Through **decision no. 602 of 26.11.2009**, the Committee set down that those statements were **harassment** and it decided to sanction the defendant by **fine** amounting to 1000 lei (art. 2 par. 5 and art. 15 of G.O. no. 137/2000, republished).

199. Expressions. Slogan. Ethnic origin. Roma. Personal dignity. NCCD was self-notified regarding the promotion and publishing of an advertisement with the following content: "If you don't buy a BMW, on reason that all Gypsies got it, it means that Gypsies have won". The defendant showed that such messages do not have a discriminatory purpose, but they inculcate a non-conformist character to the magazine he publishes and it has the meaning to dismantle a stereotype of urban culture. The Committee noted that the message promoted could have negative effects to the community of persons belonging to the Roma minority. Unlike other messages with a shocking character that are promoted, directly referring to cars, the analyzed message directly refers to persons who would own those cars, based on stereotype assumptions which could be avoided without referring to ethnic origin. Through **decision no. 245 of 14.04.2009**, the Committee retained that the notified aspects are **harassment** and it decided sanctioning of the defendant by **warning** and by issuing a recommendation (art. 2 par. 5, art. 2 par. 1 and par. 4 of G.O. no. 137/2000, republished).

200. Press article. Ethnic origin. Roma. Personal dignity. Community. The Institute for Public Policies complained about the publishing of the article named "Gypsy story" in the magazine "Romania Mare" as it promotes a behaviour which aims to offend dignity and create a humiliating atmosphere against the Roma minority. The Committee retained that the statements of the article do not contribute to any form of public debate, but they uselessly offend an ethnic community, being a form of expression which disseminates hatred based on intolerance. Through decision no. 17 of 13.01.2009, the Committee found that the notified aspects are **discrimination** and it decided to sanctions the defendant by **warning** and by issuing a **recommendation** (art. 2 par. 1 and par. 4, art. 15 of G.O. no. 137/2000, republished).

201. Statements. Ethnical origin. Roma. Personal dignity. C.T. complained about the publishing of an article in the newspaper "Renașterea Bănățeană" by which it was aimed to create an offensive environment and to harm his dignity based on his ethnic origin. The defendant considered that the article was written in good-faith, it did not pursue to discriminate or offend the dignity of the petitioner. The Committee set down that in relation to the topic presented, references to the petitioner were related to his ethnicity and thus, a distinction was made in relation to other persons. Between the petitioner and his ethnic origin were made stereotyped associations grounded on discriminatory perceptions that persons of a certain ethnic group perpetrate unlawful deeds. Through decision no. 593 of 24.11.2009, the Committee set down that notified deeds are **direct discrimination** and it decided to issue a **recommendation** (art. 2 par. 1 of G.O. no. 137/2000, republished).

202. Statements. Ethnical origin. Roma. Personal dignity. Petitioner A.M. complained among others about the statements of co-habitants in the building where she lived regarding her ethnic origin. The petitioner complained about insults addressed to her family in public, related to the term "Gypsy" and the charging of unreal facts. The Committee set down that the statements made tightly connected to her ethnicity had a discriminatory effect by which her personal dignity was offended. Through **decision no. 360 of 25.06.2009**, the Committee ascertained that the notified aspects partly constitute **discrimination** and it decided to sanction the defendant by **warning** and by issuing a **recommendation** (art. 2 par.1 and par. 5 of G.O. no. 137/2000, republished).

203. Statements. Ethnical origin. Roma. Personal dignity. A.M. complained about the statements of G.P. addressed to the petitioner's daughter regarding her ethnic origin. This publicly addressed to her telling her "you Gypsy" (...), "bloody Gypsy, I will break your head" and "she should be taken to Bug". The defendant showed that the observations regarding the girl's ethnic origin were not made with the purpose to discriminate. The Committee set down that the statements in question have a discriminatory nature and could offend personal dignity. Through decision no. 114 of 24.02.2009, the Committee ascertained that the notified deeds partly constitute **discrimination** and it decided to sanction the defendant by a **civil penalty** amounting to 400 lei (art. 2 par. 5 and art. 15 of G.O. no. 137/2000, republished).

204. Statements. Ethnical origin. Jews. Personal dignity. Community. F.G. complained regarding the posting of anti-Semitic comments on the web page of the Press Agency "Mediafax". Among others, are mentioned statements like: "But the Jewish rallies forced us to accept communism and were the assassins of this nation", "Jewish are interested only in themselves. They are very proud now of being the chosen nation…" "The involvement of the Jewish SRI (Secret Service) in this useless and disgusting business", "But the Jewish what do you think they do, intelligent man? They are worse than the Nazis. If you could



follow better what are and were their real business, you would discover that they are the real murderers", "The Germans made a big mistake with the Jewish, they would have rather approached the current Romanian politicians", etc. Through **decision no. 191 of 31.03.2009** the Committee set down that the said comments were posted by third persons as a reaction to news or articles published on the reported site, considering that some of them constitute harassment. Mediafax denied the content of those messages, published the terms and conditions of publishing comments and operated a filter of selecting certain forbidden terms of phrases. Also, the messages in question were suppressed. The Committee decided to issue a **recommendation** (Art. 2 par. 5 of G.O. no. 137/2000, republished).

205. Statements. Ethnical origin. Jews. Personal dignity. Community. The Jewish community Bârlad complained about the use of the word "Jew" in a written publication, considering that this term is discriminatory. Through **decision no. 372 of 02.07.2009**, the Committee considered that the use of this term could offend the dignity of persons belonging to the Jewish community and it decided to issue a **recommendatio** to the defendant (art. 2 par. 1 and par. 4 of G.O. no. 137/2000, republished).

206. Education. Enrollment plan. National affiliation. Hungarians. NCCD was self-notified regarding the fact that Mures School Inspectorate drew-up the school plan for the IXth class by providing 4200 places with teaching in Romanian language, considering the 3700 pupils participating in the Romanian language teaching section (VIIIth classes) and 1400 places for the 2000 pupils participating at the Romanian teaching section (VIIIth classes). Being in the course of drawing–up, at the moment of analysis, the County School Inspectorate communicated that: from all pupils: 3565 (6, 61%) in Romanian teaching language and 61 (1.11%) in German language teaching will be made up 200 classes of which 137 of Romanian language (68.5%), 60 of Hungarian language (30%) and 3 of German language (1.5%). The Committee set down that the proposal of setting up the classes settled a disproportion between Romanian teaching classes and other classes referred to the percentages of pupils considered in drawing-up the school plan. Taking into account the stage of elaboration of the school plan, through **decision no. 47 of 27.01.2009** the Committee **did not ascertain the perpetration of a discrimination deed**, but it set down that the application of such a plan **could have indirect discriminatory effects** over pupils belonging to the Hungarian community and it decided to issue a **recommendation**.

207. Education. Enrollment plan. National affiliation. Hungarians. The Union of Hungarian Teachers in Romania complained about the application of the school plan drawn-up by SIM which set-up a disproportionate number of classes referred to the number of pupils studying in Romanian and Hungarian teaching languages. It showed that although the Ministry of Education requested that the number of classes of Hungarian teaching language be modified, this was never achieved. Also, the Ministry of Education requested the review of the school plan, but the operated review stipulated the decrease of the number of classes and not its increase. The statistical data presented by the parties showed a disproportionally not only between pupils who learn in Romanian and Hungarian and the available classes for continuing studies, but also between the options expressed by pupils, to the disadvantage of those who want to continue studying in Hungarian. This disproportion could affect teachers who teach in Hungarian classes. Through decision no. 291 of 14.05.2009, the Committee ascertained that the notified deeds are indirect discrimination and decided to contraventionally sanction the defendant with fine amounting to 600 lei and by issuing a recommendation (art. 2 par. 3, art. 11 par. 1 of G.O. no. 137/2000, republished).

208. Access to public information. National affiliation. Romanians. Hungarian language. Restrictions. D.T. complained about the fact that the official internet page of Sântimbru commune (Harghita county), regarding mainly the Town Hall and the Local Council did not contain information in Romanian language, as these were presented exclusively in Hungarian language. The defendant showed that according to statistical data there were no Romanian citizens in the commune and he had no knowledge whether the information were being read by other citizens besides those of the community. He also showed that the decisions of the local council were published in Romanian. The Committee considered that the arguments of the defendant could not be considered as reasonably justified. Through **decision no. 346 of 23.06.2009** it ascertained that the notified deeds are **discrimination** and it decided to issue a **recommendation** to the defendant. (art. 2 par. 1 of G.O. no. 137/2000, republished).

209. Access to public information. National affiliation. Romanians. Hungarian language. Restrictions. A similar situation was notified in another case regarding the internet page of the commune Siculeni (Harghita county). Following the notification, the defendant updated the site, published the decisions of the local council in Romanian and the minutes of meetings. Through decision no. 644 of 24.11.2009, the Committee ascertained that the notified deeds are **discrimination**



and it decided to issue a recommendation to the defendant (art. 2 par. 1 and par. 4 of G.O. no. 137/2000, republished).

210. Employment conditions for filling a public office. Imposing the knowledge of Hungarian language. National affiliation. D.T. complained about the condition of knowing the Hungarian language in order to fill the position of Deputy Director of Division of People's Records. Given that the essential prerogatives of the public office do not involve activities of public relations, the Committee set down that the justification raised by the defendant is not reasonable for the purpose and nature of the job. Through **Decision no. 347 of 23.06.2009**, the Committee set down that the notified deeds constitute **discrimination** and decided to issue a **recommendation** to the defendant (art. 2 par. 1 of G.O. no. 137/2000, republished).

XV. Ascertaining solutions issued in 2010

211. Access to places designed for the general public. Selection criteria. Admission card. Ethnical origin. Roma. C.N., I.G., S.A., P.M., C.A. complained about the fact that trying to enter into the premises of a club, persons with dark complexion of Roma origin were asked the admission card, while other persons were not asked such a card. The defendant showed that the said persons had an inappropriate behaviour and access to the club is done only based on card. He specified that there is a situation in which agents do not require the card, namely to loyal customers and their guests, for whose conduct the customers guarantee. The investigation team of NCCD found that on the outside facade of the building was displayed a poster with the following mentions: "we reserve the right to select our customers, thank you for being our customers, loyal customers can require member cards by submitting a copy of the identity card and a passport photo, the documents shall be handed in to the security personnel, new clients who wish to be members of the club must hand in to the security personnel the following documents: passport photo, copy of identity card, copy of workman's pass, original of criminal record, scanned finger-print." The Committee of NCCD adhered to the opinion of the Ministry of Administration and Interior stating that the need to submit a card for access inside a club (the release of which is subject to presenting a copy of identity card and a passport photo), without having an exclusive nature (considering that the acceptance of new members is admitted) may be justified by a legitimate aim. This may take the form of ensuring order and public peace or protecting property. The legitimate question which arises with regard to the conditions required by the defendant is to what extent a distinction is made between deeds which may be related to crimes in connection with public order or peace or the protection of property and deeds which are not related to public order (involvement in accidents by negligence, negligence at work, family abandonment, etc.). To what extent a distinction is made between persons who hold a workman's pass and persons who do not hold a workman's pass but undertake activities based on contracts regarding rights of intellectual property or on distinct services provision). To what extent a distinction is made between persons who have the finger-print available or not. These distinctions are relevant under the principle of equality in the access to goods and services provided to the public. Or, in the absence of objective criteria tightly related to the requirement of such conditions, there is room for arbitrariness in granting the admission card in practice. Under certain conditions, the non-granting of the card for deeds which are not connected with the protection of public peace or property of others or of persons who do not hold a workman's pass could have the character of a social sanction, which could be regarded as excessive and inappropriate in a democratic society, in which access to goods and services is guaranteed by law. Subsequently the question is to what extent the requesting of additional special conditions (criminal record, workman's pass, finger-print) without clearly mentioning a specific and transparent purpose (such as its manner of assessment/evaluation) could objectively and non-discriminatorily materialize such a purpose. Or, insofar as a distinction of treatment is brought about based on arbitrary considerations, it cannot be retained that this would be objectively and reasonably justified in the light of the equality principle. Through decision no. 67/19.05.2010, the Committee set down that the stated deeds could presume that although an apparently neutral criterion was quoted (holding an admission card), in practice this led to the disadvantage of the two Roma persons in relation to other persons (Romanian nationality), without an objective justification and the methods of attaining the purpose stated were not proper, leading to indirect discrimination (art. 2 par. 3 and art. 10 lett. f of G.O. no. 137/2000, republished).

212. Access to places designed for the public. Conditions. Ethnicity. Roma. Mr. D.S. went together with 3 other persons in locality R. in order to go to the beach. On entering the pool, he was not allowed to go into on reason that he is dark-haired and he belongs to the Roma ethnic group. In this regard, the petitioner claims that he was invited to get out on reason that "others like us created problems and we don't belong to that place." The representatives of the defendant showed that the



access of clients inside the pool is not restricted according to ethnical affiliation, but according to their attitude, given that the pool is close to two notorious neighbourhoods. Individuals known to be violent and uncivilized or who have bothered/threatened clients in the past are not allowed to enter inside the pool. The Committee retained in the case that the petitioner's claims that he never went to that pool until that moment were not disputed by the defendant. Also, the defendant showed no evidence to emphasize that the petitioner is a person who bothered or threatened clients inside the pool or had a violent and uncivilized behaviour. From this point of view, the prohibition imposed by the security guard, accompanied by the argument "others like you created problems" cannot be considered objectively justified, since it is based exclusively on an arbitrary assumption which infers that a certain category of persons have an anti-social behaviour per se. As the European Court of Justice established, to the extent a distinction of treatment is brought about based on arbitrary considerations, it cannot be retained that this would be objectively and reasonably justified in the light of the equality principle. Through **decision no. 105/09.06.2010**, the Committee set down that the notified deeds lead to an **indirect discrimination** and it decided to issue a **recommendation** (art. 2 par. 3 of G.O. no. 137/2000, republished).

213. Access to public administrative services. Setting of buildings. Memorandum. Ethnicity. Personal dignity. Romani CRISS Association shows that following natural disasters were drawn-up 19 specification sheets, for houses which belong to some Roma families, for which was proposed the measure of resettlement and reconstruction. The local council was to adopt a decision but this intention was abandoned following a memorandum by which a group of citizens requested that the buildings of Roma persons not be established near their houses. The local authorities stated that through the decisions of the Local Council was decided to use some reconstruction funds and subsequently to repeal these decisions for three grounds of unlawfulness, raised by the Prefecture and retained by the Local Council. Retaining the content of the memorandum addressed to both the Local Council and the Prefect, the Committee considered that although it was tried to infer an apparently neutral character based on objective factors, this has a discriminatory content based on ethnic origin. The argument raised that the defendants had nothing against these persons (Roma) and that (Roma) were entitled to the piece of land on which to build households is countered with the express request that the decision to be adopted should not provide the distribution of plots in the neighbourhood or inside their communities (citizens originating from Casvana). This request is substantiated by inferring a distinction in relation to the acquisition of properties, lifestyle and level of the community (ex. "we worked hard in the countries of Europe", "we paid tens and hundreds of millions lei... to build households") to the Roma (ex. "we are not used...to live near such citizens", "the dismal state of the houses", "they use the land as WC", "they party often", "beatings"). Besides, the argument for not establishing the houses for Roma in the neighbourhood or inside the community is strengthened by the prevention of conflicts that would "inherently emerge between their community and ours". The memorandum of the defendants addressed to public authorities could offend the dignity of persons belonging to the Roma ethnic community in the locality. The action started by the defendants by drawingup such a memorandum, its signing and addressing to public institutions is a behaviour based on the ethnic origin of the persons mentioned in the memorandum, which led to the creation of an environment at least degrading or offensive. Moreover, also the Prefect showed that "the request that the Roma population do not receive plots for houses among Romanians, majority population (...) is outside the Romanian Constitution." Through decision no. 107/09.06.2010, the Committee retained that the action of the defendants falls under art. 2 par. 5 (harassment) of G.O. no. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished (art. 2 par. 5 of G.O. no. 137/2000, republished).

214. Access to medical services. Statements. Ethnicity. Personal dignity Center of Roma for Health Policies Sastipen shows that Ms. L.L. of Roma origin, pregnant in the second month, went during 28 August – 1 September to the Department of Obstetrics and Gynaecology of Hospital T.N. to benefit of a specialized consultation, but through the manner of address and consultation by the defendant, dr. D.D., she was discriminated based on her ethnic origin and her personal dignity was offended. Thus, it is shown that during several days in which the pregnant woman felt bad and asked for the medical services of the defendant, this did not give her the attention offered to the other patients and addressed insulting words: "that's how you are, the Gypsies", "Go home, I don't want to see you here anymore", "What is your problem? You have no problem. Go, or I'll grab the stick". The defendant disputes the charged statements, mentioning that he provided consultation and appropriate medical services despite the fact that no reference ticket or request for hospitalization were presented. The Committee set down that these arguments could be retained as objective. But the fact that the petitioner never requested institutionalization in the hospital or medical analyses at the personal physician or dispensary or the emergency room raises the question to what extent such an argument is relevant in relation to a person in a special medical situation (pregnancy) who is part of the Roma community and in a situation of socio-economic or educational disadvantage in relation to the majority population. Or, the same question can be raised also as regards a person who belongs to the majority population, who does not have knowledge to assess her particular medical situation and especially the need for medical



institutionalization or for performing a medical expertise that she should expressly require to an attending physician or an emergency service. Such a reasoning also raises the right of every patient to be properly informed about the medical care provided to him/her and which are supposed to be ensured "to the highest quality that the society has", as decided by the Romanian legislator in law 46/2003. With regard to the particular elements of the case subject to settling, from the analyzed evidence, the Committee considered that the effect created through the approach by the defendant of the petitioner's situation, the charging of some statements which explicitly or implicitly were connected to the ethnical origin known by the defendant led to the creation of an intimidating or offensive environment. Through **decision no. 149 of 07.07.2009**, the Committee ascertained that the notified aspects as regards the defendant's manner of address to the petitioner fall under the provisions of art. 2 par. 5 (**harassment**) of Government Ordinance no. 137/2000 (art. 2 par. 5 of G.O. no. 137/2000, republished).

215. Press article. Ethnical origin. Roma. Personal dignity. Romani CRISS Association complained about the discriminatory content of a press article published in "Academia Caţavencu". The petitioner considers that the message based on stereotypes promotes a negative image which aims to offend dignity and create a degrading, humiliating and offensive environment against the Roma minority. The defendant shows that the accused publication was issued with the clear purpose of sanctioning through (black) humour and irony the faults of Romanian society in post-communism, being a pamphlet-magazine with an ironical style, humorous, elitist and objective without aiming to offend the dignity of the Roma minority. The Committee set down that a person's ethnicity cannot be regarded as relevant in direct connection with how a person or a community of persons exercises a certain service or with the deeds he/she commits. With regard to the stereotypical association of the Roma community with the low level of education or implicit prejudices that among the community stealing is much simpler than working, it was set down that these could create unwanted effects, uselessly, over this community of persons, creating at least an offensive framework with regard to dignity. Through **decision no. 87/02.06.2010**, the Committee considered that the material published, with regard to the effect created could lead to offending the right to dignity of persons belonging to the Roma community and it decided to issue a **recommendation** (harassment, art. 2 par. 5 of G.O. no. 137/2000, republished).

216. Statements. Ethnical origin. Roma. Personal dignity. The petitioner I.M. complains about the charging of some statements related to his ethnical origin, namely phrases like ("Gypsy, filthy, lazy, ugly"). Through **decision no. 40 of 05.05.2010**, the Committee ascertained that the charged statements, especially "filthy Gypsy" are a form of direct discrimination, being a distinction based on ethnical affiliation by which his right to personal dignity is breached. Subsequently, it was considered that the constitutive elements of art. 2 par. 3 and art. 15 are met and it was decided to sanction the defendant by warning (art. 2 par. 1, par. 3 and art. 16 of G.O. no. 137/2000, republished).

217. Articles. Press. Statements. Ethnical origin. Roma. Personal dignity. The Roma Party Pro Europe, through legal representative complained about the articles published in the newspaper Jurnalul National ("Gypsy" instead of "Roma" and "From Roma to referendum"), considering that their content incite to discrimination, racism, xenophobia against Roma origin persons. The Committee set down that the content of the charged statements deepen negative stereotypes about Roma who are considered criminals, compared to persons belonging to the majority population, presented positively. The ethnical affiliation of a person cannot be regarded as relevant to the perpetration of certain deeds, especially by suppressing the tasks related to national affiliation (citizenship) in relation to some person and charging a certain ethnic origin in relation to others, given that both are the citizens of the same state. Through **decision no. 20 of 04.05.2010**, the Committee ascertained that the notified deeds are **direct discrimination** according to art. 2 par. 1 and they infringe the right to dignity according to art. 15 of G.O. no. 137/2000. It was also decided to issue a **recommendation** to the defendant (art. 2 par. 1 and art. 15 of G.O. no. 137/2000, republished).

218. Posting of employment notices on the internet. Restriction. Ethnical origin. Roma. Romani Criss and the association Roma Youth for Unity, Solidarity and Transparency complained about the publishing on a specialized site of certain employment notices which mention "Roma are excluded". The Committee set down that the said notice is an exclusion based on ethnical affiliation which results in restricting the access to a workplace and its publishing is an active behaviour that, through the effects it generates unduly disfavours one group of persons to other groups of persons. Through decision no. 127 of 07.07.2010, the Committee ascertained that the notified deeds are **direct discrimination** according to art. 2 par. 1 and 4 and it decided sanctioning by **warning** and by issuing a **recommendation** (art. 2 par. 1 and 4 of G.O. no. 137/2000, republished).



219. Statements. Ethnical origin. Roma. Personal dignity. Petitioner D.T. shows that some articles posted by the defendant on his blog incite to racial hatred, concretely referring to the article "Sancraieni – the spark from which a war at national level against the Gypsies can begin" and the article "They kill, steal and threaten. A Romanian stabbed in the heart and head by Gypsies in Comanesti". The Committee set down that through their content, the references to ethnical origin and crime offend the dignity of persons belonging to the Roma community. In this regard, it was set down that the given statements have no value of public interest information, do not contribute to any form of public debate which could bring progress to human relations, but they uselessly offend a community. Through decision no. 24 of 04.05.2010, the Committee ascertained that the notified deeds are **discrimination** according to art. 2 par. 1 and 4 and they breach the right to dignity of persons belonging to art. 15 of G.O. no. 137/2000. Also, it was decided to sanction the defendant by **warning** (art. 2 par. 1 and par. 4, art. 15 of G.O. no. 137/2000, republished).

