

# **In from the Margins**

## **ROMA IN IRELAND**



Addressing the Structural Discrimination  
of the Roma Community in Ireland



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Nasc, the Irish Immigrant Support Centre's Mission Statement:  
**Enabling migrants to access justice and human rights and to work to ensure a just, inclusive and integrated society.**

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Photos in this report are taken from the film 'Roma – From Huedin to Here', courtesy of Director Brian Cronin.

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In April 2011 with the adoption of the EU Framework Strategy on Roma Integration the European Commission underlined that many of the estimated 10-12 million Roma in Europe face prejudice, intolerance, discrimination and social exclusion in their daily lives. They are marginalised and live in very poor socio-economic conditions. ‘This is not acceptable in the European Union at the beginning of the 21st century’<sup>1</sup> stated the Commission. The Commission further specified that ‘first of all, Member States need to ensure that Roma are treated like any other EU citizens with equal access to all fundamental rights as enshrined in the EU Charter of Fundamental Rights’.<sup>2</sup>

While it is extremely significant that the Commission acknowledged discrimination and called on the Member States to react, unfortunately the European Commission was silent on one critical impediment to Roma inclusion: anti-Gypsyism, which manifests itself in anti-Roma sentiments and statements, intimidation, harassment and violence against Roma.

In May 2012 a survey on the situation of Roma in 11 EU Member States<sup>3</sup> carried out by the EU Fundamental Rights Agency (FRA) and the United Nations Development Programme (UNDP) highlighted that a significant proportion of Roma in Europe have experienced discriminatory treatment because of their ethnic origin. A previous report of FRA underlined that on average one in five Roma respondents were victims of racially-motivated personal crime and between 65% and 100% of Roma in the surveyed European countries did not report their experiences of personal victimisation to the police.<sup>4</sup>

In response to the European Commission’s call on the EU Member States, Ireland adopted and presented a National Roma Integration Strategy in January 2012. In its strategy the Irish Government recalls the fact that ‘the promotion and protection of human rights is central to Ireland’s domestic and foreign policies’; acknowledges ‘the continuing need to combat discrimination against Travellers and Roma’ and its commitment to ‘maintaining and, as far as possible, improving the range of positive action measures already in place to support them’. It should be said that such commitments need to be praised as they are not only important but are fundamental in a democratic society that fully engages in addressing fairly and equally its citizens irrespective of racial or ethnic origin.

Yet, a question mark which arises most of the time when discussing the Roma minority in Europe is how Governments are translating their commitments into practice in order to bring a real change into the day to day life of Roma. When assessing the Roma Strategy of Ireland, the European Commission underlined several aspects; the policy needs detailed targets, indicators, a clear cut calendar, budget to secure effective implementation of measures, longer term approach, measures to improve the consultation and political engagement of Roma and Travellers, and planning with financial resources for coming years.<sup>5</sup> What then is the message sent by the European Commission to the Irish Government and what should ordinary citizens understand in terms of how the situation of Travellers and Roma will be effectively changed in the near future?

Nasc, the Irish Immigrant Support Centre works for an integrated society based on the principles of human rights, social justice and equality. So it is quite obvious why Nasc has been looking into whether Roma in Ireland are treated like any other EU citizens. At the end of the day this is a simple and natural aspiration that anyone, including Roma in Ireland would have, to be equally and justly treated.

There is little evidence and no comprehensive data in regard to the situation of Roma in Ireland, as it appears that only limited research in scope and substance have been so far produced by State or non-State actors. Nasc has taken up the initiative to launch the first major Roma-specific assessment in Ireland that looks into the intersectionality of areas such as employment, social protection, education and healthcare, the relation with the law enforcement and the media representation regarding the Roma.

Results are not surprising and are in line with most conclusions of European institutions. Roma in Ireland face barriers in access to employment, medical services and social protection due to negative stereotyping and prejudice or due to different procedural requirements. New legislation criminalizing certain forms of behaviour as well as its implementation by law enforcement seems to be used more as a tool for ethnic profiling against Roma.

There is serious concern raised by Nasc in terms of the situation of Roma in Ireland. Coming back to the assessment of the Commission on the Irish strategy and in light of the Nasc conclusions, the question is how the Irish Government will translate into practice its own commitments to promote social inclusion and to combat discrimination against Travellers and Roma? This question deserves a clear answer not in light of the European Commission's remarks on Ireland's strategy on Roma but in light of the very situation Roma face in Ireland.

At the end of the day what would remain from a Government commitment to promote and protect human rights if it stayed on paper only and would not have a structure for enforcement? Ireland has gained a reputation to be traditionally known as 'the land of a hundred thousand welcomes'. Hopefully this applies in practice for Roma in Ireland as well!

DEZIDERIU GERGELY  
*Executive Director*  
European Roma Rights Centre

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<sup>1</sup> Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, an EU Framework for National Roma Integration Strategies up to 2020, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0173:en:NOT>

<sup>2</sup> Ibid.

<sup>3</sup> FRA, UNDP, The situation of Roma in 11 EU Member States, Survey results at a glance, 2012, at: [http://fra.europa.eu/sites/default/files/fra\\_uploads/2099-FRA-2012-Roma-at-a-glance\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/2099-FRA-2012-Roma-at-a-glance_EN.pdf)

<sup>4</sup> EU-MIDIS, European Union Minorities and Discrimination Survey, 2009, Data in Focus Report, The Roma, European Union Agency for Fundamental Rights, report available at: [http://fra.europa.eu/sites/default/files/fra\\_uploads/413-EU-MIDIS\\_ROMA\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/413-EU-MIDIS_ROMA_EN.pdf)

<sup>5</sup> Commission staff working document accompanying document to the National Roma Integration Strategies: a first step in the implementation of the EU Framework SWD(2012) 133–21 May 2012, Hungary page 46–48, [http://ec.europa.eu/justice/discrimination/files/roma\\_nat\\_integration\\_strat\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/roma_nat_integration_strat_en.pdf)

# Executive Summary

This report examines the structural discrimination experienced by the Roma community in Ireland. It explores a range of E.U. and national legislative and policy frameworks, and assesses their effectiveness as tools for addressing the discrimination and marginalisation of the Roma in Ireland.

Although the Roma have experienced discrimination for centuries, it is only within the last few decades that this was formally acknowledged and responded to by the EU. This was partially driven by the accession of a number of former Eastern and Central European States with high Roma populations. Many Roma are now EU citizens and hold a broad bundle of rights that flow from their new status. As EU citizens they can no longer be conveniently ignored. The EU response to tackling the discrimination against its Roma citizens falls within three broad areas: equality and anti-discrimination legislation, formal integration policies and measures and increased funding for Roma specific projects.

The Racial Equality Directive (RED) is a key component of the EU anti-discrimination and equality framework. It is aimed at combating racial or ethnic discrimination in EU member states and is examined in this report. The RED emphasises that individuals should not be treated less favorably because of their racial or ethnic characteristics. It prohibits discrimination in the areas of employment, education, social protection, including social security, healthcare, and the supply of goods and services, including housing. The rights granted under the RED are not absolute.

This report demonstrates that the anti-discrimination legislation, integration policies and initiatives in place in Europe have had minimal effects in combating the deeply rooted socioeconomic problems and widespread discrimination of the Roma in Europe.

The report then explores these same frameworks in the Irish context. At the time of their enactment, the Employment Equality Act 1998 and the Equal Status Act 2000 represented a milestone in the development of Irish law and, in many respects, of Irish society. This framework continues to set a benchmark as to how we function as a society.

Ireland has a strong equality legislative framework, aspects of which go beyond the minimum standards set down in the RED. Our equality framework makes an important contribution to tackling discrimination and prejudice in Ireland. This report critically assesses the effectiveness of this framework in addressing the racism and discrimination the Roma experience in Ireland, and concludes that it fails the community across a number of areas.

The research for this report is a compilation of legal case work conducted primarily between January 2011 to March 2013. It also includes field research in the form of interviews, questionnaires, focus groups and documentary research, which included secondary sources ranging from legal analysis, historical and sociological studies, NGO and statutory reports, and online and print media.

The findings catalogue the structural discrimination faced by the Roma in accessing their basic rights to employment, education, social protection, housing, healthcare, as well as ethnic profiling and their treatment by the Gardaí. The report identifies the often subtle and complex barriers to integration that Roma experience and critically assesses whether Ireland's progressive equality legislation adequately addresses the discrimination of vulnerable minorities.

The report concludes and recommendations are presented under the following headings: State bodies, legislative reforms, and policy implementation. It is imperative that we address the structural discrimination and racism that forms part of the lived experience of the Roma in Ireland, and make clear efforts to ensure that equality is attained for this community. We can only achieve this by taking a multi-faceted approach, which incorporates strong and robust anti-discrimination and anti racism legislation, coupled with effective integration measures and targeted funding to promote the social inclusion of this marginalised community.