PART III

CONCEPTS CONSTRUED IN NCCD'S CASE-LAW UNDER THE SCOPE OF DIRECTIVE 2000/43/EC



I. ARTICLE 2 PAR. 3 OF DIRECTIVE 2000/43/EC Transposition of the concept of harassment as a form of discrimination. Interpretation of concept

220. The Steering Committee refers to the provisions of art. 2 par. 5 of G.O. no. 137/2000, subsequently amended and supplemented, republished. According to art. 2 par. 5 "Any behaviour based on a criterion such as race, nationality, ethnic and social origin, language, religion, beliefs, gender, sexual orientation, affiliation to a disadvantaged category, age, disability, the refugee or asylum seekers status or on any other criterion that creates an intimidating, hostile, degrading or offensive environment constitutes harassment and shall be contraventionally punished".

221. Harassment is a form of discrimination, introduced by the Romanian legislator in the process of transposition of the provisions of Council Directive 2000/43/CE implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, published in the Official Journal of the European Communities (OJ) no. L180 of 19 July 2000 and the provisions of Council Directive 2000/78/CE establishing a general framework for equal treatment in employment and occupation, published in the Official Journal of the European Communities (OJ) no. L303 of 2 December 2000.

222. In this regard, we set down that in the domain of non-discrimination legislation, as the acquis communautaire is transposed, in order to have a harassment deed the cumulative meeting of its elements is necessary. Thus, the victimization deed consists of a behaviour which may take different forms. The wording of the text includes the phrase "any behaviour". The phrase "any behaviour" indicates the legislator's intention to include a large set of behaviours and not a restrictive one, which allows retaining different characterizations in practice and which may vary from case to case, under the form of statements expressed through words, gesture, acts or deeds, etc.

223. The motive or cause of the behaviour is determined by an inherent criterion, which is expressly provided by the legislator, in a non-exhaustive list, given that the law presents in an enumeration with a fixed character the criteria of "race, nationality, ethnic origin, language, religion, social category, convictions, gender, sexual orientation, affiliation with a disadvantaged category, age, disability, refugee or asylum-seeker status". The non-exhaustive character is given by the phrase "or any other criterion" added to the express criteria. The phrase "or any other criterion" basically gives the option of setting down any other element not specified by the law, but which is carried out as a determinant in the perpetration of any form of discrimination named harassment.

224. The manifestation of the behaviour based on any of the criteria specified by the law "leads to creating an intimidating, hostile, degrading or offensive environment". This constitutive element of harassment allows setting down those behaviours which, even if not perpetrated intentionally generate the effect of an environment defined as "intimidating, hostile, degrading or offensive". This is even more obvious as Council Directive 2000/43/EC itself implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin defines harassment in art. 2 par. 3 as: an unwanted conduct related to racial or ethnic origin with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment".

225. The inclusion of harassment as a form of discrimination in the acquis communautaire and its transposition in national legislation is extremely important. Discrimination does not take form per se, only under the form of regulatory provisions or practices, but also under behaviours which generate an impact over the environment in general, varying from physical violence to racist remarks or statements, until total ostracism. This form of discrimination offends dignity mentally and emotionally to persons belonging to one minority or another (see "A Comparison between the EU Racial Equality Directive and the Starting Line" in I. Chopin and J. Niessen, The Starting Line and the Incorporation of the Racial Equality Directive into National Laws of the EU Member States and Accession States, 2001, page 26, 27). **Excerpt from Decision no.** 103/18.02.2008, similarly see Decision no. 208/20.02.2008 Decision no. 613/13.11.2008, Decision no. 87/02.06.2010, Decision no. 107/09.06.2010, Decision no. 149/07.07.2010 etc).²⁶

²⁶Committee Decision no. 103/18.02.2008, Decision no. 208/20.02.2008, Decision no. 613/13.11.2008, Decision no. 87/02.06.2010, Decision no. 107/09.06.2010, Decision no. 149/07.07.2010, reasoning drawn-up by the Steering Committee of NCCD, Dezideriu Gergely.



II. ARTICLE 2 PAR.4 OF DIRECTIVE 2000/43/CE Transposition of the concept of instruction to discriminate (order or instruction to discriminate). Interpretation of the concept

226. The Steering Committee refers to the provisions of art. 2 par. 2 of G.O. no. 137/2000, republished which rules: "For the purpose of this ordinance, the order to discriminate against persons based on any of the grounds stipulated in par. (1) shall be regarded as discrimination". The instruction to discriminate, or, in other words the order to discriminate is a form of discrimination, introduced by the Romanian legislator in the process of transposition of the provisions of Council Directive 2000/43/CE implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin, published in the Official Journal of the European Communities (OJ) no. L180 of 19 July 2000 and the provisions of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, published in the Official Journal of the European Communities (OJ) no. L303 of 2 December 2000.

227. In this regard, we set down that in the area of non-discrimination, as the acquis communautaire is transposed, in order to have an instruction to discriminate the meeting of its constitutive elements is necessary. Thus, the instruction to discriminate consists of a compulsory rule, in written or oral form, issued by an authority or empowered person that has to be fulfilled by those aimed with the purpose to discriminate and to treat differently persons who are in comparable or analogous situations, without a reasonable and objective justification, for the purpose of art. 2 par. 1 of G.O. no. 137/2000, republished. The different treatment for the purpose of art. 2 assumes: "any distinction, exclusion, restriction or preference based on race, nationality, ethnic and social origin, language, religion, beliefs, gender, sexual orientation, age, disability, non-infectious chronic disease, HIV contamination, affiliation to a disadvantaged category, as well as on any other criterion aiming or resulting in the restriction or hindering of the recognized by the law in the political, economic, social and cultural field, or in any other fields of public life".

228. In the same regard, Council Directive 2000/43/EC implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin" defines in art. 2 par. 4 the order or instruction to discriminate, ruling: "An instruction to discriminate against persons on grounds of racial or ethnic origin shall be deemed to be discrimination within the meaning of paragraph 1" (par. 1 of art. 2 of Directive 43/2000 defines direct discrimination and indirect discrimination respectively). (Excerpt of Decision no. 278 of 22.04.2008, NCCD²⁷).

III. ARTICLE 4 OF DIRECTIVE 2000/43/EC Transposition of the concept of specific occupational requirements. Interpretation of concept

229. In the analysis of the notified aspects, the Committee acknowledges that Directive 2000/78/EC establishing a general framework for equality of treatment in employment and occupation, Directive 2000/43/EC of the Council of 29 June 2009 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, as well as Directive 2002/73/EC amending Council Directive 76/207/CEE of the Council on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions in art. 4 and art. 2 par. 6 rule that the Member States may provide, as regards access to employment that " a difference of treatment which is based on a characteristic related to racial or ethnic origin, religion or conviction, disability, age, sexual orientation and sex shall not constitute discrimination where, by reason of the nature of the particular occupational activities or the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate".

²⁷Committee Decision **no. 278 of 22.04.2008**, reasoning drawn-up by NCCD Steering Committee member, Dezideriu Gergely



230. It is well to know that G.O. no. 137/2000, as amended through law no. 324/2006 transposed the provisions of Directives 2000/43/CE and 2000/78/CE. In this regard, the Ordinance provides in art. 9 that the provisions regarding contraventions in the field of employment and occupation (art. 5-8) cannot be construed to restrict the right of an employer to refuse employing a person that does not fit the relevant occupational requirements, as long as the refusal is not a discrimination deed in the sense of this ordinance and such measures are objectively justified by a legitimate aim and the methods of attaining it are appropriate and necessary".

231. Thus, the requirement imposed by the petitioner which is the object of this complaint must be analyzed including with regard to the provisions of art. 9 of G.O. no. 137/2000, republished. (...). If we are in the field of access to employment and of specific requirements for filling a position (...) it must be analyzed if we fall under genuine and determined professional features, within the meaning of a specific occupational requirement (**Excerpt of Decision no. 510 of 29.10.2009, 125 of 07.07.2010**²⁸).

IV. ARTICLE 5 OF DIRECTIVE 2000/43/EC

A. Transposition of the concept of positive action. Determining the positive action and the positive discrimination. Affirmative measures. Interpretation of concept. Reference points from the case-law of the European Court of Justice.

232. The Steering Committee should have analyzed if the measure in this case (...) constitutes per se an affirmative measure (positive action) allowed by the acquis communautaire or a positive discrimination prohibited at the level of the European Union and implicitly in Member States legislation. In the Notice of the European Union of 30 October 2006 to the European Council and Parliament regarding the implementation of Directive 43/2000/EC regarding the equality of treatment on ethnic or racial grounds (see COM (2006) 643 final, Brussels, 30.10.2006, the European Commission explicitly states that the long-term situation and persistency of disadvantages suffered by some groups are such that the right to nondiscrimination is not sufficient and positive measures might be necessary to improve the equality of opportunities. Article 5 of the Directive of Racial Equality provides that the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin. Thus, the European Commission notes that there is a difference between positive measures or actions which are allowed and the so-called measures of "positive discrimination" which are not compatible with the Racial Equality Directive. On the one hand, positive action measures are aimed at ensuring full equality in practice by preventing or compensating for the disadvantages related to racial or ethnic origin. On the other hand, measures of "positive discrimination" give an absolute and automatic preference (for example in the access to labour) to the members of a particular group over others for the sole reason of belonging to that group. In the recent Notice of the European Commission of 2 July 1008 to the European Parliament, European Council, Economic and Social European Committee and Committee of the Regions regarding "nondiscrimination and equal opportunities: a renewed commitment" (see COM (2008) 420 final, Brussels, 2.7.2008), the European Commission restates that: the identical treatment can result in formal equality, but it cannot ensure equality in practice". Discrimination legislation at EU level does not prevent Member States from maintaining and adopting specific measures or compensating for disadvantages in relation to discrimination..." The European Commission then points out that: "there is a growing appreciation for the role of the positive action in ensuring a remedy for the lack of substantial equality in societies (...). The Commission will permanently talk with Member States in order to promote the full use of opportunities for positive action and particularly as regards access to education, labour, housing and health".

233. In terms of European legislation in this area, the first legal provisions in the field of positive action were included in art. 2 par. 4 of Equal Treatment Directive 76/207 (between women and men). Subsequently, through the Maastricht Agreement on Social Policy and the Amsterdam Treaty, positive action was included in the Treaty establishing the European

²⁸Decision of the Steering Committee **no. 510 of 29.10.2009**, **no. 125 of 07.07.2010**, reasonings drawn up by member of NCCD Steering Committee, Dezideriu Gergely.





Communities, art. 141 par. 4: "In order to ensure full equality in practice between men and women in the field of labour, the principle of equal treatment shall not prevent Member States from maintaining or adopting measures which foresee specific advantages to facilitate the pursuit of vocational activity for the under-represented sex or to prevent or compensate for disadvantages in professional career". The European Court of Justice settled that: "the exception provided for in art. 2 par. 4 of Directive 76/207 is specifically and exclusively designed to allow measures which, although apparently discriminatory are aimed at eliminating or moderating the actual situations of inequality which may exist in the reality of social life". (see case C-312/86, Commission vs. France (1988), ECR 6315 par. 15). In its subsequent case-law, the European Court of Justice showed that "the purpose of art. 2 par. 4 is to reach substantial equality rather than formal equality, by reducing de facto inequalities which might emerge in the society". (see case C-407/98 Abrahamsson (2000) ECR I-5539, par. 48; case C-319/03, Briheche (2004) ECR I-8807, parag.25).

234. In order to justify a measure adopted at Members States level in terms of article 2 par. 4, on which is also based the recent case-law of the European Court of Justice in the area of positive action on gender grounds, the European Court has established a set of elements to be analyzed in a restrictive manner. Firstly, a national measure should aim to "remedy the existing situation given by the disproportion between men and women in a specific sector or level of career" (see case C-476/99, Lommers (2002) ECR I-2891). This requires evidence of such disproportions which might justify a positive action measure. A measure that rather aims to compensate for inequalities than remove them does not fall under art. 2 par. 4. Secondly, a positive measure must be adequate. The European Court of Justice analyzes whether the measure in question is likely to attain the purpose of remedying the existing disproportion. (see case C-366/99, Griesmar (2001), ECR I-9383.) Thirdly, the measure or positive action must be proportionate - judged according to the equality principle with regard to persons who do not benefit of this measure (see case C-407/98, Abrahamsson (2000) ECR I-5539, case C-79/99 Schnorbus (2000) ECR I-10997 and case C-476/99 Lommers (2002) ECR I-2891). Thus, the measure must be necessary, appropriate and should not exceed the proposed objective. This aspect implies that automated or absolute preferences are not allowed. (see case C-407/98, Abrahamsson (2000) ECR I-5539.8.) It its recent decisions, the European Court of Justice predominantly refers to the requirement of proportionality, but it has not yet established a clear set of criteria for determining it (see European Commission, "Putting equality into practice: What is the role of positive action?", report financed by the European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, Unit G.4., published in March 2007).

235. On the other hand, at the level of the European Union has recently been adopted Council Directive 2000/43/EC implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin, published in the Official Journal of the European Communities (OJ) no. L180 OF 19 July 2000 and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, published in the Official Journal of European Communities (OJ) no. L303 of 2 December 2000. The provisions of art. 5 regarding positive action in Directive 2000/43/EC stipulate that: With a view to ensuring full equality in practice, *the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin"*. In the same regard, the provisions of art. 7 par. 1 of Directive 2000/78/EC stipulate as follows: With a view to ensuring full equal treatment shall not prevent any Member State *from maintaining or adopting of equal treatment shall not prevent and occupating specific measures to prevent or compensate for disadvantages linked to a racial or ethnic origin"*. In the same regard, the principle of equal treatment shall not prevent any Member State *from maintaining or adopting specific disadvantages linked to any of the grounds referred to in Article 1* (i.e. religious affiliation or convictions, disability, age or sexual orientation).

In relation to these measures adopted at the level of EU, it must be specified that the provisions of Council Directive 236. 2000/43/EC implementing the principle of equal treatment between persons irrespective of their racial or ethnic origin and the provisions of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation have been transposed through G.O. no. 137/2000, subsequently amended and supplemented, republished. In transposing the two European Directives, G.O. no. 137/2000, subsequently amended and supplemented, republished with reference to positive action, in art. 2 par. 9 stipulates that: "For the purpose of this ordinance, the measures imposed by local authorities or by private law entities in favour of a person, a group of persons or a community in relation to the other persons, group of persons or communities, aiming to ensure their normal development and the effective attainment of equality of chances, as well as the positive measures aiming at protecting the disadvantaged groups are not discrimination". Thus, it is unequivocal that the Romanian legislator, in considering the acquis communautaire in the field of non-discrimination has chosen to allow positive measures or measures in favour of some individuals, aiming to ensure their natural development and the effective attainment of their equality of opportunities. Moreover, the final statement of art. 2 par. 9 of G.O. no. 137/2000, republished regulates expresis verbis that the measures adopted in favour of persons, groups of persons or communities or positive measures aiming to protect disadvantaged groups do not constitute discrimination for the purpose of the ordinance. It has to be mentioned that in Romania affirmative measures have recently been adopted by both the Parliament and the Government regarding national minorities, especially in the field of participation and political



representation or in the field of education (...).

237. Not lastly, it must not be ignored that a positive measure or positive action is by its nature "temporary". According to the UN Committee for Human Rights "the principle of equality sometimes requires that the State Parties adopt affirmative measures in order to lessen or eliminate conditions that determine or facilitate the perpetuation of discrimination prohibited by the Pact (...). as long as such actions are necessary to correct discrimination, actually being a differentiation situation legitimized by the Pact" (General Comment no. 18 of the Committee for Human Rights on the right to nondiscrimination, art. 26 of the International Pact regarding civil and political rights). The International Convention on the elimination of all forms of racial discrimination, ratified by Romania stipulates that "The special measures adopted with a view to ensuring the proper development of certain racial or ethnic group of individuals that require such a protection, in order to ensure full exercise of human rights and fundamental freedoms are not considered racial discrimination, providing that such measures should not consequently lead to maintaining separate rights for various racial groups and these shall not be continued after reaching the objectives for which they were adopted (art. 1 par. 4 of the Convention). Also, the Framework-Convention for the protection of national minorities ratified by Romania establishes in article 4 the obligation of state parties to adopt "proper measures" to promote full and effective equality in all spheres of economic, social, political and cultural life and it declares that the measures such adopted shall not be considered discrimination deeds. The Explanatory Report to the Framework Convention emphasizes that the promotion of full and effective equality between persons belonging to a national minority and persons belonging to the majority could require that signatory states adopt special measures that take into account the specific conditions of those persons. Such measures should be "proper", therefore in accordance with the proportionality principle, in order to avoid breaching the rights of some and discriminating others. This principle requires, among others, that such measures should not be extended, in terms of duration or purpose beyond what is necessary to reach the objective of full and effective equality. Their purpose if to ensure that persons belonging to national minorities enjoy full and effective equality with the persons belonging to the majority (see the Explanatory Report to the Framework-Convention for the protection of national minorities, art. 4, par. 2) (Excerpt from Decision no. 578 of 27.08.2008, Dissenting opinion²⁹).

B. Affirmative measures. Special places for Roma. Regulation of education for national minorities. Principle of substantial equality.

238. The Steering Committee ascertains that in Romania enrollment of pupils belonging to the Roma ethnic group, as well as the study of Romani maternal language is conducted both in the context of general legislation of Romanian education and specialized legislation regarding education for national minorities. In the Committee's opinion, the specialized regulation of education for national minorities, in this context for persons belonging to the Roma ethnic group is based on the principle of substantial equality, which refers to categories of persons in different situations for which there must be a different treatment. This decision is also held by the European Court of Human Rights, as well as the European Court of Justice which underline that the equality principle excludes the different treatment of comparable situations and the similar treatment of different situations, except when the treatment is objectively justified.

239. The Steering Committee considers that the substantial equality falls under the notion of equality of results and equality of opportunities, the first assuming that the result of the given treatment should be equal and the second that the law shall provide that all persons benefit of the same opportunities, given that people have different starting positions, thus providing equal chances but not equal results. Thus, the equality of results recognizes that the identical treatment may apparently lead to an inequality in practice due to past or continuous discriminations or differences in the access to resources, which presumes that within this notion the effects, as well as purpose of a measure should prevail with regard to result which must be equal for persons who are the object of the given measure and which are in different situations.

240. In this regard, the measures adopted by the Romanian legislator and particularly by the Ministry of Education and Research regarding Roma pupils aimed to ensure an equality of opportunities, carried out by implementing some affirmative measures. These affirmative measures, by their nature pursued the progressive equalization of the situation of Roma children, in terms of their equality of opportunities in education, to reach their positioning in a similar or analogous situation with the pupils and children in the educational system. To facilitate the implementation of these measures, the

²⁹NCCD Decision no. 578 of 27.08.2008, dissenting opinion of the NCCD Steering Committee member, Dezideriu Gergely



Ministry of Education has drawn-up specific organizational procedures. The Steering Committee sets down in this regard that the Ministry of Education and Research has drawn-up the Procedure of organization and conduct of enrollment in state high-school education for the school year 2007-2008 and the Schedule of admission to high-school education in school year 2007-2008. This procedure and the schedule of activities are approved through Order no. 5.262 of 5 October 2006, published in the Official Gazette of Romania, part. I, no. 1.021 of 22 December 2006. Thus, from the date of their publishing the assumption arose that they grew to be known by the entities/individuals concerned, nobody being able to raise in their defence that they don't know the law as regards the acts and deeds with legal substance they perpetrated, according to the principle "nemo censetur ignorarem legem". The Steering Committee sets down that the procedure of organization and conduct of admission to state high-school education for the school year 2007-2008, published in the Official Gazette no. 1.021 of 22 December 2007-2008, published in the Official Gazette no. 5.262 of organization and conduct of admission to state high-school education for the school year 2007-2008. Thus, from the date of their publishing the assumption arose that they grew to be known by the entities/individuals concerned, nobody being able to raise in their defence that they don't know the law as regards the acts and deeds with legal substance they perpetrated, according to the principle "nemo censetur ignorarem legem". The Steering Committee sets down that the procedure of organization and conduct of admission to state high-school education for the school year 2007-2008, published in the Official Gazette no. 1.021 of 22 December 2006 contains a chapter referring to "Admission of candidates to special places for the Roma and of candidates for the special education"(Excerpt of Decision no. 433 of 05.11.2007 and similarly, Decision no. 592 of 24.11.2009³⁰).

C. Affirmative measures. Recognition of the right of organizations belonging to national minorities to be represented in the Romanian Parliament. Legal and constitutional regime.

241. The exercise of the right to vote corresponds to one of the most significant stages of the electoral process, in fact the electoral campaign. It is firstly extremely important through the system of correlations with one of the fundamental citizenship rights: freedom of expression, right to information, etc. Within it, candidates, parties, all political entities, social organizations and citizens must have the right to express their opinions freely, without any discrimination. (see Ion Deleanu, Constitutional institutions and procedures in Romanian law and comparative law, C.H. Beck Publishing House, Bucharest, 2006). In the context of the petition subject to settling, we set down that according to art. 38 of the Romanian Constitution, reviewed, "After Romania's accession to the European Union, Romanian citizens shall have the right to elect and be elected to the European Parliament". Also, in conjunction with the provisions of art. 62 par. 1 and art. 81 par. 1 of the Constitution, the vote is universal, direct, secret and freely expressed".

242. The freely expressed vote defines the vote as the possibility of the citizen to participate in elections or not and in case it participates to freely express their option for a certain list of candidates or for a particular candidate. Thus, Romanian constitutional provisions value the freely expressed vote, in conjunction with the democratic provisions from most countries in the world (see in this regard Ioan Muraru, Elena Simina Tanasescu, Constitutional law and political institutions, Volume II, Edition XI, All Beck Publishing House, Bucharest, 2004). The Steering Committee acknowledges the uniqueness of the constitutional regime in Romania which consists of recognizing the right of organizations belonging to national minorities to be represented in the Parliament. In the same regard, the Romanian legislator establishes in law no. 14/2003 regarding political parties, subsequently amended and supplemented the right of these organizations to take part in elections.