Ireland has a social legal and moral obligation to ensure that this community does not continue to suffer poverty, deprivation and social exclusion on the margins of our society.

## KEY RECOMMENDATIONS

1. Review and reform the Equal Status Acts to limit the discriminatory potential of the exemptions, especially the exemptions on nationality and legislative provision, and to provide for the inclusion for the prohibition of segregation, ethnic profiling and institutional racism within the Equal Status Acts.
2. Reform of the Prohibition of Incitement to Hatred Act to provide for hate crimes and online racism.
3. Legislative provision should be made to proscribe ethnic profiling.
4. The scope of the *locus standi* provision in the Equal Status Acts should be expanded to grant NGOs and other interest groups standing in line with the provisions in the Racial Equality Directive. This will bolster our anti-discrimination framework and improve access to justice for all vulnerable communities.
5. The Irish Government needs to take a lead role in the development of holistic and multi-faceted approaches to tackling prejudice against the Roma community and ending discriminatory practices, including negative media and public stereotypes.
6. Avenues to lodge complaints to Garda Ombudsman must be promoted and made more accessible and open to marginalised communities such as Roma.
7. The Criminal Justice (Public Order) Act 2011 should be reformed to provide for the following:
  - (a) Clarification of what constitutes “reasonable grounds” to permit a member of An Garda Síochána to arrest without warrant any person he or she suspects of committing an offence under the Criminal Justice (Public Order) Act 2011, to ensure that this is not functioning as a means of discriminating against particular groups.
  - (b) Curbing the discretionary implementation of the Criminal Justice (Public Order) Act 2011 by An Garda Síochána.
8. Delays in Social Welfare Offices caused by requests for unnecessary documentation and obstructions must be reduced dramatically to end the cycle of poverty for this vulnerable community.
9. Roma representatives must be involved in developing a clear Roma-focused integration strategy at national and local levels and ensure proper consultation with the Roma community in the development of the next National Roma/Traveller Integration Strategy.
10. Roma should be assisted in obtaining employment, including training and education targeted to this community along the lines of Traveller training schemes.
11. The Irish Government should formally acknowledge the Roma as a minority in line with European standards.
12. Effective monitoring of the National Roma Strategy with measurable goals and targets to determine its efficacy and impact on the Roma community in order that future Strategies can be tailored to meet the needs to that community.
13. Funding for Roma groups, NGOs and community organisations to promote Roma rights and combat discrimination and negative stereotypes of this community.



# Chapter 1: Introduction

## 1.1 ABOUT NASC

Nasc, the Irish Immigrant Support Centre is a non-governmental organisation working for an integrated society based on the principles of human rights, social justice and equality. Nasc (which is the Irish word for link) works to link migrants to their rights through protecting human rights, promoting integration and campaigning for change. Nasc was founded in 2000 in response to the rapid rise in the number of asylum seekers and migrant workers moving to the city of Cork, Ireland. It is the only NGO offering legal information and advocacy services to immigrants in Ireland's second largest city. Nasc's legal team assists some 1,200 migrants annually in navigating Ireland's protection, immigration and naturalisation systems. A considerable amount of our work involves reuniting families that have been separated through migration. We also assist migrants and ethnic-minority Irish people who encounter community based and institutional racism and discrimination. Our campaigning work is informed by our day-to-day experience working with migrants.

## 1.2 OUTLINE OF REPORT

This report examines the structural discrimination experienced by the Roma community in Ireland. The report explores the various legislative and policy frameworks – European and Irish – that address the Roma community. This report explores the effectiveness of Ireland's Equality Legislation<sup>6</sup> in addressing the structural discrimination the Roma experience in Ireland. However other recent developments in EU and Irish equality/ non-discrimination law are also relevant and will be considered. The development of integration policies and initiatives is also explored. The barriers Roma experience accessing employment, social protection, housing, healthcare and treatment by the Gardaí are discussed. The day-to-day discrimination the Roma in Ireland experience is viewed through the lens of these multiple frameworks. The Report examines if our frameworks are robust enough to tackle discrimination and promote equality for the Roma.