243. The Steering Committee sets down in this regard the decisions of the Constitutional Court in electoral matters in which it was settled that: "with reference to the provisions of art. 62 par. (2) of the republished Constitution which establish that: Organizations of citizens belonging to national minorities, which fail to obtain the number of votes for representation in Parliament, have the right to one Deputy seat each, under the terms of the electoral law" it results that the Constitution confers a special regime to organizations belonging to national minorities to allow them political representation within the Parliament. Thus, art. 55 of Law no. 14/2003 which establishes that, except for articles it mentions the provisions of the law of political parties applies to organizations of citizens belonging to national minorities that participate in elections is harmonized with this constitutional text. Under it, which legitimizes the participation of organizations of citizens who belong to national minorities to Parliamentary elections, these organizations will be integrated with the other electoral actors, namely political parties, in the absence of such integration being endangered the equality of opportunities of those who take part in this suffrage. In other words, organizations set up under the right of association established in art. 40 of the republished Constitution may be in different legal situations, as they participate in elections or not. When they participate in elections, under the law, their integration with the other actors of the electoral process is necessitated by the principle of equality of opportunity in the in the conduct of the electoral process" (see Decision of the Constitutional Court no. 53 of 12 February 2004).

³⁰Committee Decision no. 433 of 05.11.2007 and no. 592 of 24.11.2009, reasonings drawn-up by NCCD Steering Committee member, Dezideriu Gergely



244. Also, through Decision no. 517 of 25 November 2004, with regard to art. 55 of Law no. 14/2003, the Constitutional Court ascertained that: "according to its provisions, the organizations of citizens belonging to national minorities who take part in elections shall comply with the provisions of the law of political parties", except for the articles it mentions. This legal text is in fact only an expression of the constitutional provisions of art. 62 par. (2). Thus, the legislator pursued the application of the principle of equality of opportunities between citizens by eliminating, according to the constitutional provisions of art. 4 par. (2) any form of discrimination, among others on criteria of "nationality, ethnic origin, [...], political affiliation [...]".Constituting therefore a guarantee of rights of citizens who are a minority, this legal text not only it does not infringe the constitutional provisions(...), but it is a real means of protection of the rights established through the Constitution. (**Excerpt of Decision no. 303 of 10.04.2008, NCCD**³¹).

D. Affirmative measures. Government Strategy for improving the Roma situation. Measures at the level of the local government

245. Government Decision no. 430/2001, amended and supplemented provides for the possibility to employ Roma experts within town halls to implement the Government Strategy for improving the Roma situation. The local Council (...), through Decision no. 20/2006 ascertained the local need to hire a Roma expert, thus the petitioner was employed, with an undetermined labour contract. These legal norms recognize the different situation of the Roma community and provide a differentiated treatment, namely hiring an expert at the level of the town hall to deal with the situation of these communities.

246. Starting from the situation subject to analysis, it must be specified that the principle of equal treatment between persons must not be regarded exclusively from the perspective of formal or legal equality which establishes that persons in similar situations must be treated similarly. Legal equality is based on equal treatment and on the appearance of similarity irrespective of the general context. Or, considering this hypothesis, the second conclusion of the principle of equal treatment is formulated, namely substantial equality. Substantial equality considers the hypothesis of persons in different situations who must be treated differently, comprising two distinct ideas: equality of result and equality of opportunities.

247. A). The equality of result requires that the result of a measure applied to persons in different situations must be equal. Thus, it is recognized that the apparently identical treatment in practice may yield inequalities due to previous or current discriminations or to differences of access (to resources, to services, to rights, etc). For the hypothesis of equality of result, the effects, as well as purpose of the measure applied must be taken into account primarily.

248. B). The equality of opportunities signifies that the law could ensure equal opportunities for all persons, taking into consideration their starting positions, in order to have access to pursued benefits. The equality of opportunities has as purpose providing an equality of opportunity, but not of result. Moreover, in the European legislation the concept is standardized as "positive action" or "affirmative measure". The situation subject to analysis by the Committee should have been regarded from the perspective of substantial equality and especially the equality of opportunities and not necessarily from the perspective of legal or formal equality. The European Court of Human Rights, the European Court of Justice and the Constitutional Court of Romania have constantly and uniformly re-stated the two forms of the equality principle. The Constitutional Court settled: "the different situations in which the different categories of persons are justifies the establishment of differentiated legal treatment through the law, without these being privileges for some and discriminations for others: (Decision no. 119 of 15 February 2007, Decision no. 332 of 18 April 2006, Decision no. 438 of 10 May 2007).

249. Article 5 of Directive 43/2000/EC regarding the equality of treatment on ethnic or racial grounds provides that: With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin". Thus, the European Commission notes that there is a difference between positive measures or actions which are grounds and the so-called measures of "positive discrimination" which are not compatible with Directive 43/2000/EC. The measures of positive action are aimed at ensuring full equality in practice by preventing or compensating for the disadvantages related to racial or ethnic origin and measures of "positive discrimination" give an absolute and automated preference (for example in the access to labour) to the members of a particular group in relation to others for the sole reason of affiliation with that group. **250.** In the Notice regarding non-discrimination and equal opportunities: a renewed commitment of the European

³¹Committee Decision no. 303 of 10.04.2008, reasoning drawn up by NCCD Steering Committee member, Dezideriu Gergely



Commission of 2 July 2008 to the European Parliament, European Council, European Economic and Social Committee and Committee of the Regions is re-stated that: "the identical treatment can result in formal equality, but it cannot ensure equality in practice". Legislation in the non-discrimination area at the level of the European Union does not prevent Member States from maintaining and adopting specific measures or from compensating for disadvantages related to discrimination". The European Commission further shows that: "there is growing appreciation for the role of positive action in order to ensure the remedy for the lack of substantial equality in societies [...]. The Commission will permanently talk with Member States in order to promote the full use of possibilities for positive action, particularly as regards the access to education, labour, housing and health". In transposing the provisions of Directive 43/2000/EC on equal treatment on grounds of ethnic or racial origin, G.O. no. 137/2000, subsequently amended and supplemented, republished stipulates in art. 2 par. 9: "For the purpose of this ordinance, the measures imposed by local authorities or by private law entities in favour of a person, a group of persons or a community in relation to the other persons, group of persons or communities, aiming to ensure their normal development and the effective attainment of equality of chances, as well as the positive measures aiming at protecting the disadvantaged groups are not discrimination". Thus, it is unequivocal that the Romanian legislator, in considering the acquis communautaire in the area of non-discrimination, has chosen to allow positive measures or measures in favour of some persons, aiming their natural development and the effective attainment of their equality of opportunities. Moreover, the final statement of art. 2 par. 9 of G.O. no. 137/2000, republished regulates expresis verbis that the measures adopted in favour of some persons, groups of persons or communities or positive measures aiming to protect disadvantaged groups do not constitute discrimination for the purpose of the ordinance. It must be specified that in Romania affirmative measures or positive actions have been recently adopted by both the Parliament and the Government regarding national minorities, especially in the field of participation and political representation or in the field of education (Excerpt from Decision no. 393 of 02.07.2009³²).

V. ARTICLE 7 OF DIRECTIVE 2000/43/EC Capacity to stand the proceedings in discrimination cases. Protection of rights. Interpretation.

251. According to art. 5 of the internal procedure: "The petitioner is the person who deems himself/herself discriminated and notifies the Council regarding the perpetration of the discrimination deed against him". According to art. 7 par. 1 and 2 of the internal procedure "(1) The concerned person is either the person who deems himself to be discriminated and notifies the Council regarding the perpetration of a discrimination deed against him/her either by one of the persons stipulated in art. 8 par. (1) şi (2) or by other persons who have a legitimate interest in combating discrimination and he is a person, a group of persons or a community against which a discrimination deed was perpetrated". (2) Persons who do not have the exercise of their rights can be a party if they are represented, assisted or authorized, according to the law".

252. According to art. 28 par. 1 and 2 of G.O. no. 137/2000, republished as well as art. 8 of the Internal procedure: The non-governmental organizations aimed at protecting human rights or having a legitimate interest in combating discrimination have the capacity to pursue the proceedings in case the discrimination relates to their field of activity and it prejudices a community or a group of persons. (2) The organizations stipulated in par. (1) have the capacity to pursue the proceedings also in case the discrimination prejudices an individual, upon his request (...).

253. 253. Referring to the provisions of G.O. no. 137/2000 republished, the Committee restates that for the purpose of the provisions of art. 20 par. 1 **"The person who considers himself to be discriminated** can notify the Council (...)". Therefore, the legislator establishes in the benefit of the person who consider themselves discriminated the right to an action for ascertaining and contraventionally sanctioning a discrimination by NCCD. Art. 20 par. 6 of G.O. no. 137/2000, republished, as regards procedural obligations rules that **"The concerned person has the obligation** to prove the existence of deeds presuming to allow the existence of a direct or indirect discrimination **and the person against whom the notification was filed** has the task to prove that the deeds are not discrimination".

254. Unlike art. 20 par. 1 of G.O. no. 137/2000, republished in which the legislator uses the phrase "the person who deems himself discriminated" in art. 20 par. 6 is contained the phrase "the concerned person". In order to fully understand

³²Committee Decision **no. 393 of 02.07.2009**, reasoning drawn-up by NCCD Steering Committee member Istvan Haller



the content of this term, we must refer to the provisions of art. 28 par. 1 and par. 2 of G.O. no. 137/2000, republished, in which the legislator refers to the capacity to stand the proceedings of non-governmental organizations aiming to protect human rights or that have a legitimate interest in combating discrimination. It thus results that in the field of non-discrimination, the capacity to stand the proceedings belongs firstly to the person who deems himself/herself discriminated and secondly, equally to non-governmental organizations, under the conditions stipulated by the legislator.

255. This meaning is fully rendered in the Internal procedure of settling complaints before NCCD which defines the concerned person in art. 8: "either the person who deems himself/herself to be discriminated and notifies the Council regarding the perpetration of a discrimination deed against him/her, or one of the persons stipulated in art. 8 par. (1) and (2) (non-governmental organizations) or other persons that have a legitimate interest in combating discrimination and is a person, a group of persons or a community against whom a discrimination deed was perpetrated".

256. Art. 8 of the procedure indicates the intention to comprise several categories of persons that may appeal to NCCD, but under certain conditions. Firstly, the person who deems himself/herself discriminated (art. 20 par. 1 of G.O. no. 137/2000), non-governmental organizations (art. 28 par. 1 and par. 2 of G.O. no. 137/2000) as well as other persons that have a legitimate interest and is a person against whom a discrimination deed was perpetrated. As such, the procedure establishes the possibility of a third category of persons to notify NCCD. These are other persons than the non-governmental organizations but that have a legitimate interest in combating discrimination, persons that represent an individual who was discriminated or a community of discriminated persons. In its case-law, this last category was represented by trade-unions, trade union confederations which applied to the Council on behalf of their members. Equally, in this last category were included the relatives of some persons who were discriminated and who applied to the Council on behalf of that family member (**Excerpt of Decision no. 76 of 02.06.2010**³³).

VI. ARTICLE 8 OF DIRECTIVE 2000/43/EC Transposition of the principle of reversal of the burden of proof. Interpretation of concept. Reference points from the case-law of the European Court of Justice.

257. In relation to the content of art. 20 par. 6 of G.O. no. 137/2000, republished, the Steering Committee sets down the principle that derives from the provisions of art. 20 par. 6, in discrimination cases, as an exception from the ordinary law provisions "onus probandi incubit actori", according to which the burden of proof belongs to the one that makes a proposal (statement) before trial. In the field of ordinary law, we set down that also the defendant is obliged to prove what he states, in a context in which he comes out of passivity and defends himself proving the baselessness of the petitioner's claims, the principle "probatio incumbit ei qui dicit, non ei qui negat" becoming evocative, the burden of proof thus being divided between the defendant and the petitioner (see in this regard Theoretical and Practical Treaty of Civil Procedure, Volume II, Prof. Univ. Dr. Viorel Mihai Ciobanu, National Publishing House, page. 155). It has to be mentioned that the principle of the reversal of the burden of proof, as assumed by the Romanian legislator and transposed in art. 20 par. 6, does not impose sui generis the exclusive obligation on the defendant to prove a negative deed, in the meaning that this is not discrimination, totally reversing the proof as a task of the defendant.

258. The Steering Committee sets down that the phrase "reversal of the burden of proof" does not accurately reflect its matter, since the defined procedure is much more nuanced than what the text of the phrase suggests. What the principle implies in fact is a sharing of the burden of proof and a transfer to the defendant of those elements that concern him, regarding deeds in the case. It cannot be thus interpreted that there is an absolute exception of the reversal of the burden of proof from the procedural rules according to the principle "onus probani incubit actori" as long as the procedural rule established in art. 10 par. 6 itself determines the obligations of the parties as regards substantiation, sharing the burden of proof between the petitioner and the defendant. Thus, "the concerned person has the obligation to prove the existence of deeds allowing to assume the existence of direct or indirect discrimination and the person against whom the notification was filed has the task to prove that the deeds are not discrimination".

259. According to this principle, the concerned person, in our case the petitioner must indicate sufficient elements which allow presuming the existence of discrimination. These elements can be considered means of evidence to support the existence of a different treatment (exclusion, restriction, preference, distinction) applied to the petitioner directly or indirectly, but it must be specified that with reference to the provisions of art. 20 par 6 the obligation imposed on the petitioner is to "prove the

³³Committee Decision **no. 76 of 02.06.2010**, reasoning drawn-up by NCCD Steering Committee member Dezideriu Gergely



existence of deeds" which positions us in the field of the general principle of the burden of proof which belongs to the petitioner of proving deeds, however, as an exception, the legislator establishes "deeds which allow to presume the existence of a direct or indirect discrimination" as defined by G.O. no. 137/2000, republished. This aspect requires in terms of procedure the obligation of the petitioner in supporting his statements to prove the existence of a deed which could give rise to an assumption of different treatment applied. At this time, the person against whom the notification was filed has the task to prove that the deeds are not discrimination. Or, in this respect, it is clear beyond any doubt that it results the exception from ordinary law as regards the burden of proof, as long as the petitioner is not obliged to prove the lack of justification for the differentiated treatment (distinction, exclusion, restriction, preference). Or, (See, in this regard the case-law of European Court of Justice, case Bilka Kaufhaus, par. 31, case C-33/89 Kowalska [1990] ECR I-2591, par. 16, case C-184/89 Nimz [1991] ECR I-297, par. 15, case C-109/88 Danfoss [1989] ECR 3199, par. 16, case C-127/92, Enderby [1993] ECR 673, par. 16).

260. The Steering Committee sets down that the petitioner Romani CRISS quotes the case-law of the European Court of Justice, namely case C-381/99 Brunnhofer vs. Osterreichischer Bank Postsparkasse [2001] ECR I-4961 sau C196 Vasiliki Nikoloudi vs. Organismos Tilepikinonion Ellados AE [2005] ECR I-1789. Similar to the reasoning quoted above by the Steering Committee (see infra. par. 6.3.-6.7), the European Court of Justice specifies: "in case the defendant brings evidence by which he shows that the criteria for establishing the existence of a difference of payment between women and men and for identifying the comparable work are met, so that, prima facie there is a discrimination case and then the employer will be obliged to prove that there was no breach of the principle of equal payment. It is obvious that also the interpretation of the European Court of Justice considers in essence the sharing of the burden of proof, since as the Court specifies "in case the defendant brings evidence (...) so that, prima facie, there is a discrimination case", "the employer will be then obliged to prove" that there was no breach of the principle of equal treatment (European Court of Justice Decision C-381/99 Brunnhofer vs. Osterreichischer Bank Postsparkasse [2001] ECR I-4961, par. 52 and 53) As the European Court of Human Rights settled, the difference of treatment becomes discrimination when distinctions are caused between analogous and comparable situations, which are not based on a reasonable and objective justification. The European Court has constantly settled that in order for such a breach to occur , it must be established that persons in analogous or comparable situations in the field benefit of a preferential treatment and this distinction has no objective or reasonable justification".

261. Thus, the burden of proof as regards the evidence of justification is transferred to the defendant, this having to prove a positive fact, namely that the different treatment applied in the case has an objective and reasonable justification in order to attain a legitimate aim and the means of attainment are proportionate, which is assimilated in practice to the evidence that no discrimination deed was perpetrated. The National Council for Combating Discrimination or courts have a certain margin of appreciation in order to determine if and to what extent the differences between analogous or comparable situations could justify the distinctions of legal treatment applied. In conjunction with the issues of fact subject to settling, the Steering Committee ascertains that it is notified regarding the content of certain acts or deeds which take the form of statements expressed through words. The object subject to settling the petition falls under the analysis of the statements in question, which assumes in the first instance ascertaining the existence of statements and lastly ascertaining the content of the statements as regards the applicability or not of the provisions of Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination, subsequently amended and supplemented, republished (**Excerpt from Decision no. 180 of 17.07.2007, Decision no. 440 of 30.07.2008, Decision no. 292 of 14.05.2009**³⁴).

262. In the case S. Coleman vs. Attridge Law, Steve Law and in the case Centrum voor gelijkheid van kansen en voor racismebestrijding vs. Firma Feryin NV, the European Court of Justice showed that according to the principle of reversal of the burden of proof, the petitioner has the obligation to establish, before the national court a situation of fact which allows the assumption of a direct discrimination based on one of the forbidden criteria. The adaptation of the norms regarding the burden of proof is necessary as soon as there is an assumption of discrimination. In case the petitioner established a situation of fact which would allow the assumption of a direct discrimination against him the effective implementation of the principle of equality of treatment would then require that the burden of proof should be imposed on the defendants of the main action, that should prove that there was no breach of the mentioned principle. In this context, the mentioned defendants could contest the existence of such a breach, establishing by any legal means particularly that the applied treatment is justified by objective factors and separate from any discrimination on one of the forbidden criteria (see the European Court of Justice, case S Coleman, ECJ, C-303/06, Decision of 17 July 2008, case Centrum voor gelijkheid van kansen en voor racismebestrijding v. Firma Feryn NV, C-54/07, Decision of 10 July 2008). **(Excerpt from Decision no. 510 of 29.10.2009, 121 of 07.07.2010**³⁵).

³⁴ Committee Decision no. 180 of 17.07.2007, Decision **no. 440 of 30.07.2008**, **Decision no. 292 of 14.05.2009**, reasonings drawn-up by the NCCD Steering Committee member Dezideriu Gergely

³⁵Committee Decision **no. 510 of 29.10.2009, 121 of 07.07.2010**, reasonings drawn-up by the NCCD Steering Committee member Dezideriu Gergely



VII. ARTICLE 9 OF DIRECTIVE 2000/43/CE Transposition of the concept of victimization as a form of discrimination. Interpretation of concept. Exercise of the right to file actions in courts

263. In the system of the Romanian Constitution, justice is one of the guarantees of the effective exercise of citizenship rights and freedoms. This role is justified through the place of judicial authorities in the system of state powers and their functions. The principle of free access to justice applies irrespective of the position of the protected person and it allows access to justice to defend any right or any freedom and legitimate interest, irrespective if they result from the Constitution or other laws. Also, no law can limit the exercise of this right (see Ioan Muraru, Elena Simina Tanasescu, Constitutional law and political institutions, Vol. I, Edition IX, All Beck Publishing House). The Constitutional Court of Romania settled that free access to justice also supposes access to the procedural means by which justice is done. (See Decision no. 204/2000, Off. Gaz. nr.46/2001, CDH 2001, p.146). In the considerations of the same decision, was set down that the significance of art. 21 par. (2) of the Constitution, according to which access to justice cannot be limited by law is that no category or social group can get excluded from the exercise of procedural rights it settled (see Decision no. 204/2000, Off. Gazz. no. 46/2001, CDH 2001, p.346).

264. In conjunction with the issues that are the object of the notification, as formulated, the Steering Committee refers to the provisions of art. 2 par. 7 of G.O. no. 137/2000, subsequently amended and supplemented, republished. According to art. 2 par. 7: "According to this ordinance, any adverse treatment as a reaction to a complaint or to any legal proceedings in relation to the infringement of the equal treatment or of the non-discrimination principle constitutes victimization and shall be contraventionally punished".

265. Victimization is a form of discrimination, introduced by the Romanian legislator in the process of transposition of the provisions of Council Directive 2000/43/EC implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin, published in the Official Journal of the European Communities (OJ) no. L 180 of 19 July 2000 and the provisions of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, published in the Official Journal of the European Communities (OJ) no. L303 of 2 December 2000.

266. In this regard, we set down that in the area of non-discrimination legislation, as the acquis communautaire is transposed, in order to have a victimization deed, the constitutive elements of it must be met. Thus, the victimization deed is carried out through an adverse treatment which may take different forms. The text formulation comprises the phrase "adverse treatment" applied to a person, but the text of art. 2 par. 7 does not define the adverse treatment expresis verbis. The phrase "any treatment" designates the legislator's intention to include a large area of behaviours and not a restrictive one, which allows setting down different descriptions in practice and which may vary from case to case, however restrained to the adverse or contrary treatment. In this regard, several factors must be taken into account, together or separately: the context in which the charged facts took place, the duration of the "treatment" applied, its effects and consequences over the person that suffered them, etc.

267. The motive or grounds of the adverse treatment is caused by filing a complaint, a notification or a court action. Thus, the act that causes the perpetration of the victimization deed is the initiation of an administrative or judicial procedure, by filing a complaint, namely a court action, which assumes the existence of a causality link, in the absence of which victimization cannot be set down. With reference to the provisions of art. 2 par. 7 of G.O. no. 137/2000 republished, we set down that the adverse treatment comes as a reaction to a complaint or court action regarding the breaching of the principle of equal treatment and non-discrimination. The initiation of the administrative or judicial procedure by filing a complaint and court action respectively is subject to raising the principle of equal treatment and of non-discrimination. This constitutive element of victimization implies that the complaint or court action that caused the adverse treatment should have had as object the breaching of the equality principle and of non-discrimination. The absence of raising the equality principle and of non-discrimination causes impossibility to set down the victimization deed. The display of the contrary or adverse behaviour against the initiating party, which could be carried out either through one subsequent action or several simultaneous actions against him is caused, as far as victimization is concerned by the preliminary raising, within administrative or judicial procedures of the previous breach of the principle of equality and non-discrimination. (**Excerpt from Decision no. 436 of 28.11.2007, NCCD**³⁶).

³⁶Committee Decision no. **436 of 28.11.2007**, reasoning drawn-up by NCCD Steering Committee member, Dezideriu Gergely



VIII. ARTICLE 13 PAR. 2 OF DIRECTIVE 2000/43/EC NCCD'S capacity to issue judgments, opinions and recommendations in the field of nondiscrimination. Interpretation

268. The Steering Committee considers that in the specific area of non-discrimination, the National Council for Combating Discrimination can adopt judgments, representing opinions with a guiding nature, with no legal binding force regarding the application of the non-discrimination principle. This activity must be understood in the sense of the specific role fulfilled by the National Council for Combating Discrimination and of the special provisions comprised in G.O. no. 137/2000, republished as well as in the sense of the provisions of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, published in the Official Journal of the European Communities (OJ) no. L180 of 19 July 2000 and of General Recommendation no. 2 of the European Commission against Racism and Intolerance (within the Council of Europe) regarding specialized institutions to combat racism, xenophobia, anti-Semitism and intolerance at national level and of Recommendation no. 7 on national legislation to combat racism and racial discrimination, as well as Resolution of the General Assembly of United Nations Organization no.48/134 of 1993 on national institutions for the promotion and protection of human rights.

269. Thus, according to the Directive of the Council of the European Union 2000/43/EC, Chapter III, art. 13 "Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. (...)." According to par. 2 of art. 13: "Member States shall ensure that the competences of these bodies include: "making recommendations on any issue relating to such discrimination".

270. According to General Recommendation no. 2 of the European Commission against Racism and Intolerance, Chapter C, lett. i the specialized bodied must have within their competence; "to issue advice on standards of anti-discriminatory practice in specific areas" and according to General Recommendation no. 7 on national legislation to combat racism and racial discrimination, Chapter V, Common provisions, par. 25 "the competencies of the specialized body must include the right to monitor legislation and to provide assistance to the legislative and executive power". In this regard, the Explanatory Memorandum of the Recommendation, in par. 53 shows that: "the functions of national specialized body should also include monitoring legislation and formulate recommendations to the executive and legislative authorities on the way in which relevant legislation, regulations or practice may be improved".

271. According to the Resolution of the General Assembly of United Nations Organization no. 48/134 of 1993 on national institutions to promote and protect human rights, Chapter Competencies and Responsibilities, point 3, lett. a i) and lett. b), the national institution shall, inter alia, have the following responsibilities: "to issue opinions, recommendations, proposals and reports in any matters regarding the promotion and protection of human rights".

272. In the opinion of the Steering Committee, the special provisions established especially at the level of the European Union as well as the Council of Europe and United Nations Organization in the field of specialized institutions in the area of human rights and especially the non-discrimination field have been seized by the Romanian legislator through law no. 324/2006 amending and supplementing Government Ordinance no. 137/2000, published in the Official Gazette of Romania, Part I, no. 626 of 20 July 2006 which transposes the provisions of Council Directive 2000/43/EC implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin, published in the Official Journal of the European Communities (OJ) no. L180 of 19 July 2000 and the provisions of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, published in the Official Journal of the European Communities (OJ) no. L303 of 2 December 2000.

273. According to art. 16 of G.O. no. 137/2000, republished: The National Council for Combating Discrimination, hereinafter named the *Council* is the state, autonomous control body in the field of discrimination, having legal personality, being under parliamentary control and at the same time *a guarantor of the observance and enforcement of the non-discrimination principle, according to internal legislation in force and to international documents to which Romania adhered*. According to art. 18 par. 1: "The Council is responsible for enforcing and controlling the observance of the provisions of this law in its field of activity, as well as for harmonizing the provisions of regulations or administrative acts that infringe the non-discrimination principle." And according to art. 19 (1) In view of fighting against discrimination deeds, the National Council for Combating Discrimination exercises its prerogatives in the following fields: a) prevention of discrimination deeds; b) mediation of discrimination deeds; c) investigating, ascertaining and sanctioning discrimination deeds; d) monitoring of discrimination cases; providing specialized assistance to the victims of discrimination".

274. Or, in the combined interpretation of the provisions of art. 16, art. 18 and art. 19 of G.O. no. 137/2000, republished, the Steering Committee considers that, lato senso, the National Council for Combating Discrimination has prerogatives which could justify the formulation of judgments, opinions or recommendations with a guiding nature, without legal binding force restrained to the analysis of the principle of non-discrimination. (**Excerpt from Decision no. 310 of 14.05.2008**³⁷).

³⁷Decision of the Committee no. **310 of 14.05.2008**, reasoning drawn-up by the NCCD Steering Committee member Dezideriu Gergely


IX. RACIAL OR ETHNIC ORIGIN

A. Assimilating the phrase "crow" with racial or ethnic origin. Discrimination by association

275. The Steering Committee sets down that according to the definition of the Explanatory dictionary of Romanian language, IInd edition, 1998, edited by the Romanian Academy, the Institute of Linguistics lorgu lordan crow also signifies "…epithet given to a swarthy man". In the same regard, on DEX online (DEX online is the transposition on the internet of certain prestige dictionaries of Romanian language within which the definitions are taken by text from the mentioned sources) available at the address (…), crow also signifies Roma, Gypsy" the dictionary of synonyms, 2002 edition being mentioned as source. Referring to the public space, various situations could be set down in which the use of the phrase "crow" is associated with ethnical, racial affiliation or with the colour of certain categories of persons in a context which resulted in generating a humiliating atmosphere. For example, media narrations regarding chanting during sports manifestations ("Suspend us, we hate the crows!", "One million crows, one solution – Antonescu!", "Die, Gypsy!", "You crows, you crows, are the blackest on the lawn!", "The Champions League, forbidden to crows!").

276. Moreover, the Steering Committee refers to its case-law, setting down that as regards the use of certain phrases like "crow/crows" it was considered that their use offends human dignity, a discrimination deed being perpetrated. For example, the Steering Committee issued a decision as regards the chanting uttered during the game F.C. Steaua Bucuresti– UFC Rapid Bucuresti of 13.04.2005 when among others was chanted "another crow has died" (slogan used when a player of Rapid was fouled). Also, NCCD was self-notified as regards the statements uttered by Mr. A.S. in an interview dated 19.04.2005, broadcasted within the News program of Realitatea TV, stating the following: "(..) with players from the internet and all these crows brought; if I take them to the Zoo and show them to children: look, the monkey! There is no distinction (...)". In both cases was ascertained the existence of a discrimination deed and it was decided sanctioning by contraventional fine.

277. Combining the elements above, in terms of the connotations associated to the use of the phrase "crow" it results unequivocally that in the public space unfortunately this is used and largely spread, being associated to a stigma, in fact identified with race, colour or ethnical affiliation of certain persons. Moreover, the explanatory dictionaries associate secondarily the term crow with an "epithet given to a swarthy men" or "Roma, Gypsy". The use of this phrase was object of sanctions regarding persons that used it, due to the racist, discriminatory, humiliating and offensive character by association with race, colour or ethnical affiliation. As regards the person of Mr. M.V., he enjoys notoriety in public and political life. As regards ethnical, national or colour affiliation, it is also known that these aspects were publicly debated and Mr. V did not consider necessary to justify himself, but about which diverse speculations were made in the media. In this sense, the Steering Committee sets down that it is the right of every person to self-identify as belonging to a group or another and the others don't have this prerogative to consider a person as belonging to an ethnic group or another. Regarding the statement "I don't think that a crow, namely Mr. M.V. can be a spokesperson for our party", the Steering Committee sets down a behaviour that results in offending dignity and creating a humiliating environment against a person through association to a certain ethnic group or colour" (**Excerpt from Decision no. 251 of 07.06.2006, NCCD**³⁸).

B. Assignment of name to a group of persons. Phrases: "Roma" vs. "Gypsy"

278. When NCCD is notified with regard to the content of certain acts or deeds which take the form of statements expressed through words, the object subject to petition settling is restrained to the analysis of the given statements, which supposes firstly ascertaining the statements and lastly, ascertaining the content of statements as regards the relevance or not of the provisions of Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination, subsequently amended and supplemented, republished. With reference to the object of petition, as formulated the Committee considers that the assumption from which the petitioner's request must be regarded is the Framework Convention for the protection of national minorities, adopted at Strasbourg at 1st February 1995 and ratified by Romania through law no. 33 of 29 April 1995, published in the Official Gazette no. 82 of 4 May 1995. As art. 3 par. 1 of the

³⁸Committee Decision no. 251 of 07.06.2006, reasoning drawn-up by NCCD Committee member, Dezideriu Gergely



Convention stipulates: "Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice" (see infra. par. 7.8, 7.9.).

279. Moreover, even in the Opinion for Romania of 2001 the Advisory Committee of the Framework Convention shows expresis verbis that "the possibility" of recognizing themselves in the name adopted to designate the minority is one of the essential aspects of this right" (see infra. para. 7.10). Or, the Advisory Committee of the Framework Convention for the Protection of National Minorities, in the same opinion for Romania ascertains that "numerous representatives of the Roma community refuse being named "gypsies" mainly because of the pejorative connotation related to the period of slavery". (See Advisory Opinion, 2001, par. 21, page 7).

280. Otherwise, in this context, is extremely relevant the General Policy Recommendation no. 3 on combating racism and intolerance against Roma/Gypsies, by which the European Commission against Racism and Intolerance "recommends that Member States of the Council of Europe should ensure that the officially used name for different communities of Roma/Gypsies are the names by which those communities want to be known" (for details see infra. par. 7.11 - 7.13). The Committee considers that the recognition of diversity of minorities in general and Roma communities especially is extremely important. Or, from this point of view, there is a variety of groups within the Roma minority with an echo as regards assignment of names, which constituted a topic approached both internationally and at the level of states. The terminology used for the Roma minority has seen changes nationally, at the level of Member States and internationally, at the level of the Council of Europe, of United Nations Organization and of the Organization for Security and Cooperation in Europe and of the European Union. Or, the modifications occurred were the result of the free will of those minorities (for details see infra. par. 7-15 - 7.21). In this regard, it is easily observed that in the last 10 years the names of the given minority were "Roma", "Roma and Sinti", "Roma and Travellers", "Roma, Sinti and Travellers" comprising the diversity of groups inside the Roma community or similar ones, without identifying them as Roma, as it is the case with Travellers.

281. It is true that initially, the names have also comprised the term "Gypsies", but as also shown by the High OSCE Commissioner for National Minorities, the term "Gypsy" was replaced with "Roma". "gypsy" being a term considered by most Roma pejorative, in considering the preference of many Roma which are active within international and national movements regarding the rights of Roma. (see infra. par. 7.18). Presently, the official documents of the European Union, of the Council of Europe, of the Organization for Security and Cooperation in Europe, of United Nations Organization, to which Romania is a party use the term "Roma: for communities of Roma", "Roma women" etc. (see for details infra. par. 7.22 - 7.23 in the European Union; par. 7.24 of the Council of Europe, par. 25 in OSCE, par. 7.26 in UN). On the other hand, the Steering Committee considers that the case-law of the European Court of Human Rights is extremely relevant in the case, all the more as were addressed complaints against Romania, among others as regards the way in which, under certain circumstances the representatives of state authorities have classified the persons belonging to the Roma minority through the phrase "gypsy". From this point of view, the Committee considers that may be relevant the decisions of the European Court of Human Rights in cases Moldovan and others against Romania, Decision no. 2 of 12 July 2005 definitive at 26/07.2007, case Gergely vs. Romania, Decision of 26 April 2007 definitive at 26/07/2007, case Kalanyos and others vs. Romania, Decision of 26 April 2007 definitive at 26/07/2007, case Vasile Tănase and others vs. Romania, Final Decision of Admissibility, 19.05.2005, case Cobzaru vs. România, Decision of 26 July 2007 definitive at 26/10/2007, case Stoica vs. România, Decision of 4 March 2008 (for details on the decisions of the Court see infra, para. 7.27 - 7.33). The European Court ascertained under certain conditions that express references to certain persons as "gypsies" in correlation to circumstances associated with life style, social behaviour, psychological characterization, application of a certain treatment or refusal to grant certain rights, as well as tendentious remarks regarding ethnic origin are essentially discriminatory, in the absence of any substantiation.

282. Moreover, the National Council for Combating Discrimination has found in recent cases that under certain conditions the phrase "gypsy" can take the form of a discrimination, in the meaning of art. 2 par. 1 and art. 15 of G.O. no. 137/2000, republished (among others, for example Decision no. 416 of 28.11.2007, Decision no. 92 of 23.05.2007 regarding the use of the phrases "gypsies" "stinking gypsy", Decision no. 91/18.02.2008, Decision no. 101/18.02.2008 on expressions like "filthy Gypsy", "go to hell Gypsies", "crows, gypsies"). In considering all the grounds laid out above and in conjunctions with the definition of indirect discrimination comprised in art. 2 par. 3 of G.O. no. 137/2000, republished, the Steering Committee considers that the petitioner's allegations cannot be retained and interpreted as falling under indirect discrimination, which would result, per a contrario in objectivising the use of the term "gypsy" or of another term than "Roma" as a unique and proper method to attain the purpose of the objective in the case (**Excerpt from Decision no. 384 of 22.04.2008, NCCD**³⁹).

³⁹Committee Decision no. **384 of 22.04.3008**, reasoning drawn up by NCCD Steering Committee member, Dezideriu Gergely



X. ETHNICAL SEGREGATION. EDUCATION.

A. International regulations, national standards. Assimilation of segregation as a form of discrimination. Raising the principle of continuity in the class

283. Education of one of the fundamental elements of a democratic society, also taking into account that this must pursue the full development of human personality, as well as the strengthening of respect, understanding, tolerance, human rights and fundamental freedoms.

284. The Convention regarding the fight against discrimination in the field of education (adopted at the UNESCO General Conference, in Paris on 14 December 1960, entered into force at 22 May 1962, according to the provisions of art. 14; Romania ratified the Convention at 20 April 1964 through Decree no. 149, part I, of 20 April 1964, published in the Official Gazette no. 5 of 20 April 1964) represents the international instrument that expressly forbids segregation in education. Thus, in art. 1 of the Convention is established that discrimination means any distinction, exclusion, restriction or preference which, based on race, colour [...], national or social origin pursues or results in the suppression or alteration of the equality of treatment as regards education, and especially: a) removal of a person or of a group from access to various types or degrees of education b) limiting at a lower level the education of a person or of a group; c) establishing or maintaining separate systems of educational institutions for persons or groups, placing a person or a group in an incompatible situation with human dignity. The international Convention regarding the elimination of all forms of racial discrimination (Romania adhered to the Convention on 14 July 1970 through Decree no. 345, published in the "Official Journal of Romania" part I, no. 92 of 28 July 1970). Art. 3 stipulates that: "the state parties condemn especially racial segregation and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction". (...) and the Committee regarding the Elimination of Racial Discrimination in General Recommendation XIX (Session 47, 1995) regarding article 3 of the Convention which condemns racial segregation "1. draws the attention of State Parties regarding the formulation of the text of article 3, by which State Parties undertake to prevent, prohibit and eradicate all practices of racial segregation. 2. The Committee considers that the obligation to combat all practices of this kind includes the obligation to eradicate the consequences of such practices adopted or permitted by previous Governments within states or imposed by force from outside states".

285. In the analysis of the case subject to settling, we must refer to international institutions which in the field of prohibiting segregation in education of Roma children have formulated recommendations to states in view of taking the right measures to eliminate the effects of discrimination in education to Roma children. In this sense, the Steering Committee acknowledges General Recommendation XXVIII regarding discrimination to Roma, adopted by the Committee regarding the Elimination of Racial Discrimination which indicates to Members States: 18. To prevent and avoid as much as possible the segregation of Roma children and maintain open at the same time the possibility of bilingual education or in maternal language; in this sense, to try to raise the quality of education in all schools and with regard to results in schools for the minority community, to recruit within the teaching staff persons among the Roma communities and promote intercultural education". Recommendation no. 4/2000 regarding the education of Roma children in Europe, adopted by the Ministers Committee of the Council of Europe recommends: "10.The Member States should ensure that the establishment of separate programs shall not lead to creating separate classes." General Policy Recommendation no. 3 on combating racism and intolerance to Roma, adopted by the European Commission against Racism and Intolerance recommends that Member States of the Council of Europe "should firmly combat any form of schools segregation to Roma children and ensure their effective equality in the access to education". The Resolution of the European Parliament P6 TA (2005) 0151 regarding the situation of Roma in the European Union, in point 15: addresses to Member States where Roma children are segregated in special schools for persons with mental disabilities or placed in separate schools to adopt programs of desegregation for a pre-determined period of time, in order to thus ensure free access to quality education for Roma children and prevent the increase of anti-Roma feelings among school children".

286. According to Notification no. 29323/20.04.2004 issued by the Ministry of Education and Research through the Office of the Secretary of State for Pre-University Education, in order to fully apply the International Convention on the Elimination of all Forms of Racial Discrimination, of United Nations Convention regarding Child's Rights and the provisions of the UNESCO Convention regarding Discrimination in Education , the Ministry of Education and Research prohibits the formation of pre-school education groups, as well as of classes I and V, comprising exclusively or predominantly Roma pupils. This type of organisation of groups/classes, irrespective of the reasons raised are forms of segregation. Notification no. 29323/20.04.2004 stipulates expresis verbis that: "Segregation is a serious form of discrimination. Within the educational system, except for the



schools/classes with teaching of all subjects in Romani language, segregation consists of physical, intentional or unintentional separation of Roma children from the rest of children in schools, classes, buildings and other facilities, so that the number of Roma children to the non-Roma one is disproportionately high in relation to the percentage that the Roma children of age school have in the total population of age school in that territorial unit. Segregation results in the unequal access of children to quality education. Separation in kindergartens in schools invariably leads to an inferior quality of education to that offered in groups, classes or schools with another ethnical majority than that of school population".

287. In the same sense it is provided that: "Maintaining the separation in education on ethnical criteria has negative effects, for both Roma and the Romanian society as a whole. In schools with a population made predominantly by Roma or in schools formed only of Roma pupils the following characteristics were identified: maintaining the prejudices among the majority population and among Roma, the feeling of inferiority at Roma children, insufficient number of qualified teachers, fluctuation of teachers, incapacity to prepare children at a level that would ensure school success, high rate of unenrollment and school abandon, etc. On the other hand, it is known and demonstrated that the inclusion of children in mixed classes ethnically and culturally contributes to knowledge and acceptance of cultural and ethnical differences, to tolerance and at the same time it favours school success. "Also in the Notification is specified that: "School inspectorates shall analyze the situation of all schools in which the number of Roma children to the non-Roma one is disproportionately high in relation to the percentage that the Roma children of school age have in the total population of age school in that administrative unit and shall initiate a plan of measures that pursues to eradicate segregation" namely "For classes IInd, IIIrd, IVth, VIIth, VIIIth as well as IXth and XIIth which have a school population made exclusively or predominantly of Roma pupils, schools shall analyze the situation for each case and shall draw up and implement a proper plan of measures".

288. The Steering Committee sets down that the placing of children only of Roma origin in separate classes emerges unequivocally from the allegations of the Inspectorate and the high-school respectively which specify: "that the maintenance of classes transferred from the inappropriate spaces in which they functioned" and "for pedagogical reasons and of peculiarity of the given children, differences from educational and cultural point of view, due to the principle of continuity in class, the management of the school, in agreement with teachers from the school decide that pupils from IInd, IIIrd and IVth class shall remain in the classes in which they initially were until the end of the primary school". With regard to this aspect, we consider that indeed, in the analysis of such a situation there has to be taken into account the particular aspects and interests of pupils, but these must be referred concomitantly to the fundamental principles of human rights and fundamental freedoms, especially from *the perspective of the educational process offered to certain children, such as pupils belonging to the Roma minority, so that a fair balance is struck between the interests of the schools and interests of pupils, also with regard to certain discriminatory effects over them. In relation to the parties allegations, we consider that the principle of continuity is a relevant argument, but we appreciate that in such a situation the whole complex of circumstances must be set down which should prevent and avoid as much as possible school segregations of <i>Roma pupils* and combat firmly any form of school segregation and ensure their effective equality in the access to education so that educational policies in favour of Roma children do not lead to the creation of separate classes.

289. (...)The effect of composing classes exclusively of Roma children, their maintenance and compact displacing from one location to another, under the same composition as regards ethnical origin gave rise to a circumstance carried out as a different treatment, which meets the constitutive element of the deed stipulated in art. 2 par. 1, generically as a distinction, restriction, exclusion, preference and which, in relation to the object subject to settling materializes in a separate placing of Roma children combined in distinct classes, which is assimilated to their segregation.

(...)The effect of these circumstances in conjunction with the situation of fact gave rise to an implicit different treatment, through the decision of maintaining and continuing classes in their structure, as they were transferred from School S. (...)In conjunction with the circumstance of knowledge of the provisions of Notification no. 29323/20.04.2004, as well as of the situation carried out through a different treatment, it is set down the situation of fact, the composition and maintenance of classes made up of Roma origin pupils, which implicitly determines to cumulatively set down the criterion stipulated in art. 2 of G.O. no. 137/2000, republished, in this case the pupils' affiliation with the Roma ethnic group. Secondarily, the differentiated treatment must pursue or result in the restriction or hindering of the recognition, use or exercise, under equality conditions of the human rights and fundamental freedoms or of the rights recognized by the law in the political, economic, social and cultural field or in any other fields of public life. In relation to this aspect, we consider that in this case it could be set down the unequal access of Roma children to quality education.

290. The importance of combating segregation in education of Roma children was also re-stated, but especially strengthened through the actions of the Ministry of Education, which has recently adopted Order no. 1.540 of 19 July 107 on prohibiting school segregation and approving the Methodology for the prevention and elimination of school segregation of Roma children, published in the Official Gazette no. 692 of 11.10.2007 (Excerpt from Decision no. 338 of 03.09.2007, NCCD⁴⁰).

⁴⁰Committee Decision no. **338 of 03.09.2007**, reasoning drawn-up by the NCCD Steering Committee member Dezideriu Gergely



B. De facto separation. Parents' request to enroll Roma children in segregated schoolsegate

291. The Committee sets down that the parties do not contest that certain situations have led to circumstances which could result in a de facto separation of Roma children, which perpetuated in time. As it results from documents and reports submitted at the file, for example, one of the kindergartens in A. is attended by Roma children, being located in the Roma community. Similarly, the kindergarten with normal schedule of C. is situated in the centre of the Roma community speakers of Romani language. Unlike these situations, the kindergarten with normal schedule of D. or T. commune is situated at a great distance from the Roma community, which led, in the Inspectorate's opinion to a low level of enrollments of Roma children from these locations. As it decided in its case-law, relevant for the current case subject to settling, the Steering Committee considers that the effect of setting up schools, classes or groups exclusively of Roma children, their maintenance and compact displacement from one location to another, in the same composition as regards ethnical affiliation gives rise to a circumstance carried out as a different treatment, which meets the constitutive elements of the deed stipulated in art. 2 par. 1 of G.O. no. 137/2000, republished and which materializes in a separate placing of Roma children, constituted either in distinct schools, distinct classes or distinct groups, which is practically assimilated to their segregation. Such a segregation offends the right to education of children and personal dignity directly.