The research for this report is a compilation of legal case work conducted primarily between January 2011 to present. It also includes field research in the form of interviews, questionnaires, focus groups and

documentary research, which included secondary sources ranging from legal analysis, historical and sociological studies, NGO and statutory reports, and online and print media.

The report is comprised of five chapters and is laid out as follows:

This chapter will set out the broader context for this report by looking at the definition of Roma, providing a brief history of the Roma community in Cork and the impact of the legal restrictions with regard to the right to work, as well as a brief overview of the ongoing legal case work that Nasc has done on behalf of the Roma in Cork. It includes an examination of their changing legal situation; from asylum seekers to EU nationals requiring work permits in 2007 (in relation to Romanian and Bulgarian nationals) with a final examination of their current status as EU nationals in Ireland with free access to the labour market and all consequent rights and entitlements. The changing legal status of Roma in Ireland has contributed to difficulties in accessing employment, healthcare, housing, social welfare and education leading to their further marginalisation in Ireland. As a consequence the Roma community in Ireland require targeted support and advocacy.

The second chapter gives a brief overview of the history of Roma in Europe. It discusses the human rights abuses suffered by Roma from the first migration of the community to Europe in the 14th century through to the modern-day anti-Roma violence and expulsion policies throughout Europe. In this chapter the Racial Equality Directive, the primary anti-discrimination legislation in place in Europe is discussed. The Directive aims to both combat racism and promote integration, and its usefulness in the context of Roma integration is examined. In addition, the development of policies for Roma integration at a European wide level are discussed.

The third chapter concentrates on the corresponding legislative and policy framework in Ireland, including Ireland's human rights obligations and equality legislation in Ireland and whether it meets the requirements of the Racial Equality Directive. It discusses the integration framework in place in Ireland, including Ireland's National Roma/Traveller Integration Strategy.

In Chapter Four the compilation of two years of legal case work, questionnaires, surveys, focus groups and consultation with national and international

organisations working with Roma form the basis of the research and analysis conducted by Nasc. The data and methodology are explored and our conclusions detailed. With the use of case studies derived from two years of legal work, the four primary areas outlined in the scope of the Racial Equality Directive are considered, including: access to housing, education, employment and healthcare. In addition, three other areas are considered including: social protection, treatment by the Gardaí and ethnic profiling. Additionally indirect discrimination occurring in accessing social protection and the structural discrimination occurring in the implementation of the Criminal Justice (Public Order) Act 2011 is examined in this section. Enacted in 2011 the legislation criminalises ‘aggressive begging’ as defined in the Act and examines whether the legislation – and in particular the provision which gives the discretion to the Gardaí to decide whether the begging may be characterised as aggressive – disproportionately affects, and has led to the criminalisation of, the Roma Community. In the course of compiling this report, a concern arose in relation to the ethnic profiling of Roma women; this is also considered in the findings of this report.

Chapter Five concludes and includes recommendations on how to improve the situation for Roma in Ireland, including: addressing structural discrimination in the areas of employment, housing, education and social protection and treatment by the Gardaí; training for service providers and statutory bodies on the issues impacting this community; further research on the Roma living in Ireland; and providing distinct strategies and initiatives aimed at this group.

### 1.3 THE TERM ‘ROMA’

Roma means ‘people’ in Romani and is the preferred term used to describe members of Roma communities.<sup>7</sup> The term ‘Roma’ covers a wide range of ethnic groups. It is used, similarly to political documents of

the European Parliament and the European Council, as an umbrella term which includes groups of people who have more or less similar cultural characteristics, such as Roma, Sinti, Kalé, Travellers, and Gens du voyage. While no official data on ethnicity is available across the EU, it is estimated that 10 to 12 million Roma are in Europe, and approximately 6 million in the EU, making them the largest minority group in Europe. The main sub-groups are ‘oriental’ Roma (85%), Sinti (referred to as ‘Manouches’ in France – 4%), Kalés (10%), and Gypsies/Travellers in the UK and Ireland (0.5%), as well as many smaller groups.<sup>8</sup> Although historically nomadic, 80% of Roma in Europe are now settled.

The 2011 report by the Network against Racism (ENAR) and the European Roma Information Office (ERIO) estimates Ireland’s Roma population numbers at over 40,000 in 2009.<sup>9</sup> According to Ireland’s National Traveller/Roma Integration Strategy,<sup>10</sup> the vast majority of this broad ‘Roma’ category in the Irish context are indigenous Irish Travellers. Excluding indigenous Irish Travellers, the Roma community in Ireland is made up primarily of Romanian, Hungarian, Polish and Czech origin. As such, they are citizens of the European Union and under EU law have the same rights as any other EU citizen resident in Ireland.

For the purposes of this report, we did not include Irish Travellers in the category of ‘Roma’. All the cases studies pertaining to the Roma community in Ireland discussed in this report are Romanian nationals. We did this as we identified a particular need in this community through our legal clinics and advocacy work. The experiences of Roma and Irish Travellers differ fundamentally in that Irish Travellers were never officially excluded from the labour market and as Irish or UK citizens, they have an unrestricted right to reside in Ireland. In national policies (e.g. the National Traveller/Roma Integration Strategy), this community has been categorised with Irish Travellers and we found that as a result the particular immigration related issues and experiences of discrimination of the community were not being adequately addressed.

<sup>6</sup> Council Directive 2000/43/EC of 29 June 2000 Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin [2000] OJ L 180/22 (hereafter the Race Directive) and Council Directive 2000/78/EC of 27 November 2000 Establishing a General Framework for Equal Treatment in Employment and Occupation [2000] OJ L 303/16 (Employment Equality Directive).

<sup>7</sup> This was agreed at the World Romani Congress in 1971.

<sup>8</sup> European Network Against Racism & European Roma Information Office (2011) Debunking Myths and Revealing Myths about Roma (Brussels, ENAR & ERIO).

<sup>9</sup> Ibid.

<sup>10</sup> Department of Justice, Ireland’s National Traveller/Roma Integration Strategy (2011), available at: [http://ec.europa.eu/justice/discrimination/files/roma\\_ireland\\_strategy\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/roma_ireland_strategy_en.pdf) (date accessed: 11 May 2013).

# Chapter 1: Introduction

## 1.4 THE ROMA IN IRELAND: FROM ASYLUM SEEKERS TO EU NATIONALS

Roma migration in Ireland is not a new phenomenon. Prior to the mid 1990s, when the Roma entered in large numbers to seek asylum, it was not uncommon for Roma to enter as migrant or seasonal workers, picking up work such as fruit picking or farm labouring and returning to the U.K. and Europe. As the migration was seasonal, irregular and short term in nature it went relatively unnoticed.<sup>11</sup>

From the mid 1990s up to and including the accession of Romania and Bulgaria in 2007 there was an increase in the numbers of Roma entering the state to seek asylum, claiming persecution in their home country. This increase in numbers was consistent with the overall increase in the numbers seeking asylum in Ireland over the same period. The now-defunct National Consultative Committee on Racism and Interculturalism (NCCRI) noted that the first major arrival of Roma in Ireland was from Arad in North Eastern Romania in 1998 and most of this group were granted refugee status.<sup>12</sup>

Today there are an estimated 5,000 Roma in Ireland but there is very little accurate data available as Roma ethnicity is not collected in immigration, employment, or other Government statistics.<sup>13</sup> The lack of accurate information on Roma communities makes it difficult to develop effective and appropriate policies and to provide appropriate services. However, it does appear that Ireland has a relatively small Roma population compared to other Western European countries. According to Council of Europe estimates, there are some six million Roma in the European Union of whom close to two million are estimated to live in Romania.<sup>14</sup> Other Member States with large Roma populations are Bulgaria, Slovakia, Hungary, Spain and France.<sup>15</sup>

Roma in Ireland originate predominantly from Romania, but also the Czech Republic, Slovakia, Hungary, Poland and Bulgaria creating a very diverse community in Ireland. Due to a number of recent changes such as the accession of countries into the European Union in 2004 and 2007, discussed in more detail below, Roma in Ireland have a variety of different statuses, depending on when they came here and what country they are originally from. As EU citizens, the Roma have the same rights as any other citizen from their country of origin legally resident in

Ireland. Prior to 2012 however, Romanian and Bulgarian nationals required a work permit in order to seek employment – these employment restrictions were removed ahead of the 2014 EU-wide deadline. In Ireland today, the difficulties Roma experience in accessing education, health, housing and employment is often exacerbated by their changing immigration status.