292. Beyond these considerations, in relation to the case subject to settling, the Steering Committee acknowledges that the educational institutions and especially the County School Inspectorate have endeavoured to implement desegregation measures in order to ensure equality of opportunities for children, irrespective of ethnical affiliation. The Committee considers that in this case it cannot be set down that the school authorities aimed to apply a different treatment on the contrary, taking note that there have been adopted and implemented concrete measures for desegregation, but it must be said that these measures must presume that the effects separation of children on grounds of ethnicity may lead to segregation, which is ultimately a form of discrimination.

293. The Steering Committee cannot ignore the fact that in certain situations, the parents of Roma children prefer enrolling children in educational institutions placed within the Roma community, unlike those set up at significant distances from the community (see kindergarten in A, kindergarten in C) to kindergartens with extended schedule, due to limited financial resources (see kindergarten in A) or in special groups, due to the allotment of a food supplement for children (see kindergarten in A). In relation to these aspects still, the Steering Committee considers that indeed in the analysis of concrete situations, from case to case the particular aspects and interests of pupils must be taken to account and those of parents, but these must be referred concomitantly to the fundamental principles of human rights and fundamental freedoms, especially from the perspective of the educational process offered to certain children, such as those belonging to the Roma minority, so that a fair balance is struck between the interests of school and interests of children, including as regards the prevention of possible discriminatory effects. (**Excerpt from Decision no. 306 of 13.05.2008, NCCD**⁴¹).

C. Enrollment of Roma children in special schools. Assessment system.

294. The Steering Committee acknowledges the decision of the European Court of Human Rights, adopted in file no. 57325/00 of 13 November 2007, case D.H. and others against Czeck Republic , in which were settled similar aspects to the object subject to settling in petition no. 624 of 25.01.2007. European Court set down inter alia as follows: ""Discrimination based inter alia on the ethnic origin of a person represents a form of racial discrimination. Racial discrimination is particularly an unfair form of discrimination which supposes, under the dangerous consequences special vigilance and a vigorous reaction from authorities. For this reason, authorities should make use of all means available to combat racism, focusing on the democratic vision over the society in which diversity is not perceived as a threat, but as a source of wealth. " (see Nachova and Others vs. Bulgaria [GC], nos. 43577/98 and 43579/98, § 145, ECHR 2005-...; and Timishev vs. Russia, nos. 55762/00 şi 55974/00, § 56, ECHR 2005-...). - The Court has set down that "no difference of treatment which is exclusively grounded on the ethnic origin of a person cannot be set down as objectively justified in a contemporary society based on the principles of pluralism and respect for different cultures" (Timishev, quoted above, § 58). Official undeniable statistical data represent evidence regarding the existence of the differentiated treatment. The vulnerability of Roma implies the necessity

⁴¹Committee Decision no. **306 of 13.05.2009**, reasoning drawn up by NCCD Steering Committee member, Dezideriu Gergely



of giving special attention to their needs and own life style due to their turbulent history and perpetual uprooting, Roma are a disadvantaged and vulnerable minority, with a special nature; the protection of Roma also extends to the system of education; the minors' right to education represents a primary interest; a differentiated treatment may take the form of a prejudicial effect that is disproportionate to certain policies and measures, which even if they are formulated neutrally they discriminate a group".

295. The European Court of Human Rights has settled in this case against Czech Republic as follows: - there is an assumption of indirect discrimination considering: the lack of certain legal provisions that would directly aim Roma. from the enforcement of the law however results a disproportionate high number of Roma children, including the applicants but who are placed in special schools without justification; the rules regarding the proving of indirect discrimination are less strict; the statistics submitted by interveners (several organizations for human rights and Roma organizations) show that the percentage of Roma in the special school (56%) is much over the percentage of Roma children in schools (2.26%). To these statistics there are no others, with official nature, only estimates that do not deny the phenomenon. 2. there is no objective and reasonable justification considering that although it was wanted to place children with mental disabilities in special schools, this system is not beneficial through the reduced curricula and the segregationist nature of the system; the system of testing is extremely controversial and continues to be debated by scientists. the testing and analysis of results did not take into account the ethnical peculiarity of the applicants. 3. the fact that parents agreed to the enrollment of children in special schools does not mean that they waived the right of not being subjected to discrimination, because the waiving must be unequivocal, done consciously, given based on a transparent consent; in this case it cannot be stated that those that signed that they agree with the enrollment of children in a special school knew the consequences of this deed, being the members of a disadvantaged community, without training; the possibility of waiving the right to not be discriminated cannot be admitted, in fact such a waiving would offend an important public interest (...).

296. The system of assessing pupils for their enrollment in special schools, as well as the financial and concrete support granted to the legal representatives of children that follow the courses of special schools generate discriminatory effects in practice. Thus, statistically it is proved that the percentage of Roma pupils represents the overwhelming majority of pupils in this special school, without having a medical reason on all cases, which is objective and could justify their displacement. The Steering Committee considers that in special schools pupils must be enrolled exclusively subject to the requirements expressly provided in the relevant legislation, in correlation with the special situation in which these pupils are, but not as regards their social-economic situation.

297. The Steering Committee considers that the Ministry of Education, Research and Youth should endeavour to implement assessment/re-assessment programs of pupils enrolled in special schools, in order to ensure objective conditions of employment of pupils in special schools, to ensure in practice the prevention of direct or indirect discrimination situations. 298. The Steering Committee ascertains that the importance of combating segregation of Roma children was re-stated, especially strengthened through the actions of the Ministry of Education, Research and Youth that adopted Order no. 1.540 of 19 July 2007 regarding the prohibition of school segregation of Roma children and for approving the Methodology to prevent and eliminate school segregation of Roma children, published in the Official Gazette no. 692 of 11.10.2007 (**Excerpt from Decision no. 733 of 11.06.2008**⁴²).

⁴²Decision of the Committee no. **733 of 11.06.2008**, reasoning drawn-up by NCCD Steering Committee member, Anamaria Panfile

PART IV

ACTIVITY OF PREVENTION OF DISCRIMINATION



Chapter I. Prevention of discrimination in the field of sport

299. Sport signifies before all fair play, mutual respect, teamwork, not only on the field, but also on tribunes. In the sports world, football has an important role to play, being in Romania probably the most viewed sports spectacle.

300. Due to intensifying demonstrations that degenerated into incidents with racist nature on stadiums, UEFA decided to adopt drastic measures to stop racism in football and actions for their information, prevention and sanctioning became number one of the parent body of European football. In order to fulfil this objective, UEFA implemented new compulsory rules of behaviour for all actors involved in the football phenomenon, their non-observance resulting in sanctions for clubs. **UEFA** drew up the 10 points of the **action plan** which are the following:

- 1. Issuing a statement in which the club condemns racism and taking of measures against those who chant slogans with racist nature. The statements must be placed on the field during the games.
- 2. Racism must be condemned publicly.
- 3. An anti-racist message should be printed on tickets for sale.
- 4. Prohibiting materials with racist character on the field, inside the stadium and in tribunes.
- 5. Taking disciplinary action against players who incite to racism.
- 6. Contacting all other clubs for information on the anti-racist policy.
- 7. Drawing up common strategies between club organizers and law enforcement agents to counteract racist manifestations.
- 8. Removing inscriptions with racist character from stadiums as a priority measure.
- 9. Ensuring the equality of opportunities for the transfer of players.
- 10. Cooperation between other groups, agents, supporters, schools, voluntary organizations, youth clubs, sponsors, local authorities and police in order to carry out programs, information and awareness campaigns on discriminatory and racist manifestations.

301. Despite the tolerant character of sport, we encounter more and more frequently aggressive manifestations, both of language and of physical violence, racist reactions against sportsmen or supporters, etc. In this context, the National Council for Combating Discrimination considered that discrimination and racism must be eliminated from sports competitions and has organized a series of campaigns, has made recommendations and applied fines for discriminatory language.

302. Thus, in 2003, the National Council for Combating Discrimination was involved within the program⁴³ initiated and financed by FARE (Football Against Racism in Europe), entitled "**Action week against racism in football**", which consisted in drawing-up some banners displayed on the stadiums which hosted the matches of First Division during 16-28.11.2003. Also, there were information campaigns on the topic of six discrimination criteria (language, nationality, ethnic origin, race, religion and gender) and radio spots were broadcasted in 36 towns in the country, with a frequency of 10 emissions a day.

303. During 15-23 October 2005, within the international campaign Action Week against Racism in Football, the National Council for Combating Discrimination in partnership with Romanian Football Federation initiated the project **"United against Discrimination**"⁴⁴, implemented through the UEFA network **"**Football against racism in Europe**"**.

304. The project aimed to promote tolerance, prevent racism and discrimination in football, as a result of certain incidents found over time on Romanian stadiums. In order to draw the attention of viewers and televiewers, the football players together with the referees wore before the start of the games t-shirts and banderoles on which was printed the message "United against Discrimination", materials afterwards distributed to viewers. At the entry on stadiums were distributed leaflets, with the purpose of making the public aware regarding the negative effects which discrimination might have. The broadcasters of stadiums and commentators of games offered information regarding the context in which this campaign takes places. Its initiators explained the significance of t-shirts and banderoles wore by the players or notion regarding discrimination and at the edge of the terrain was located a banner promoting NCCD.

⁴³2003 NCCD Activity report.

⁴⁴2005 NCCD Activity report.



CONSILIUL NAȚIONAL PENTRU COMBATEREA DISCRIMINĂRII



POSTER OF THE CAMPAIGN





PLAYERS TOGETHER WITH REFEREES SHOWING RED CARDS TO THE VIEWERS

305. Within the same campaign dated 20 October, NCCD together with the National Agency for Sport organized a minitournament of room football, concluded with the awarding of a prize as a symbol of fight against discrimination, attended by teams of NCCD, Deputies, Journalists and Romani CRISS. The project "United against Discrimination" was well-received by the football clubs, institutions and people who act in this field getting involved together with NCCD in the organization and performance of events. This kind of prevention action knew a major importance, the problem of racist chanting being largely debated by the mass-media following some events that happened in 2005, the education of supporters in the fair-play spirit becoming a priority.

306. In December 2005, the National Council for Combating Discrimination awarded to the players of the football team Dinamo Bucuresti the award **"Promoting Diversity in Sport**" following the gesture of footballers of painting themselves on their face at one of the team's trainings, as a symbol of solidarity with the player of Ivorian origin Mariko Daouda. The colour footballer had been aggressed after the defeat suffered by Dinamo before the players from FC National by a group of supporters who were in the cantonment of the team of Saftica to protest. The fans then hit the colour player with bananas.

307. In **2006**, following proliferation of manifestations and discriminatory attitudes on the occasion of sports competitions and considering its specific competences, NCCD required the Commission of Discipline of the Romanian Football Federation to take measures against chanting and racist manifestations of the supporters of various teams in the internal football championship.⁴⁵

308. The most severe sanction was applied by the Discipline Commission of RFF (Romanian Football Federation) to the club Jiul Petrosani, following the championship match fought on the own field with Rapid Bucharest team. Thus, for repeated chantings "Gypsies", "We always had and we will hate the Gypsies", and "The championship league forbidden to the crows" the club Jiul Petrosani was fined with 30.000 Swiss Francs and its field was suspended for one stage.

309. Also, teams like Steaua, Dinamo or Rapid were sanctioned following the racist attitude of supporters, either by fighting the games without viewers or by compulsoriness of playing the matches on their own field or on other stadiums.

310. In the spring 2006, while conducting the matches in the final quarters of UEFA Cup, in which the teams Rapid and Steaua had qualified, NCCD together with Romanian Football Federation and National Youth Authority organized the campaign to prevent discriminatory manifestations and promote fair play on stadiums and tribunes **"LEAVE RACISM IN OFFSAID**", being known the racist manifestations from the their games in the past, which NCCD also sanctioned. The campaign "Leave racism in offsaid" enjoyed success from the public, no incident being recorded, but also from mass-media as the campaign was intensively broadcasted.

311. Also, a demonstrative game was organized, the teams being made up of journalists, various personalities active in non-governmental organization from the field of human rights protection, etc. The match was opened by Mr. Jonathan Scheele, Head of the European Commission in Romania. Also, the President of the Romanian Football Federation, Mr. Mircea Sandu was also present.

312. During 27 – 29 October 2006, the National Council for Combating Discrimination together with Romanian Football Federation, Open Society's Institute, Roma Initiative Office, Press Monitoring Agency, European Roma Grassroots Organization with support from MC CANN ERIKSSON organized within the "European week of action against racism" to all the football games within the Ist League, XIth Stage, the campaign "**Racism spoils the play**". The campaign was designed to

⁴⁵2006 NCCD activity report



stimulate social dialogue, promote tolerance and fair play in football. The players within the matches (Politehnica Timişoara -Jiul Petroşani; Universitatea Craiova - Pandurii Târgu Jiu; F.C.M UTA Arad - F.C. Național; F.C. Steaua Bucureşti - Unirea Urziceni; S.C. Vaslui - Ceahlăul Piatra Neamț; Gloria Bistrița - Farul Constanța; Dinamo Bucureşti - Politehnica Iaşi; F.C. Argeş Piteşti - Oțelul Galați; U.F.C. Rapid Bucureşti - C.F.R. Cluj) alongside the referees wore t-shirts and showed the viewers two banners with the slogan of the campaign, at the entry on the field, at the beginning of matches. The ball boys wore during the games t-shirts of the same kind.





WEARING T-SHIRTS AND SHOWING VIEWERS THE TWO BANNERS OF THE CAMPAIGN

313. The matches were televised and their commentators informed viewers on the organization of this event. Also, over 130.000 spectators were present on stadiums. During the conduct of the campaign, most of the written media reserved spaces for informing readers on this event. The audience of matches was estimated to over 2.3 viewers. Estimates show that the articles for the campaign were read by minimum 650.000 readers.⁴⁶ Saturday, 28 October 2006, Gazeta Sporturilor, the most read sports newspaper dedicated its first page to the event. Also, in the newspaper was published an editorial on the event. Also, in the newspaper an editorial of the event was published. The number of copies sold by Gazeta Sporturilor is estimated for that day to 650.000.⁴⁷

314. Within the campaign, during the whole day of Saturday 28 October 2006, was organized in Bucharest within the Student Complex Tei a mini-tournament of football attended by 16 teams representing all football clubs. The participants were children from age groups between 1996 and 1997. The teams for each age category, classified on the first three places, received the awards of the Cup "Football against Racism".

315. In 2007, the National Council for Combating Discrimination continued the campaigns in the sports field, in the same partnership with RFF and the international organization "European Roma Grassroot Organization". Thus, on the occasion on the International Child Day, 1st of June was organized a mini-tournament in the Student Complex Tei which brought together the teams of the football clubs with juniors and the football team of the non-governmental organization that defends the right of the Roma minority "Romani CRISS". At the end of the tournament the first three places were awarded a prize. The prizes awarded to organizers



⁴⁶The data were taken from Mr. Valeriu Nicolae, General Secretary ERGO
⁴⁷Idem.



were focused on other qualities of the teams such as that of the best player, the best goalkeeper, the award for fair play, but diplomas for participation were also awarded, to encourage the teams to continue to join events of this kind, which are extremely important for combating and preventing violence and discrimination acts. The event of the 1st of June is part of a broader campaign, carried out in 2007 under the slogan **"Racism spoils the play. Violence destroys lives**", conducted in the same partnership throughout the year.

316. The first part of the campaign ended on 25 July, with the game between Super Romanian Cup, Dinamo Bucuresti – Rapid. On this occasion, at the beginning of the game, the players of both teams wore t-shirts with the slogan of the campaign and showed the spectators a banner with the same content, as a sign of disapproval of discriminatory, racist and violent manifestations from football games.

317. The second part of the Campaign took place in October, with the game Romania – Holland, when the same manifestations took place.

318. In 2009, considering the increasingly violent atmosphere of several football competitions, both in Romania and internationally, NCCD in partnership with Romanian Football Federation conducted during 30 May - 13 June the campaign "**No to racism! No to violence!**", with the clear objective of stopping racist and violent manifestations on the football stadiums, but also outside them.⁴⁸



AT THE BEGINNING OF THE FOOTBALL GAME, PLAYERS OF BOTH TEAMS WEARING THE T-SHIRTS OF THE CAMPAIGN "UNITED AGAINST DISCRIMINATION"

319. The campaign consisted in achieving promotional materials to ensure the visibility and promotion of the message against racism and violence. These were distributed in the mini-tournament of football that was conducted on 30 May, as well as the final of the Romanian Cup between Politehnica Timisoara and CFR Cluj of 13 June. There were distributed diplomas, trophies, t-shirts wearing the message of the campaign and the activities were broadcasted by PRO TV and TVR1 television posts within sports shows, with the purpose of promoting social dialogue and the principle of non-discrimination in sport. The campaign was designed mainly for the 20 junior teams belonging to age groups 1998, 1999 and 2000, around 5000 children, but also to the 1000 viewers as well as televiewers of football games. Following the evaluation of the campaign, its impact through its nature being conducted within sports manifestations of large audience it was very large: approximately 500 children took part in the mini-tournament of football; 1000 spectators were present at the mini-tournament of football; the total number of direct beneficiaries was 10.000 persons; the number of viewers cannot be assessed, but it can be estimated to around 1.000.000 persons.

320. Although there were campaigns annually organized by the National Council for Combating Discrimination, but by other organizations/institutions, we consider it necessary to continue to run such events since public opinion must be educated in the spirit of tolerance.

⁴⁸2009 NCCD activity report



Chapterl II

National Council for Combating Discrimination with non-governmental organizations

321. The National Council for Combating Discrimination collaborated with non-governmental organizations with prerogatives in promoting and protecting human rights, trying to improve legislation and the Romanian institutional framework, but also promote campaigns of information or common projects.

322. In 2003, it was established the National Alliance against Discrimination which was conceived as a forum of debate open to all non-governmental organizations and trade-unions, to support the activity of preventing discrimination deeds conducted by the National Council for Combating Discrimination.

323. NAID operated during 2003 – 2005 and it gathered a total number of 80 non-governmental organizations which periodically met within conferences (on the following criteria: youth, old people; refugees and asylum-seekers; gender; disabilities; race; nationality and language; ethnic origin, sexual orientation; HIV/AIDS, social category and social origin, religion and convictions) within their field of activity in order to identify concrete measures to promote equality and combat discrimination.

324. In November 2006, the National Council for Combating Discrimination submitted to non-governmental organizations active in the field of human rights and non-discrimination the Project of the National Strategy implementing measures to prevent and combat discrimination (2007-2013), drawn-up according to ART III par. (2) and (3) of Law no, 324/14 July 2006 amending and supplementing Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination, published in the Official Gazette no. 626 of 20 July 2006. The project was debated in November 2006 at Brancusi hall within the Parliament House, among the participants being: Accept Association, Together Agency, Civic Alliance of Roma, ARCA, Center Partnership for Equality, CRCR (Center of Resources for Roma Communities), Center for Legal Resources, FILIA Center, Foundation for an Open Society, UNOPA (National Union of Organizations of Persons Affected by HIV/AIDS), The Party of Roma, National Authority for Disabled Persons, Pro Democrația Association, ProEuropa League, LADO (League for the Defence of Human Rights), Association of Blind People, Intercultural Institute Timișoara, Group for Initiatives, Studies and Social Analyses Sebes

325. In 2006, the National Council for Combating Discrimination discussed with a few non-governmental organizations the proposals to amend Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination.

326. The collaboration continued through the organization of an annual meeting between the National Council for Combating Discrimination and representatives of the civil society to debate NCCD's activity report from the previous year, occasion on which a press conference was also organized. In 2010, the National Council for Combating Discrimination organised the launching of its activity report for 2009 and on this occasion there was a public hearing, alongside the representatives of relevant non-governmental organizations and of certain embassies. The report was printed and annexes printed on a CD and it was distributed to non-governmental organizations, public institutions partners of NCCD, embassies, representatives of written and audio-visual press. According to the law, the Report was submitted to the standing bureaus of the Chamber of Deputies and the Senate for debate and approval. Moreover, since 2007 (when NCCD has been under Parliamentary control) up to now, NCCD has debated with the representatives of non-governmental organizations all the yearly Reports that it achieved and submitted to the standing bureaus of the Chamber of Deputies and the Senate and which subsequently were approved by the Parliament. Through the organization of this public hearing, the National Council for Combating Discrimination wanted to assess and analyze how it is perceived by the civil society, how its institutional activity is appreciated, how the activities undertaken were received.

327. A form of cooperation with non-governmental organizations with prerogatives in promoting and protecting human rights was to send petitions to NCCD when these appreciated that there was a form of discrimination. For example, in 2009, NCCD received 46 petitions from non-governmental organizations and in 2008 it received 53. It must be emphasized here that the non-governmental organizations have the capacity to gather information about possible discrimination deeds from the territory, locally and subsequently to communicate them to the National Council for Combating Discrimination, through petitions.

328. The preparation, organization and conduct of certain projects to prevent discrimination in various social environments was often achieved in collaboration with non-governmental organizations. This private-public partnership led to a better knowledge of the institution's activity by non-governmental organizations, to understanding certain organizational and financial aspects, to obtaining better results.

329. Among the organizations with which NCCD conducted a series of actions following the conclusion of a collaboration protocol, we remind:

ProDemocrația Association, Regional Center of Resources Focsani, through the project Youth say NO to discrimination,
 Center of Legal Resources and Romani Criss Organization in collaboration with the National Institute for Magistracy, through a series of workshops regarding the magistrates professional training in the area of legislation on preventing and combating discrimination,

Association C. Marshall Romania, in collaboration with the Presidential Administration, US and German Embassy through the Conference "**Human rights dimension in the context of security**"

Association A.R.T. Fusion and New Horizons Foundation through the programme "Are you a spectator? Take attitude!"
 Roma Community Association of Targu Jiu through the campaign Education for non-discrimination in Gorj county.

 Association of Amateur and Non-Amateur Footballers in collaboration with Romanian Football Federation and European Grassroot Organisation through the campaign Racism spoils the play. Violence destroys lives.

• Romanian Association for Debates, Oratory and Rhetoric through the organization of the National Competition for Public Speaking, **Discriminagora**.

Association for the Promotion of Diversity and Equality of Opportunity in collaboration with the Town Hall of Resita, through the organization of the **Carnival of Diversity**,

•National Agency for Roma, through the workshop of information and awareness regarding the situation of the Roma ethnic group

◆ Program of the United Nations for Development and ProDemocratia Association, Regional Center Focsani, Caravan for information and training in the field of non-discrimination

◆The High Commissioner for Refugees UNHCR, Romanian Representative Office and Organization of Women Refugees in Romania through the organization of the **Week of Refugees in Romania**,

◆Cultural Association TURN Timisoara through the organization of the Roma International Arts Festival, *So keres Europa*?

Association Future of Youth through the organization of debates regarding discrimination in the high-schools in Prahova
 Center Partnership for Equality and Foundation for an Open Society, through the project Its your chance to get

involved in a labour market without discrimination,

• Foundation Family and Protection of Children, through the international competition European Union and nondiscrimination

Accept Association, Press Monitoring Agency, Center for Curricula Development and Gender Studies Filia, Center for Legal Resources, Foundation for Poetry Mircea Dinescu, Institute for Public Policies, Roma Acces, Romani Criss and Equal Opportunities through the organization of the debate **2007: between the observance of the principle of equal treatment and discrimination**.

330. The collaboration with non-governmental organizations is constantly achieved **by communicating information that some NGOs request** to the Council. For example, the Center of Legal Resources requested a series of information from NCCD in order to achieve a correct reflection of Romania to the EU, CLR developing the project of monitoring racism, xenophobia and anti-Semitism "RAXENA National Focal point in Romania". The questions addressed refer to the number of notifications received by NCCD on certain criteria, in how many situations the existence of a discrimination deed was ascertained, in how many cases NCCD was not competent to settle, how many refer to the access to health of Roma persons, etc. The National Council for Combating Discrimination offered the answer to these questions within the terms requested by CLR.

331. In 2009, the National Council for Combating Discrimination was partner of the Press Monitoring Agency in the project "Cyber Hate Watch" submitted within the Financial Mechanism of Economic European Space - Fund for Non-Governmental Organizations, round II. The project aimed to promote actions of self-help and representation of the interests of socially excluded groups and to implement anti-discrimination policies.

332. In 2010, the Center for Legal Resources applied to obtain POS DRU financing for the project "Multi-regional network of anti-discrimination counselling services for social inclusion of discriminated persons". The project aims to improve equal access to the labour market of women and persons belonging to vulnerable groups. The specific objectives are to facilitate access to services that promote the principle of equality of opportunity and gender in the Romanian society and especially on the labour market by setting up a network of anti-discrimination local centres, to increase the level of awareness of public opinion on the issues regarding equal rights on the labour market, in the field of labour legislations and to overcome cultural stereotypes, including sexual harassment at the workplace, improve competences and skills in the field of equality of opportunities and gender of managers and personnel employed in central and local authorities, social partners and organizations of civil society, experts and mass-media operators, etc. The National Council for Combating Discrimination is a partner in this project alongside the Giacomi Brodolini Foundation.



333. The activities enumerated above had a double effect: on one hand they led to consolidating cooperation with the civil society and on the other hand they applied the objectives of the National Strategy implementing the measures to prevent and combat discrimination during 2007-2013, promoting equality of opportunity and the right to not be discriminated.

Chapter III Comparative analysis of opinion polls ordered by the National Council for Combating Discrimination

334. The comparative analysis is based on the study of the following public opinion barometers, four of them being conducted after they were ordered by the National Council for Combating Discrimination:

◆ IPP/Gallup – "Intolerance, discrimination and authoritarianism in public opinion" (2003);

◆NCCD/Metro Media Transilvania – Opinion poll regarding discrimination in Romania" (2004);

• NCCD/CURS Center of Urban and Regional Sociology – "Perceptions and attitudes towards the discrimination phenomenon" (2005);

NCCD/Gallup – "Perceptions and attitudes of the Romanian population towards the discrimination phenomenon (2008);
 NCCD/INSOMAR – "The phenomenon of discrimination in Romania" (2009).

335. The analysis takes into account how the ethnic and national minorities are perceived by the majority population. In this regard, it is analyzed the existence of stereotypes towards certain minority groups and the way in which these affect social relations.

336. The Roma population is clearly the population towards which the most attitude of rejection from the majority population occurs. Also, towards is ascertained the existence of powerfully negative stereotypes. In order to support what we set forth we present the results of public opinion barometers obtained following the invitation addressed to respondents to express their agreement or disagreement towards certain statements referring to Roma group persons (Image I). We can observe that there is a decrease towards 2003 as regards certain discriminatory opinions to Roma. It is important to underline the extremely high percentages obtained by the agreement to the statement "most Roma break the laws", but also the fact that this opinion has not changed significantly over time (82% in 2003, 72.4% in 2009). In this circumstance, we can talk about a "pattern" applied to the persons of Roma origin, before the majority population these being arbitrarily considered criminals. A correlation of this can be made with the percentages which represent the agreement to the statement that "Roma are a shame for Romania" (61% in 2005, 54% in 2008, 48% in 2009), case in which we observe again a stigma applied to the whole minority.

337. Moreover, according to the data of the poll achieved in 2008, Roma are characterized as **"Thieves" – 47%; "Dirty – 44%"; "Lazy – 43%. The 2009 data** give once again a confirmation of stereotypes present at the level of the majority population to the Roma minority. The invitation was to express the first word that comes to mind when the word "Roma" is pronounced.

338. The responses registered referred to **crime/theft/begging – 23%; normality/ordinary man/indifference – 16.2%;** "uneducated/uncivilized/dirty" – 10.5%; contempt/repulsion – 5.2%.

339. We believe that it shouldn't be neglected that the generation of these images to Roma is also impacted by the massmedia, opinion makers, etc, as it is very important how certain news, press articles are presented, as they generate a positive or negative impact on the public and implicitly on the majority population. It would be beneficial to follow the future evolution of these aspects, together with the achievement of programs to combat discrimination, stereotypes to Roma and promote tolerance.

340. It must be said that the majority population recognizes significantly that the Roma minority is discriminated in Romania. It is not therefore a "hidden" discrimination, as all persons concerned are aware of it. In the poll achieved in 2009, **58.8% of the respondents considered that a Roma origin person managed to obtain a workplace harder**, even if he/she has a level of training similar to a person who is not in that ethnic group. The 2005 and 2008 data show that there is a majority opinion on the fact that Roma origin persons are discriminated in the society (Image II).



CONSILIUL NAȚIONAL PENTRU COMBATEREA DISCRIMINĂRII



image II

Agreement that a Roma origin person should be







How often is a person treated differently because he/she is a Roma?

percentages for the total responses as "often" and "very often"



image IV

How often is a person treated differently because he/she is a Hungarian? percentages for the total responses as "often" and "very often"



2005 🗖 2008



Basically, we cannot talk about an avoidance of Roma ethnic persons, but about a certain attempt to limit their 342. closeness to the family space. The percentages of acceptance are larger where there isn't a direct possibility of choosing between relating with a Roma origin person and avoiding him/her (as a neighbour or work colleague).

As regards the relationship that the majority population has with Roma origin person, that with Magyar nationality 343. persons, this is sensibly different. In relation to it isn't considered that there are attitudes of discrimination to the extent these are present to the Roma origin persons (Imag. IV). The difference of attitude to the Magyar population is also present in the appreciations with which it is characterized, its representatives being considered "hard-working - 27%", "civilized – 26%", "united – 25%", "decent – 19%". As negative threats were mentioned those related to "pride" – 17%, selfishness – 16% and hostility - 15% (the 2008 poll).

344. The social distance to the persons of Magyar nationality is also profoundly modified compared to that to the persons of Roma origin. Image V shows the extremely high percentages towards the availability of having a Magyar nationality person at all levels of social relations, both as a family member, and work colleague.



345. The agreement with certain statements referring to persons of Magyar nationality has a new type of relation. This does not involve anymore negative stereotypes, as it was the case with persons of Roma origin. Towards the persons of Magyar nationality there is larger acceptance (Image VI) and it is believed that the relations would be much better if there wasn't a political mediation of these.

346. We can talk about a higher tolerance towards this minority, in this sense being relevant the decrease of the percentage that records the agreement with the coerciveness of using Romanian language in relation with the institutions (71% in 2005 to 61.6% in 2009).

The notoriety of the National Council for Combating Discrimination, i.e. the extent in which it is known among 347. the population increased a lot. In 2003, only 33% of the population had heard of NCCD, following that in 2009 the percentage reached approximately 71% (Image VII).



image VI

Agreement that a Hungarian person should be....







348. Correlated to this percentage there is also the degree of trust that people have in NCCD. Unfortunately, both in 2008 and 2009 the highest percentages to the question regarding trust in NCCD was the answer alternative **"Not much, not less" (43% in 2008; 43.3% in 2009)**. We believe it is important that in the future NCCD's degree of notoriety be completed with a trust consolidated at social level. This can be done through a better communication of the institution's activity results, an immediate and involved public response to discrimination situations existing in the society



Chapter IV.

Programs implemented by the National Council for Combating Discrimination during 2002 – 2010 according to the provisions of Directive 2000/43/EC

349. Since its setting up in 2002, the National Council for Combating Discrimination has organized and implemented programs, projects, courses, national and regional campaigns etc. with the purpose of informing, raising awareness and educating the population in general and certain socio-professional groups in particular in view of observing the values of diversity, tolerance and all human rights.

350. In order to fulfil its objectives, during 2002-2006, the National Council for Combating Discrimination implemented the activities of prevention based on a *National Action Plan for Combating Discrimination*. This was elaborated following the establishment of the *National Alliance against Discrimination* as a result of identifying certain specific problems by the non-governmental organizations active in the field of human rights and which are operational on certain sectorial areas or that represent the interests of certain vulnerable groups to the phenomenon of discrimination. Basically, the National Action Plan for Combating Discrimination and was permanently improved until 2004 when it was approved through Government Decision and published in the Official Gazette.

351. However, once the independence statute was clarified by approving Law no. 324/2006, by transfer from the Government subordination to Parliamentary control there was a need to act strategically, in a structured, integrated, manner and focused. In this sense, was drawn up the *National Strategy implementing measures to prevent and combat discrimination* (2007-2013), by consulting non-governmental organizations active in the field.

352. The National Council for Combating Discrimination according to the regulations in force, in the programs and projects it implements comprises 14 discrimination criteria, involving a large sphere of covering the issues of vulnerable groups. As regards the criteria pursued by the Council Directive 2000/43/EC, the National Council for Combating Discrimination pursued to achieve continuity in the sphere of prevention and especially in a few fields such as sports, education and information, that of training of socio-professional categories. Besides these, we present the projects, programs and campaigns implemented by the National Council for Combating Discrimination since its setting up, correlated to the criteria pursued by Council Directive 2000/43/EC:

2003

353. In 2003, the activity of preventing the phenomenon of discrimination implemented by the National Council for Combating Discrimination concerned the following main direction actions:

1. National Alliance against Discrimination (N.A.I.D.)

354. In 2003, was set up the National Alliance against Discrimination which was conceived as a forum of debate open to all non-governmental organizations and trade unions, to support the activity of preventing discrimination deeds developed by the National Council for Combating Discrimination.

355. NAID also operated during 2003 – 2005 when it gathered a total number of 80 non-governmental organizations which met periodically within conferences in their sphere of activity in view of identifying concrete measures to promote equality and combat discrimination. Thus, in 2003 were established 11 conferences as follows: youth, elderly, refugees and asylum-seekers; gender; disabilities; race; nationality and language; ethnic group; sexual orientation; HIV/AIDS, social category and social origin; religion and convictions.

2. National Action Plan to Combat Discrimination 2003 – 2006

356. The National Plan to Combat Discrimination represents a set of measures designed to ensure the observance of the principles of equality and non-discrimination. The plan was drawn up taking into account the suggestions received by representatives of the civil society, N.A.I.D. members. The plan represents a document of public policies whose aim is to establish certain action directions in the field of preventing and combating discrimination.

357. The plan measures concern: disseminating information regarding equality of opportunities;



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\diamond promoting tolerance and diversity;

♦ making public institutions responsible, the civil society and undertakings in order to prevent and combat discrimination acts and deeds; achieving a coherent system at national scale to prevent discrimination;
 ♦ combating discrimination deeds by applying the law and prompt authorized intervention

358. Besides its main activity directions, the Council was involved in organizing and participating to a series of seminars, actions and campaigns in the field of human rights and combating ethnic and racial discrimination:

3. "European Week of Action against Racism"

• Within the event were organized a few manifestations together with the High Office of the United Nations for the Refugees;

4. "Human rights and combating discrimination"

• Seminar organized by the Council in partnership with the Commission for Human Rights, Cults and Problems of National Minorities of the Chamber of Deputies;

5. "United against Discrimination"

• Project implemented by NCCD within the program "Action week against racism in football" initiated and financed by FARE (Football Against Racism in Europe);

6. "Give a chance! Give yourself a chance!"

• Campaign to inform the public regarding the correct wording and editing of classified ads regarding the organization of competitions to occupy a position and their publication.

2004

359. In August 2004 was approved the National Action Plan to Combat Discrimination through G.D. no. 1258/2004, published in the Official Gazette 775/2004.

360. According to the general Objectives of the National Action Plan to Combat Discrimination and the Prevention Policy, the Council implemented the following programs:

• The program of information and documentation in the field of preventing and combating discrimination: "Information campaign on combating discrimination in District 3" – project organized in partnership with Town Hall of District 3 which had as objective to ensure a climate of tolerance and safety between the members of the community of District 3.

• The program of education in the field of non-discrimination, of the rights and fundamental freedoms: Festival of diversity – DiversFest - event organized by NCCD together with a series of non-governmental organizations members of NAID and Department for Inter-Ethnic Relations within the Romanian Government, National Authority for Youth, Ministry of Culture and Cults, Press Monitoring Agency – Academia Catavencu – National Romanian Commission for UNESCO. The project was the first initiative of this kind in Romania which promoted diversity and tolerance and which enjoyed the support of the History Museum of Bucharest Town and of the Cultural Centre Friedrich.

• The program of social research in the field of discrimination: the opinion poll regarding the phenomenon of discrimination in Romania, entitled Opinion poll regarding discrimination in Romania – 2004, achieved in collaboration with Metro Media Transilvania. The poll had among its objectives: to identify the main forms of discrimination in Romania and of actors involved; to assess the actual measures to combat discrimination and to mitigate its effects; to identify factors to make efficient the activity of relevant institutions in making decisions to combat discrimination.

2005

361. In 2005, the prevention activities implemented by NCCD pursued to reach the general objectives of the National Action Plan to Combat Discrimination through the following programs:



◆ Program of information and documentation in the field of preventing and combating discrimination: Information and promotion campaign based on ethnic origin – project implemented by NCCD together with the Town Hall of District 2 of Bucharest which aimed to raise awareness on the existence of the discrimination phenomenon in all its forms, to sensitize public opinion as regards the prevention and combating of discrimination, improve education as regards the promotion of human rights.

• The programme of education in the field of non-discrimination, of rights and fundamental freedoms:

♦ festivalul "diversFEST2005" – proiect realizat în colaborare cu Departamentul pentru Relații Interetnice şi Autoritatea Națională pentru Tineret, cu sprijinul Organizației Naționale "Cercetaşii României" şi Alianța pentru Unitatea Romilor.

♦ "**United against Discrimination**" – project implemented through the UEFA network "Football against racism in Europe" within the Action Week against Racism in Football which aimed to promote tolerance, prevent racism and discrimination in football following certain incidents found over time on Romanian stadiums.

• Program of social research in the field of discrimination: opinion poll regarding the phenomenon of discrimination "Perceptions and attitudes towards the discrimination phenomenon" achieved by the Center of Urban and Regional Sociology CURS SA.

2006

362. According to the National Action Plan to Combat Discrimination 2003 – 2006, the activities of prevention of the Council were based on raising awareness of the issues and the negative impact of discrimination over vulnerable groups by implementing the following programs:

363. • The program of information and documentation in the field of preventing and combating discrimination:

♦ "Leave Racism in Offsaid" a campaign conducted in partnership with Romanian Football federation and National Youth Authority. The campaign was carried out during the matches of the quarters of the UEFA Cup fought between the football teams F.C. Steaua Bucuresti and U.F.C. Rapid Bucuresti, when two banners with the message as a sign of rejecting racist manifestations on stadiums and promote the spirit of fair-play in football were printed.

♦ "**Racism spoils the play**" – campaign conducted in partnership with Romanian Football Federation, Open Society Institute, Roma Initiatives Office, European Roma Grassroots Organization, Press Monitoring Agency "Academia Caţavencu" with the support of McCann Erickson. The campaign was carried out within the European Week of Action against Racism organized through the FARE network (Football Against Racism in Europe) in all Europe annually.

364. • Program of education in the field of non-discrimination, of human rights and fundamental freedoms:

♦ The summer school **"Intercultural Dialogue**" – organized by the National Youth Authority in partnership with the Department for Inter-Ethnic Relations and National Council for Combating Discrimination which aimed to acquaint youth with the cultural peculiarities of national minorities.

"All different - all equal" – summer school organized in partnership with the National Youth Authority and the Department for Inter-Ethnic. Its purpose was to increase the participation to the social life of youth with a risk of social integration coming from disadvantaged categories.

2007

365. În luna august anului 2007 a fost aprobată prin Ordinul cu nr. 286/2007 al Președintelui Consiliului Național pentru Combaterea Discriminării Strategia națională de implementare a măsurilor de prevenire și de combatere a discriminării (2007-2013).

366. • Obiectivul 3 - Asigurarea egalității în acces, participare și rezultate în ceea ceprivește serviciile publice și private destinate publicului larg, ART. 16 – Promovarea egalității în domeniul educației:

♦ Activities of information of pupils in Constanta county, on the occasion of the International Day of Eliminating Racial Discrimination. The project was conducted by the National Council for Combating Discrimination in collaboration with the Ministry of Education and Research, through Constanta County School Inspectorate, offering information on discrimination cases, legislation in the field and actions to prevent and combat discrimination.

♦ "A smile for everyone" – project conducted in partnership with Kindergarten no. 28 Baia Mare and Kindergarten Coltau which aimed to obtain a partnership between the two kindergartens, namely three groups of children, two groups of Romanian children and one of Roma;

367. • Priority 4.1 - Consolidating anti-discrimination initiatives at national level and implementation of certain programs of intercultural awareness regarding diversity and non-discrimination

♦ **"The Week of Refugees in Romania**", project conducted by the National Council for Combating Discrimination in partnership with the High Commissioner for Refugees UNHCR – Romanian Representative Office and Organization of Refugees Women in Romania. The events organized had as beneficiaries asylum-seekers and refugees from Romania.

♦ "Festival of International Art of Roma- So keres Europa?" Under the High Patronage of the National Council for Combating Discrimination. The project was organized in partnership with TURN Cultural Association from Timisoara, pursuing to diminish stereotypes regarding the Roma ethnic group, establish relations of appreciation of the others through culture, to put together people of ages, occupations, different nationalities. Our institution was involved in all the activities of the project, especially those that promote non-discrimination.

368. • Priority 4.3 - Cooperation and consolidation of relation with institutions and sports entities, by promoting actions and programs in order to prevent and combat all forms of discrimination in sport:

♦ Campaign **"Racism spoils the play. Violence destroys lives**" the campaign was implemented in partnership with Romanian Football Federation (RFF), European Grassroot Organisation (ERGO) and Association of Amateur and Non-Amateur Footballers (AANF). This campaign took place in the context of the "Action week against racism in football" which takes places annually at European level in October in which NCCD was actively involved, since 2003.

369. • Priority 5.1. – Promotion of initiatives to inform citizens in order to become aware of the effects of discrimination in all aspects of social life:

♦ *"*Education for non-discrimination in Gorj county" – a project achieved in partnership with Association Roma Community of Targu Jiu. The target groups of the project were children, pupils, parents, educators and teachers in kindergartens, schools and high-schools in Gorj county in which there are still groups/special classes for Roma ethnic group members.

370. • Priority 5.2 - Consolidating the education of citizens in the field of non-discrimination through formal and non-formal educational processes:

Seminar of professional training of magistrates in the field of legislation on preventing and combating discrimination, organized by the National Council for Combating Discrimination with support from the National Institute of Magistracy, of Center of Legal Resources and organization Romani CRISS. *Q*, Romanian Police in its relations with minorities[™] – Debate organized by the Center of Training and Continuing Education of police officers "Nicolae Golescu" in Slatina. Within it, the National Council for Combating Discrimination held training courses in order to consolidate the relation police – ethnic minorities. *Q* The training course in the field of managing discrimination access on the ethnic criterion, from legal and administrative point of view which was addressed especially to the members of County Offices for Roma, and the courses were held by lecturers within NCCD, but also representatives of other specialized institutions and of civil society.

♦ Seminar of information and awareness regarding the situation of the Roma ethnic group in Romania, addressed to the employees of the National Agency for Roma at central level and territorial offices and the courses were held by lecturers within NCCD.

♦The information seminar regarding discrimination on the ethnic group criterion, especially of Roma \ ethnic group members, for magistrates in the judicial system in Romania. The seminar was organized by NCCD in partnership with SoJust.

2008

371. In 2008, the prevention activities of the Council pursues the guidelines with the objectives and priorities established within the National Strategy implementing measures to prevent and combat discrimination (NSIMPCD) 2007 - 2013.

372. As regards the activity to prevent discrimination on ethnic and racial criteria, in 2008 the Council pursued as objectives and priorities within NSIMPCD:

373. • Priority 1.4. - Consolidating cooperation in the field of combating discrimination with other institutions competent in this field at national and international level:

♦ "Combating racial and ethnic discrimination – challenges and good practices. Comparative approach at the level of member states" –international conference organized in partnership with the National Union of Judges and Foundation "Friedrich Ebert". This was focused on presenting good practices in the field of combating discrimination from the perspective of various social actors - judicial bodies, organizations of civil society, institutions of central and local government, etc, with the purpose of identifying a set of measures and issues necessary in the process of drawing up public policies.

374. • Objective 3 – Ensuring equality of access, participation and results as regards public and private services designed for the general public. ART 16 – Promoting equality in the field of education:

♦ "I am a child like you" – it was organized together with Kindergarten no. 28 Baia Mare and Kindergarten Coltău. Through the actions achieved within this project (an exhibition of March amulets made by children, the competition "The most beautiful drawn egg" and an artistic programme "I am a child like you") was obtained a collaboration between the two kindergartens, namely of the three groups of children – two groups of Romanian children and one of Roma.

375. • Priority 5.2 - Consolidating the education of citizens in the non-discrimination field through formal and non-formal educational processes:

Solution Wersus discrimination Constant - project implemented by NCCD in collaboration with the Romanian Association of Debates, Oratory and Rhetoric (ARDOR) and Roma Center for Social Intervention and Studies ROMANI CRISS. The project implied the organization of 30 public debates whereby it was intended to assemble high-scholars and involve them in debates and changes of policies on themes such as the acceptance of Roma, of persons infected with HIV/AIDS, of sexual minorities.

♦ "**Promotion of intercultural dialogue among youth**" – summer school having as target group students, faculty graduates, master students or from the country and representatives of national minorities. The general objectives of the events pursued to acquaint participants with the non-discrimination field, with that of protection of human rights, promotion of intercultural values and to inform them as regards the prerogatives and competences of the National Council for Combating Discrimination.

376. • Priority 5.4 - Monitoring and analyzing the phenomenon of discrimination in Romania, identifying the extent of the phenomenon, action directions, necessary measures and initiatives to prevent all forms of discrimination:

♦ "Perceptions and attitudes of the Romanian population to the discrimination phenomenon" opinion poll achieved by GALLUP upon the request of NCCD that had as objectives to assess the discrimination phenomenon (notions, legislation, effects), to appreciate the impact of EU accession over perceptions and attitudes to the discrimination phenomenon by identifying the opinions of the population on persons with different social and biological features (vulnerable groups).

377. "Speak-out Against Discrimination" – a campaign of the Council of Europe launched in Romania by the Information Office of the Council of Europe in Bucharest in collaboration with the National Council for Combating Discrimination and the National Audiovisual Council. The campaign pursued to inform the general public as regards the meaning of the discrimination notion (definition of discrimination in Protocol no. 12 to the European Convention of Human Rights), as well as mechanisms to combat it; in order to convince parliamentarians to use Principle 1 of the Committee of Ministers



Recommendation no. R (97) 20 regarding " hate in discourse"; to supports professionals and mass-media to be better prepared when reporting discrimination and promote cultural diversity.

378. "Improving the management of discrimination cases before courts" – Project financed from European funds through the PROGRESS program, which was addressed to magistrates (judges and prosecutors) and was organized as six courses of specialized training. . Within these training sessions, the trainers and other participants (NCCD representatives, of the National Institute of Magistracy and of civil society) had the opportunity to develop and debate themes such as: national and European legislation in the non-discrimination field, ECHR case-law, national case-law, but also the case-law of the National Council for Combating Discrimination, the institution's prerogatives and competencies, administrative and judicial procedures.

379. The educational program to prevent and combat discrimination of Roma in localities Plǎieşii de Sus and Caşinu Nou, Plǎieşii de Jos commune, Harghita county, Implemented by NCCD during 2008 – 2009, implemented from NCCD's own funds, based on GD 1283/2008.

380. Within the programme were implemented a series of activities in view of preventing and combating discrimination and stimulate participation of persons of Roma origin to the social life, in the educational system and cultural life. Also, it had as purpose to improve relations between the members of local communities (Roma and Magyar) from the mentioned localities.

381. Thus, in November 2008, the National Council for Combating Discrimination implemented courses designed for school inspectors within County Harghita Inspectorate and teachers of the educational institutions in the mentioned localities. The courses were held by lecturers within the National Council for Combating Discrimination, Ministry of Education, Research and Youth, Romani CRISS and NSPAS (National School for Political and Administrative Studies).

2009

382. According to the National strategy implementing measures to prevent and combat discrimination (NSIMPCD) 2007 -

2013 in 2009 the National Council for Combating Discrimination implemented the following prevention activities:

383. • Priority 4.3. – Cooperation and consolidation of relations with institutions and sports entities, by promoting actions and programs to prevent and combat all forms of discrimination in sport:

♦ Football campaign "**No to racism! No to violence!**" implemented in partnership with Romanian Football Federation which had as purpose to promote social dialogue and the principle of non-discrimination in sport.

384. • Priority 5.2 - Consolidating the education of citizens in the non-discrimination area through formal and non-formal educational processes:

♦ Camp of ethnic minorities in Romania ALTERIS 2009 – NCCD in partnership with Alteris Association and Department for Inter-Ethnic Relations within the General Secretariat of the Government organized in the Agreement Center of Padureni, Covasna county, during 13 – 18 July 2009 the second edition of the Camp of ethnic minorities in Romania Alteris 2009. The purpose of the camp was to promote culture and intercultural dialogue, ethnic, cultural and religious diversity, to sensitize decision makers in view of developing harmonious inter-ethnic and inter-confessional relations.

♦ Information sessions addressed to persons of Roma origin on the territory of Bucharest – project implemented in partnership with General Division of Social Assistance of Bucharest and the Roma Center "Amare Rromentza" which aimed to inform Roma community members regarding the mechanisms to \ combat discrimination. abăra minorităților etnice din România ALTERIS 2009 – CNCD în parteneriat cu

385. • Priority 5.4 – Monitoring and studying the phenomenon of discrimination in Romania, identifying the extent of the phenomenon, action directions, necessary measures and initiatives in preventing all forms of discrimination:

♦, **The phenomenon of discrimination in Romania** – **perceptions and attitudes**" opinion poll achieved by the National Institute for Opinion and Marketing Studies (INSOMAR) upon the request of NCCD. The poll has as objective to assess the level of knowledge of the discrimination phenomenon (notion, legislation, effects) and to assess the impact of EU accession over perceptions and attitudes to the discrimination phenomenon.

386. "Educational program to prevent and combat the discrimination of Roma in localities Plǎieşii de Sus and Caşinu Nou, Plǎieşii de Jos commune, Harghita county, to be implemented during 2008 – 2009" executed from own funds of NCCD based on GD 1283/2008.



According to this program the following activities took place in 2009:

two courses addressed to magistrates in Harghita county (9-12 March and 23-26 March 2009);

◆ course addressed to police officers in Harghita, Covasna and Mures county to prevent the discriminatory treatment of Romanian citizens of Roma origin (18-21 May 2009);

◆ public information campaign addressed to County School Inspectorate and teachers of educational units in localities Plǎieşii de Sus and Caşinu Nou (May 2009);

◆performance of study regarding the infrastructure needs of communities in Plăieşii de Sus and Caşinu Nou localities, Harghita county (May – June 2009, upon the request of NCCD).

2010

- **387.** Art. 15 OBJECTIVE 3 Ensuring equality of access, participation and results as regards public and private services designed for the general public. Art 15 Promoting equality in the field of health.
- **388.** \diamondsuit "Combating discrimination of Roma in the access to health services in Romania" project implemented in partnership with Association for Development and Social Inclusion which has as purpose to promote equal treatment in the field of health in order to reduce prejudices, stereotypes and discriminatory attitudes on the ethnic criterion in the system of health.
- **389.** $\$, **Treatment without discrimination**" project implemented in partnership with Association for Development and Social Inclusion, Sanitary Post-Secondary School Craiova; Sanitary Post-Secondary School Petrosani; Sanitary Post-Secondary School Baia Mare which had as target group pupils of post-secondary schools of medical assistants and pharmacists and which consisted in organizing information and training courses.
- **390.** $\$ "**Center of information and counselling for Roma origin persons**" project developed in partnership with General Social Assistance Division of Bucharest which had as objective to offer information and counselling services for Roma origin persons in Bucharest in view of improving access to integrated services in the field of social assistance, employment, obtaining identity and civil status documents.
- **391.** $\$, **A better access to health for Roma**" project developed in partnership with the Association of the Cultural Center of Roma "O Del Amenca" which consisted in the organization of two conferences with the participation of parties concerned in the health system of lalomita county, in monitoring policies and strategies for heath for Roma, creating a coalition which will lead to speeding-up the development of Roma's health status, combating the discrimination of Roma in the access to health services in lalomita county by monitoring discrimination cases against Roma in the health system, through the organization of an event in the community and achievement of 500 posters for the Roma communities and public places and through the organization of two meetings with the Public Health Division lalomita and health mediators.
- **392.** Priority 5.2 Consolidating the education of citizens in the non-discrimination field through educational formal and non-formal processes:
- **393.** $\$ "**Youth debate**" project implemented in partnership by NCCD, Agency for Community Development "Together", Ministry of Education, Youth and Sports, ARDOR, Policy Center for Roma and Minorities, Department of Inter-Ethnic" Relations, National Agency for Roma, National Agency for Equality of Opportunities, Roma Education Fund. The project comprises the organization of trainings, debates at county/regional/national level which have as purpose the correct information, substantiated debate and sensitize over various forms in which social, ethnical, economic, health or gender differences may constitute barriers to communication and tolerance.
- **394. ③ Training courses for Roma** project executed in partnership with the Party of Roma Pro Europe which has as purpose to inform and train Roma legal counsellors regarding the prevention and combating of discrimination in the context of human rights observance in view of improving methods of monitoring cases of ethnical discrimination.
- **395.** *♦*, **Children talk about discrimination and about their rights**" project implemented in Bucharest, Constanta and Tuzla having as beneficiaries pupils and professors of general school and high school which consisted in holding open classes in which was discussed about discrimination, about what it means to be different, where discrimination can be found, types, etc. Within the project, pupils elaborated drawings and/or collages on the theme of equality of opportunity.



396. ◇ "Stop discrimination in high-schools in 2010" – project executed in lasi in partnership with University Petre Andrei, with high-schools in lasi and which was addressed to pupils in high-schools, psychologists, social assistance, sociologists and school counsellors. The project consisted in a campaign to increase awareness in the high-schools of lasi and holding a national conference on the theme of discrimination.
 397. ◇ "We have the same rights" – project executed in partnership with association Nevo Parudimos, implemented in Resita whose beneficiaries were teachers, students, high-scholars, community policemen.
 398. ◇ "School without discrimination III – Training of trainers" –. Project executed in partnership with the Ministry of Education, Research, Youth and Sport developed in Drobeta Turnu-Severin, Sibiu, Călăraşi, Tulcea, Miercurea-Ciuc, Bistrita having as target group managers and teachers of the Teaching Bodies.

Chapter V.

Media coverage of ethnic, racial discrimination, racial and on nationality criterion

399. Unlike processes that take place in other systems, communication is an irreversible process, which has one sense, as a message once communicated cannot be deleted, but at most diminished.

400. Written press, radio, television and internet interact and achieve the information environment that we do not perceive in reality, but which exercises a continuous pressure, modifying attitudes, behaviours at macro level and personally. Beyond doubt, mass-media essentially contributes to shaping mentalities, to how the categories predisposed to a discriminatory treatment are perceived.

401. The press, through the influence it exercises on society may contribute to increasing the level of social inclusion of persons or marginalized groups, but at the same extent it can ensure a framework favourable to shaping or maintaining certain stereotypes. The increased number of articles⁴⁹ which make reference to various aspects of discrimination prove the interest that mass-media shows regarding this subject.

402. References to the issue of discrimination are very varied, including the presentation of national or European strategies which concern this field, opinion polls, studies or the description of concrete discrimination cases.

403. Given the media impact and the inclination of the press for sensational, the discrimination cases in which were involved public figures (politicians, sportsmen)⁵⁰ had the most increased visibility. In this case two categories of factors appear which impact public opinion: on one hand the mass-media, through the manner of presenting deeds and on the other hand concerned public figures, as these are models for the society, opinion leaders.⁵¹

404. The presentation by the written press of discriminatory manifestations was not constant. Thus, there were steady positions of publications that criticized certain discriminatory attitudes (decision of journalists from Adevarul to file a suit against Gigi Becali following the xenophobic statements addressed to the supporters of football team Ujpest), but there were also references which led to violent reactions from one part of the society (the manner in which was presented the Roma minority in the context of the assassination of handballer Marian Cozma).

405. A considerable part of the articles on the subject of discrimination arose in the context of increased racist and xenophobic attitudes that Romanian citizens from various European countries are subjected to.⁵²

406. The manner of the press managing discrimination cases with high visibility has a decisive role. An inefficient management equates to a framework favourable to shaping stereotypes. For example, the manner in which the issues of discrimination of Roma minority⁵³ were sometimes discussed did not lead to a tolerant attitude, but on the contrary to an incitement to racism.

⁴⁹See the Press review of August 2010.

⁵⁰For example: Adrian Cioroianu, George Becali, Traian Băsescu, Dorin Florea, Sorin Oprescu, Teodor Baconschi, Călin Popescu Tăriceanu, Ludovic Orban etc.

⁵¹NCCD's activity report for 2009, page 66

⁵²See for ex.: http://www.romanialibera.ro/actualitate/eveniment/mailat-din-avrig-omul-care-a-murdarit-o-tara-110283.html, http://www.mediafax.ro/externe/nicolae-romulus-mailat-condamnat-la-29-de-ani-de-detentie-3390800, http://www.gandul.info/news/franta-devine-incet-italia-lui-mailat-6902328

⁵³See for ex.: http://www.cotidianul.ro/123724-Ungurii_propun_infiintarea_unor_lagare_pentru_romi, http://www.contrasens.com/2008/01/31/despre-discriminarea-romilor.html, http://stirileprotv.ro/exclusiv/revista-presei/revista-preseibasescu-despre-tigani-vorbim-ca-sa-nu-ne-confundam-noi-cu-ei.html,



407. Thus, the manner in which ethnic, national or religious minorities are presented by the written press contributes to shaping a positive or negative image which leads to being characteristic of this minority.

408. Although the press assigned important spaces to the presentation of benefits of which may benefit companies that accept cultural, religious or linguistic diversity, articles that contribute to the intensification of discriminatory attitudes continue to be published. There is still a tendency of journalists of reporting the actions of a person as representative for the community he/she is part of.⁵⁴

409. Although the interest for presenting the issue of discrimination is constant, cases which don't focus on attitudes, but the notoriety of persons involved have an important weight.⁵⁵ The situation is also proved by the fact that only cases with a high media impact are followed for a longer period (case "stinking Gypsy"), the common ones being mentioned only by statistics.

DISCRIMINATION OF ROMA

410. Without doubt, the most numerous articles which refer to the issue of discrimination are related to the Roma minority. But the manner in which journalists refer to it is extremely different. Thus, written press has contributed to covering certain campaigns⁵⁶ conducted by institutions or non-governmental organizations which are active in this field.

411. But, besides these actions that had as objective to increase the level of tolerance to the Roma minority, there were numerous references which led (directly or indirectly) to strengthening stereotypes related to this minority. Therefore, the attention that the written press gave to the Roma was not every time equivalent to promoting the rights and values of this community.

412. The activities that a part of the press undertook in view of eliminating or at least diminishing discriminatory attitudes of which Roma origin persons are victims were reduced in impact just because of certain articles that promoted existing stereotypes.

413. In other words, the appeal to tolerance that the written press made several times was basically annulled by the presentation of the Roma ethnic group in terms such as "thieves", "poor", "beggars". We find numerous references in which Roma continue to presented in relation to the perpetration of certain crimes (trafficking in persons, marriages between minors, blackmail). The explanations offered by journalists regarding discriminatory attitudes concerning the Roma ethnic group are limited to highlighting their apparent incapacity to assume and observe elementary social norms.

414. Central publications mentioned the affirmative policies conducted by authorities, which have as purpose to integrate Roma. In general, the presentation of these policies, of the reasons that underlined their formulation have generated a positive impact on how the Roma minority is perceived. Through these affirmative policies there is also the granting by the Ministry of Education of certain places for the university and pre-university education. In this context, journalists have called into question the need for sustained efforts in the field which should originate from authorities.

415. Also, the written press grants special attention to how the Roma ethnic group is perceived by the European states. Although there is a significant number of articles which contain harsh criticism to discriminatory policies (direct or indirect) implemented by certain European states (especially Italy, Spain, France) we still find references which contribute to maintaining tendencies to marginalize Roma origin persons.⁵⁷

416. Thus, actions such as assessing the negative impact that that the crimes committed by Roma on the image of Romania in Europe and in the world prove the fact that in some situations the press offers to the society the environment to manifest its racist attitudes. Expressions such as "Europe wants to close the doors again" or "we embarrass ourselves": (because of the Roma) maintain discriminatory manifestations.

417. The presentation of testimonies of Romanians established in certain European countries which were victims of

⁵⁴See for ex.: http://www.adevarul.ro/actualitate/eveniment/Regina_tiganilor_a_gaurit_bugetul_Regatului_

Unit_0_221378433.html, http://www.urbaniulian.ro/2010/08/23/glorios-jucariile-lasate-la-maternitatea-giulesti-in-amintirea-bebelusilorarsi-au-fost-furate/,http://www.newsme.ro/actualitate/doi-tigani-au-furat-mai-multe-scule-auto.html, http://www.gazetanordvest.ro/2010/07/20/cinci-familii-de-tigani-terorizeaza-satul-iojib/comment-page-1/

⁵⁵Ludovic Orban, George Becali, Traian Băsescu, Dorin Florea, Sorin Oprescu, Teodor Baconschi, Călin Popescu Tăriceanu.

⁵⁶See for ex.: "Know them before you judge them! In school there is no place for discrimination. Say NO to discrimination!"

⁵⁷See for ex.: http://www.mediafax.ro/social/taberele-de-romi-din-italia-o-problema-sociala-si-nu-de-infractionalitate-2789654,http://www.adevarul.ro/international/europa/Satele-integrare-Franta-inconjurate-ziduri_0_324568127.html, http://www.monitoruldegalati.ro/mapamond/italienii-se-tem-ca-vor-fi-invadati-de-romii-expulzati-din-franta.htm



certain discriminatory attitudes or even of violence from authorities or individuals does not automatically lead to a conviction of those who committed them. On the contrary, they contribute to a certain extent to marginalizing Roma ethnic group members.

418. Therefore, Roma continue to be presented also as targets of discrimination. It is still observed a shift from topics such as illegal immigration of Roma to those that call into question the high number of crimes. In the written press, is maintained the image of the poor and uneducated Roma which emigrated in the Western countries to improve his standard of living, but who ends by committing crimes just for surviving.

419. A significant increase of references to the Roma minority was registered following the death of handballer Marian Cozma.⁵⁸ The violent manner in which this was murdered by two Roma origin Magyars generated a wave of racist reactions in Hungary and in Romania.

420. Although some journalists drew the attention over the fact that no member of the Roma minority is guilty for the death of Marian Cozma, this situation could not be avoided. Certain articles which made reference (direct or indirect) to a so-called predisposition of Roma for crime. This incapacity is also the result of the increased interest that the press has for the presentation of cases which may provide considerable audience.

421. In 2009, Jurnalul national conducted a campaign that had as main topic the debate of difficulties continuing to face Roma origin persons.

422. This campaign in fact comprised a series of articles that called into question the need to apply inclusive coherent policies. But, although this campaign offered to the representatives of the Roma minority the possibility to make their point of view known (providing a significant visibility for them) it also contained topics that contributed to maintaining the existing negative image.

423. Such an approach was represented by the calling into question of measures that authorities should implement in order to avoid confusions referring the use of the terms "Romanian" and "Roma".

424. Another topic that journalists paid attention to was the behaviour of Roma origin persons manifested on the occasion of local or central elections.⁵⁹ Again, the Roma were presented in a negative manner, the press focusing on the ease with which these are manipulated. More precisely, the Roma origin voters were misinformed (highlighting that a part of them were illiterate), they accepted electoral bribe that various parties offered and especially decided to a certain extent the destiny of the majority population.

425. Moreover, there were also mentions referring to the low participation in elections, this fact sustaining the argument that Roma have a diminished capacity of adapting to new realities.

426. The discrimination case that the press paid most attention to was that in which was involved president Traian Basescu, presented under the name "stinking Gypsy". The visibility of this case was very high, the press presenting it as a clear proof of existence of the discriminatory attitudes that Roma origin persons are subjected to. The case was frequently presented by the press,⁶⁰ the articles referring to the position of competent authorities in the field, such as NCCD, the Court of Appeal or the High Court of Cassation and Justice.

427. Also, within this case was presented the position of the president who considered himself discriminated because his case was settled differently by that of Adi de la Valcea. This case drew the attention of the international press that made several references to the attitudes and discriminatory actions which continue to face the Roma minority. The impact of this case was therefore a high one, being included in the Amnesty International Report.

428. The conflict emerged at the beginning of 2008 between the Roma of Sintesti locality was widely presented by the central press.⁶¹ This conflict started from the annulment of a marriage between two minors and it degenerated, being closed with the intervention of law enforcement authorities. The case was also presented in detail by the foreign press that recalled into question the incapacity of authorities to solve the problems of Roma.

429. It was also presented the point of view of Roma, who considered that the prohibition of marriage between minors is discriminatory because the state does not observe the traditions of this minority.

⁵⁸See for ex.: http://www.prosport.ro/alte-sporturi/handbal/tragedie-marian-cozma-a-fost-omorat-au-bagat-3-cutite-in-inima-lui-3881028, http://www.jurnalul.ro/stire-observator/marian-cozma-ucis-in-ungaria-143998.html,

http://www.monitoruldevaslui.ro/2009/02/handbalistul-marian-cozma-injunghiat-mortal-intr-o-discoteca-din-ungaria.html

⁵⁹See for ex.: http://www.romanialibera.ro/actualitate/politica/tiganii-din-clejani-au-votat-lautareste-dupa-ureche-156271.html

⁶⁰See for ex.: http://www.gandul.info/news/basescu-isi-merita-sanctiunea-tiganca-imputita-1031059,

http://www.romanialibera.ro/actualitate/eveniment/basescu-sanctionat-cu-avertisment-pentru-tiganca-imputita-96108.html, the second se

http://www.adevarul.ro/actualitate/politica/Familia-Basescu_0_212979233.html, http://www.realitatea.net/tiganca-imputita--un-exemplu-pentru-discriminarea-romilor-in-romania-potrivit-amnesty_526042.html

⁶¹See for ex.: http://www.roportal.ro/stiri/sintesti-o-nunta-intre-minori-provoaca-scandal-cu-focuri-de-arma-1221214.htm,

http://www.evz.ro/detalii/stiri/scandalurile--la-sintesti-au-ecou-si-in-europa-793817.html



430. Another case which questioned the issue of discrimination of Roma was the one in which Madonna was involved. The reactions of viewers as a result of Madonna's appeal to eliminate discriminatory attitudes against Roma were presented in the whole Europe. Even if it did not constitute a concrete discrimination case, it had an important impact, especially outside the country.

431. In 2009, Jurnalul National conducted a campaign that had as main topic the issue of the Roma minority in Romania. Within the articles were questioned the reasons that underlined the persistence of a discriminatory attitude against Roma, were presented arguments for and against the use of the term "Roma". The articles contained the points of view of representatives of that community.⁶²

432. In January 2010, central press presented a discrimination case against Roma in the locality Gilau (Cluj).⁶³ The young people of Roma origin accused the owners of a discotheque of discriminatory treatment. The press presented the requests that the Roma addressed to the local and county council in view of eliminating these attitudes.

433. In 2010, within the national preselection for Eurovision, Florin Salam accused the members of the jury of racist attitudes. This declared that the jury "cannot accept that Romania be represented by a Gypsy".⁶⁴

434. In 2010 also, the Ministry of Foreign Affairs, Teodor Baconschi was accused of discriminatory attitudes against the Roma population. His statement "I have nothing against the Roma, they are robbers since birth"⁶⁵ drew virulent criticism from the representatives of the Roma minority, especially that the statements had been made in an official framework, at the meeting with the Secretary of State for European Affairs of EU. Although, he retracted his words, which he classified as "un unhappy expression", Baconschi was criticized by the press, that considered his gesture inadmissible.

435. Most attitudes of discrimination for the analyzed period were displayed following the assassination by a Roma origin person of the handballer Marian Cozma. The discriminatory manifestations emerged in Hungary and in Romania. The danger of intensification of these attitudes was highlighted by the external press which drew attention on the existence of a "racial bomb". Moreover, the press also presented the appeals of authorities⁶⁶ and of the family of Marian Cozma which aimed to prevent certain violent manifestations to which Roma could be victims.

DISCRIMINATION ON THE NATIONALITY CRITERION

436. In May 2008, the owner of Steaua team, Gigi Becali was accused of discriminatory attitudes directed against the Magyar minority. Becali declared that the accusations brought by NDA (National Anti-Corruption Office) are actually the effect of a "staging planned by Magyars".

437. Also in May 2008, Becali was involved in another discrimination case broadcasted especially by the sports press. Becali's statements that "God is a bozgor" (i.e. jargon for Magyar)⁶⁷ "the Hungarians want to destroy the country"⁶⁸ were presented by the press as revolting. These statements were made in the context of winning the national football championship by CFR CLUJ, a team whose owner is of Magyar nationality.⁶⁹

438. Numerous discriminatory attitudes were manifested in the context of football games between Steaua Bucuresti and Ujpest (July 2009). Magyars were urged by a national newspaper to come to the game only with knives, and the Romanian gallery leaders urged the supporters to scream "Hungarians out, out of the country!".⁷⁰

439. The case was presented both by the Romanian and Hungarian press, especially by the sports one. During the matches the supporters of both teams manifested racist and xenophobic attitudes. "Adevarul" newspaper took legal action against the owner of Steaua, Gigi Becali, as through its declarations incited to violence the supporters of both teams.

886896.html, http://www.hotnews.ro/stiri-esential-6952364-baconschi-despre-romi-poti-spui-despre-vrei-dar-nu-sunt-imbecili.htm

⁶²See for ex.: http://www.jurnalul.ro/stire-tigan-in-loc-de-rom/de-ce-tigani-si-nu-romi-146036.html

⁶³See for ex.: http://www.citynews.ro/cluj/eveniment-29/acuze-de-discriminare-la-discoteca-din-gilau-69601/,

http://www.romanialibera.ro/actualitate/eveniment/romii-din-gilau-ies-in-strada-pentru-ca-nu-sint-lasati-la-disco-175665.html ⁶⁴See for ex.: http://www.cancan.ro/showbiz/showbiz-intern/salam-ii-acuza-de-rasism-pe-membrii-juriului-de-la-eurovision-85953.html

⁶⁵See for ex.: http://www.romanialibera.ro/actualitate/eveniment/mai-multe-organizatii-neguvernamentale-cer-demisia-lui-baconschi-

dupa-declaratiile-despre-romi-177632.html, http://www.evz.ro/detalii/stiri/editorialul-evz-baconschi-are-o-suferinta-fiziologica-

⁶⁶See for ex.: http://www.romanothan.ro/comunicate/Comunicat-referitor-la-moartea-tragica-a-lui-Marian-Cozma.html,

⁶⁷See for ex.: http://www.inpolitics.ro/Dumnezeu-e-bozgor-art20519.aspx

⁵⁸Idem

⁶⁹Arpad Paszkany

⁷⁰See for ex.: http://sport.hotnews.ro/stiri-fotbal-5988514-udmr-depus-plangere-penala-pentru-banner-fanilor-stelisti.htm



CONSILIUL NAȚIONAL PENTRU COMBATEREA DISCRIMINĂRII

440. As a reaction to these events, NCCD president requested UEFA to sanction the team Steaua Bucuresti.⁷¹ The case also had an impact outside the country, as UEFA decided to sanction both teams.⁷²

441. In 2009, the mayor of Constanta, Radu Mazare was involved in a discrimination case.⁷³ The appearance of the mayor in a fashion parade wearing an outfit that hinted to the uniform of the Nazi soldiers generated a stream of discontent from the Jews in Romania. This case was presented by the foreign press and it recalled into question the issue of the Holocaust.

442. In January 2009 George Becali was involved in a new discrimination case, being accused by a physician that he was not hired by the club Steaua Bucuresti on reason of being a Muslim.

443. In the field of audiovisual, NAC is the only regulatory authority. We present below the sanctions applied to TV and radio stations for breaching the legal norms in the field of discrimination.

444. Starting from 2002 and until 19 July 2010, the National Audiovisual Council applied 21 sanctions, of which 10 fines totally amounting to 170.000 lei for breaching the legal provisions in the audiovisual field regarding discrimination on grounds on nationality and race and ethnic group.⁷⁴

The situation on years is as follows:

 \diamond 2004: 3 sanctions;

- \otimes 2005: 4 sanctions;
- \diamond 2006: 5 sanctions;
- 2007:1 sanction;
- \diamond 2008: 3 sanctions;
- \diamond 2009: 1 sanction.

The sanctions were applied as follows:

- 15 for the television stations in Bucharest;
- ♦2 for the radio stations in Bucharest;
- \otimes 1 for the local television stations.

Of these:

9 discrimination cases on grounds of nationality;

- 6 discrimination cases on grounds of race, ethnic origin;
- \otimes 3 discrimination cases on grounds of ethnic origin/race and nationality.

I. Sanctions applied to the television stations in Bucharest:

445. •Realitatea TV was sanctioned by <u>public formal notice</u> because in the show "<u>The last hour</u>" broadcasted on <u>22.05.2007</u>, the moderator Andrei Gheorghe manifested a xenophobic attitude against the Austrian citizens, which infringes the provisions of art. 40 of the Audiovisual Law and of art. 46 par (1) of the Audiovisual Code.

In essence: when discussing the situation created after the referendum regarding the suspension of president Traian Basescu, in the context of certain considerations made by Mr. Emil Boc over the semi-presidential model in Austria, the moderator Andrei Gheorghe stated as follows against the Austrian people: *"they are Nazis (...)Anschluss-ul (...)", "(...) some Nazis who gave birth to Hitler", "They are paedophiles, they eat limbs, they have two cases of paedophilia."*

446. • Antena 1 was sanctioned by <u>public formal notice</u> as in the emission <u>"Sport</u>" broadcasted on <u>04.09.200</u>6 in the context in which it was supposed to conduct a football match between Romania and Albania, two pieces of news with a xenophobic and discriminatory content were broadcasted (discrimination on the nationality criterion) addressed to the Albanian people, which infringes the provisions of art. 46 par. (2) of the Audiovisual Code.

In essence, two pieces of news were broadcasted:

♦ the first, under the title *"Back in the future"* in which was presented a short history of Albania;

♦ The second, under the title *"Jokes with Albanians" w*ithin which were presented several jokes with discriminatory content against the Albanian people.

⁷¹See for de ex.: http://www.sport.ro/europa-league/consiliului-national-pentru-combaterea-discriminarii-protesteaza-la-uefa-impotrivabannerului-de-la-steaua.html

⁷²See for ex.: http://www.sport.ro/europa-league/steaua-amendata-cu-50-000-euro-pentru-bannerul-din-ghencea-cu-ujpest.html, http://www.evz.ro/detalii/stiri/steaua-fara-spectatori-in-europa-862680.html,

⁷³See for.: http://www.romanialibera.ro/actualitate/eveniment/mazare-cercetat-din-nou-pentru-utilizare-de-insemne-naziste-179392.html, http://www.gandul.info/news/radu-mazare-nazist-de-ocazie-umar-la-umar-cu-fiul-sau-video-4662009

⁷⁴www.cna.ro



447. • National TV was sanctioned by <u>fine amounting to 10.000 lei</u> because on the <u>emission "The core of the problem"</u>, edition of <u>7 February 2006</u> were broadcasted on the crawl messages with discriminatory nature against the Magyar ethnic group in Romania (discrimination on nationality criterion), which incited to hatred, which infringes the provisions of art. 40 of the Audiovisual Law.

In essence: While in the studio there were discussions regarding the theme of the emission, conducted under the title "UDMR: Attack to the national state" on the crawl were unrolled messages from viewers with regard to the topic under debate, some of them with discriminatory nature against the Magyar ethnic group and of incitement to violence against it.

The members of the Council considered that the deed was all the more serious as the station also broadcasted (in replay) on 08.02.3006 from 15.00 the emission in question, on the crawl being posted all messages broadcasted directly on 07.02.2006.

448. •TVR 1 was sanctioned by <u>public formal notice</u>, because within the <u>emission "Between good and evil"</u>, edition of 1<u>1</u> <u>March 2008</u>, replayed on 12 March 2008, the opinions expressed by viewers through the messages displayed on the lower band of the screen contained manifestations with discriminatory nature, inciting the public to hatred and violence against the Roma ethnic group in Romania.

The purpose of the emission was obviously favourable to the idea of tolerance and understanding, of achieving good relations between the majority and the Roma minority, but the excessive transmission of messages against this ethnic group made possible that a debate of public interest became an act of incitement to violence, hatred and discrimination.

449. •TVR 2 was sanctioned with <u>public formal notice</u> because in the <u>emission "News hour"</u> of <u>5 December 2009</u> through the statements of Ms. Gabriela Cotarcea was produced the idea that the generation of possible negative events, namely the transmission of diseases, non-payment of taxes or increase of social expenses are generated by Chinese and Indian labourers who work in Romania.

In essence: starting from the theme of the discussion, a piece of news that was presented before the dialogue in the studio which made reference to infertility, the guest of the emission, Ms. Gabriela Cotarcea made discriminatory statements against foreign labourers who work in Romania, raising possible problems that these may generate, such as the transmission of diseases, non-payment of taxes or increase of social expenses.

450. •Prima TV was sanctioned by <u>public formal notice</u> because in the <u>emission "Cronica cârcotașilor"</u> of <u>22.03.2006</u> were made statements with discriminatory nature against the Roma ethnic group (discrimination on the race criterion), which infringes the provisions of art. 40 of the Audiovisual Law and of art. 43 par (2) of the Audiovisual Code.

In essence: The emission contained a sketch about the Social Democrat Party in which, among others were made references against Mr. Marian Vanghelie, in the following manner: *"Please conjugate first the verb "to be"! Leave my aunt, my dearest Tamara! My celebrated Nelus, the crow has gone mad?"* In another context, referring to the same person the following statements were made: *"Dearness Mareanus, do you suffer from any disease? We keep you in the party and we wash you from pitch"*.

In the same manner, was presented the situation of kidnapping a young woman of Roma ethnic origin, case which constituted the subject of several news editions broadcasted on different television stations.

451. •OTV was sanctioned by <u>fine amounting to 5000 lei</u> because on the <u>emission</u> <u>"Dan Diaconescu Direct"</u> dated <u>11</u> <u>November 2004</u>, the guests made statements with an intolerant, discriminatory nature on sexual and race grounds, which infringes the provisions of art. 40 of the Audiovisual Law (discrimination on the criterion of race and sexual orientation).

In essence: The guest of the emission, Mr. Gigi Becali stated about the sexual minority of homosexuals: "*it signifies* an attack to the moral security of this nation", "*it means that we need to beware, to see that two of them are* homosexuals", "why doesn't one homosexual come to me and I'll beat him up", "they arealso people (homosexuals) and I don't want to shake hands with them", "to authorize sin in Romania, because in my opinion this sin (homosexuality) is the second sin after death".

During the emission, the guest Gigi Becali made an extremist propaganda, proposing the sanctification of the leader of the Legionary Movement, Corneliu Zelea Codreanu.

452. •OTV was sanctioned by <u>fine amounting to 25.000 lei</u> in the <u>emission "Dan Diaconescu Direct"</u>, broadcasted on <u>9</u> <u>December 2004</u>, when a documentary movie was published about marshal lon Antonescu, in which was promoted an anti-Semitic attitude, which infringes the provisions of <u>art. 40 of the Audiovisual Law</u>.

In essence: The documentary was broadcasted by the station under the title "Forbidden movie. The destiny of marshal Antonescu", without comments being made regarding the movie or details offered regarding the reason of its broadcast or prohibition. Limiting itself to broadcasting the documentary without giving the public all the



information this would need for a correct assessment, the TV station OTV manipulated the viewers, by presenting marshal Ion Antonescu only as a victim of the Soviets and of the communist regime.

Through the false presentation of the tragic events of lasi from June 1941 and through the subjective attitude in favour of marshal Antonescu, the broadcast of the documentary was an act of disinforming the public regarding especial events in history, promoting an anti-Semitic attitude.

453. •OTV was sanctioned by <u>public formal notice</u> because in the <u>emission "Checkmate"</u> broadcasted on <u>07.04.2005</u> were made libellous statements against the Roma ethnic group in our country, which infringes the provisions of art. 40 of the Audiovisual Law (discrimination on the race criterion).

In essence: In a discussion on the theme of an anti-Romanian song composed by a Spanish DJ and on its impact over the image of our country, the guests of the emission, Mr. Eugen Nicolicea and Mr. George Pruteanu associated the Roma minority with various crimes, the representatives of this ethnic group being accused of *"irregularities"*, *"fraud"*, *"robbing"*.

454. •OTV was sanctioned by fine amounting to 25.000 lei, because in the emission "Dan Diaconescu Direct", editions of 17 and 24 May 2005, broadcasted under the title " The disclosures of Corneliu Vadim Tudor" and "Vadim throws the bomb in the crisis of hostages" was promoted a racist speech and were manifested discriminatory attitudes against minorities on grounds of race, ethnic origin and sexual orientation (discrimination on criteria of race, nationality and sexual orientation) which infringes the provisions of art. 15 of the NAC Decision no. 248/2004 on the protection of human dignity and right to its own image.

In essence: Both the guests and the TV director had a racist speech and manifested discriminatory attitudes against the Roma ethnic group, the Magyar community and persons of homosexual orientation. For example, Mr. Corneliu Vadim Tudor stated about prince Radu Duda: "*What kind of a prince is this, Cioaba is a better one*" (...), *Duda is a Gypsy too, maybe you don't know* (...), *Yes, he is a Gypsy, you can see it on his face*" (...).

Subsequently, when speaking about the march of homosexuals and lesbians of 29 May 2005 in Bucharest, Mr. Corneliu Vadim Tudor said: "My God, they should not make me angry, because I'll prick them and they might like it" (...)". Talking about "Academia Catavencu", Mr. Corneliu Vadim Tudor said: "Well how will Ivanciuc appreciate you, who is an Ukrainian Gypsy himself?".

455. •OTV was sanctioned by <u>fine amounting to 30.000 lei</u>, because in the <u>emission "Dan Diaconescu Direct"</u> of <u>14-15</u> <u>August 2005</u> broadcasted under the title "Hadareni Bomb: Romanians beat with the Gypsies" on the crawl were broadcasted messages with discriminatory nature against the Roma ethnic group and of incitement to violence against it (discrimination on the race criterion), thus breaching the provisions of art. 40 of the Audiovisual Law.

In essence: Although several public figures intervened by telephone, disapproving the broadcast of such messages. Mr. Dan Diaconescu read within the show other messages of *this kind received from viewers: "Romanians should unite and <u>lynch</u> all Roma", "I support Romanians and I am <u>against</u> Roma", "Gypsies don't work and incite to what is worst. All Roma should be beheaded!", "Hadareni was just the beginning. If authorities do nothing, we will lynch all Gypsies", "Roma are embarrassing us and are making us regress", These Gypsy crows must disappear!".*

456. •OTV was sanctioned by <u>contraventional fine amounting to 50.000 lei</u> because on the <u>emission "Dan Diaconescu</u> <u>Direct"</u>, editions of <u>21 and 22 December 2005</u> was promoted a xenophobic speech of incitement to hatred and violence against the Roma ethnic group (discrimination on the nationality criterion), which infringes the provisions of art. 40 of the Audiovisual law.

In essence: During the show of 21 December 2005, discussing the intention of building a commercial complex in the centre of Bucharest, Mr. Gigi Becali, invited to the show made a series of serious statements against the Magyar minority in Romania, but also investors of Magyar origin, thus: "(...) *Videanu (...) wants to perform now, see, a Hungarian investment in the centre of Bucharest. It is not enough what we have in Ardeal, there", (...) Videanu now \ shows us the Esplanada (...), you didn't see what project he is showing us (...), Leave the Esplanada with Hungarian investments here, let the Hungarians ride us". If I had been in that Parliament of Romania, I would have taken all Hungarians from UDMR: get out from here, c'mon, go away, make the great Hungary at your homes. Don't you see that it maddened their minds? Who knows what businesses he has with them, do you understand me?".*

In the same manner was conducted the edition of <u>22 December 2005</u> of the emission, that had Mr. Aurelian Pavelescu as guest. During it, Mr. Gigi Becali intervened by phone, who resumed the discriminatory speech against the Magyar nationality in Romania.

The xenophobic speech, of incitement to hatred promoted during these emissions had an immediate effect, being achieved within their occurrence and immediately after they were finished, through the SMS-es broadcasted on the crawl, which at their turn supported the points of view expressed by Mr. Gigi Becali and Mr. Aurelian Pavelescu, expressing opinions which contained the same message of incitement to hatred and violence against the Magyar ethnic group.

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457. • **OTV** was sanctioned by <u>fine amounting to 5.000 lei</u> because in the <u>emission "Dan Diaconescu Direct"</u> of <u>26 August</u> <u>2006</u>, broadcasted under the title: *"A new tragedy plunges Romania into mourning: 3 young men killed by a British citizen"* persuaded the viewers into believing that the accident would be due to the fact that the person driving the car was a British citizen (*discrimination on the nationality criterion*) which infringes the provisions of art. 46 par. 2 of the Audiovisual Code.

In essence: The Council appreciated that the manner in which the title of the emission was formulated produced the idea that the accident would be due to the fact that the person on which the blame was put was a British citizen. Or, the accident has no relevance for the citizenship of the person, its author being naturally the person.

458. •OTV was sanctioned by <u>fine amounting to 5.000 lei</u> because in the <u>emission "Dan Diaconescu Direct"</u> broadcasted on <u>7 May 2008</u>, the moderator allowed a xenophobic discourse of Mr George Becali of incitement to hatred against the Magyar minority in Romania. Statement like: *"Dear boy! Do you mess with the Hungarians? They are capable of anything the Hungarians in this country. I am leaving! I will come to the power and you won't see Hungarians managing the Romanian country forever and ever in your life!"* is extremely serious, containing a message of incitement to hatred against Magyars in Romania, which is forbidden by the audiovisual law, a legislation harmonized with the European one.

459. •OTV was sanctioned by <u>public formal notice</u>, because in the edition of <u>8 May 2008</u> of the <u>emission "Dan</u> <u>Diaconescu Direct"</u> it transmitted a musical video with electoral character promoting the PIN candidate Cozmin Gusa, audiovisual material that had an <u>explicit discriminatory message</u> on grounds of nationality, race, disability and sexual orientation against certain persons or groups of persons, which is forbidden by the audiovisual law.

II. Sanctions applied to the local televison stations

460. • Station TELE M IASI was sanctioned by <u>public formal notice</u>⁷⁵ because during the <u>emission "Uncomfortable</u> witness", editions of <u>9 September and 7 October 2009</u>, the moderator allowed the guest to formulate discriminatory comments against the Roma ethnic group which infringes the provisions of art. 46 par. (2) of the Audiovisual Code.

In essence: Discussing a presumed situation created by an association of owners by a few citizens of Roma origin, the guest made the following statements against this ethnic group: "(...) and when it comes to the third manager, who was taunted by the Gypsies and they wait for order, that the world get rid of these parasites, (...) here comes a Gypsy and one day they take one window from the entrance, the second day it takes their door from the building and the third day I don't know, steal their buttons from the elevator (...)."

III. Sanctions applied to the radio stations in Bucharest

461. •INFO PRO was sanctioned by <u>public formal notice</u> because within the heading <u>"They talk, therefore they exist</u>" broadcasted on the emissions <u>"Ears up</u>" and <u>"Listen here!</u>" of <u>12 January 2006</u> were made discriminatory and xenophobic statements against the Roma minority, manifestations forbidden by the provisions of art. 15 of NAC Decision no. 248/2006 regarding the protection of human dignity and the right to its own image (discrimination on the race criterion).

In essence: The presenter of the heading *"They talk, therefore they exist" made the following comment: "We give you only one clue. These specimens are more coloured, almost black, are spread all over the Romanian territory and in some areas they sell seeds at the corner of the street". Also, in the second part of the heading "They talk therefore they exist" Mr. lorgu lanosi stated that "Minister Gheorghe Flutur blames the minority ones, it seems some tanned people of ours were bored one day so they started to walk some hens". Subsequently a song sung in Romani language was broadcasted, which was interrupted by a croak.*

462. • EUROPA FM was sanctioned by <u>fine amounting to 5.000 lei</u> because in the e<u>mission "Priority road"</u> broadcasted on <u>24 November 2004</u> were brought serious accusations against the Magyar minority in Romania, as there is a risk of inciting the public against this minority, which infringes the provisions of art. 40 of the Audiovisual Law and of art. 15 par. (2) of NAC Decision no. 248/2004 regarding human dignity (discrimination on the nationality criterion).

In essence: During the show, its director discussed the fact that in Hungary several blondes protested before the Parliament of this country for prohibiting jokes with blondes. Starting from this fact, the director diverted the discussion referring to the Magyar minority in Romania and stating: "Thanks God we live in Romania, a country in which almost all jokes are allowed, even those with Magyars. But this because many Hungarians from our country have Romanian blood. On the hood, on the door, on shirt and in other places".

⁷⁶http://www.cna.ro/Decizia-nr-343-din-09-05-2008.html



Chapter VI. Institution's budget in the period 2002 – 2010

463. SITUATION OF BUDGETS APPROVED AND OF THE BUDGETARY EXECUTION IN 2002 - 2010

YEAR	Total budget	No. of employees	Budget for programmes	Budgetary execution
2002	293.338	24	0	282.299
2003	1.820.170	25	380.470	1.782.909
2004	2.149.100	43	572.500	2.063.075
2005	4.491.620	37	3.070.330	3.586.060
2006	3.570.000	41	1.850.000	3.829.588
2007	4.250.000	54	254.000	3.951.105
2008	6.303.726	65	1.547.000	5.864.887
2009	4.554.200	60	478.000	4.455.507
30.06.2010	4.975.000	65	680.000	1.989.324