It is our contention that the situation of the Roma in Ireland, in particular the Roma who originated from Romania, has not improved despite the acquisition of new rights attached to their relatively newly acquired EU citizenship status. One of the roots of the problem stems from the fact that there are a number of variables to be taken into consideration when examining the rights and entitlements of the Roma Community. These rights will vary depending on a number of factors, including whether they had residence permission in Ireland pre-accession, had been a work permit holder between 2007 and 2012, have an Irish citizen child or are newly arrived as a jobseeker. The rights accorded to the Roma resident in Ireland are thus stratified in nature, leading to unequal access to a range of services such as education, employment, social protection, housing, citizenship, and healthcare. These barriers can directly impact their sense of belonging and their ability and/or willingness to participate fully in Irish society. The stratification of rights which many migrants experience is amplified in the case of the Roma, as following the accession of Romania and Bulgaria in 2007, all Roma from these two states became EU Nationals overnight with little or no transitional procedures in place.<sup>16</sup>

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## 1.5 JANUARY 1<sup>ST</sup> 2007 – EUROPE COMES TO THE ROMA

Following the accession of Romania and Bulgaria, the Roma nationals of these countries, as is the case with all EU Nationals, are no longer subject to immigration control. In line with all EU Nationals from 1 January 2007 the Roma were now covered by the provisions of the Free Movement of Persons Directive (hereafter known as the 'Free Movement Directive').<sup>17</sup> What this means in effect is that they have the right to enter and remain in Ireland for a period of 90 days without conditions. For stays longer than 3 months they must either:

- i. Be in employment or self-employed in the State,
- ii. Have sufficient resources to support himself or herself and family members and have comprehensive sickness insurance in respect of himself or herself and family,
- iii. Be enrolled as a student in the State (including on vocational training) and have comprehensive sickness insurance in respect of himself or herself and family, or
- iv. Be a family member accompanying or joining a Union citizen.<sup>18</sup>

Given the increased level of protection of fundamental rights and freedoms by the Member States of the European Union, all Member States are regarded as constituting safe countries of origin in respect of each other for all legal and practical purposes in relation to asylum matters.<sup>19</sup> In practical terms, this effectively means that Roma with European citizenship are debarred from applying for asylum in European countries, despite the fact that, in some cases, they continue to meet the asylum requirements in countries outside the EU.<sup>20</sup>

Within the first week of Romania and Bulgaria joining the EU, the Office of the Refugee Appeals Commissioner (ORAC) received 220 applications for protection from Romanian nationals. This immediately

prompted the then Minister for Justice, Mr. Michael McDowell, to announce that Ireland had decided to 'take firm action to deal with the influx of Romanian asylum seekers'<sup>21</sup> by evoking Protocol 29 of the Treaty of the European Union, which makes applications for refugee status from EU nationals inadmissible except in the very exceptional circumstances.<sup>22</sup> He further went on to declare that these applicants were economic migrants and would not be 'allowed to enter into, or remain in, our asylum processes or in accommodation provided by the Reception and Integration Agency for asylum seekers'.<sup>23</sup> At that point, any pre-existing applications for asylum, subsidiary protection and/or Temporary Permission to Remain were dropped, regardless of whether a valid claim for protection existed or not. All Romanian and Bulgarian nationals who were accommodated in Direct Provision were required to leave, with no transitional measures put in place. The limiting nature of the Free Movement Directive meant that whole families were removed from state care overnight with no access to accommodation, social protection, and very limited access to the labour market. It is difficult to see how this discrete group could deem to have benefited from their new found EU Citizenship status. The state effectively washed their hands of these families whilst at the same time reaffirming their 'strong commitment to its obligations under the Geneva Convention relating to the status of refugees'.<sup>24</sup>

<sup>11</sup> National Consultative Committee on Racism and Interculturalism (NCCRI), Traveller and Roma Community website, <http://www.nccri.ie/cdsu-travellers.html#2> (date accessed: 5 May 2013).

<sup>12</sup> Ibid.

<sup>13</sup> Pavee Point and Health Service Executive (HSE) (2012) Roma Communities in Ireland and Child Protection Considerations (Dublin, Pavee Point & HSE).

<sup>14</sup> Council of Europe, Special Eurobarometre Report 393: Discrimination in the EU in 2012 (2012), available at: [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_393\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_393_en.pdf) (date accessed: 11 May 2013).

<sup>15</sup> Average estimates. April 2012 figures can be downloaded from [www.coe.int/web/coe-portal/roma/](http://www.coe.int/web/coe-portal/roma/)

<sup>16</sup> Eight Central and Eastern European countries (the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia), plus two Mediterranean countries (Malta and Cyprus) joined the EU on 1 May 2004. As the majority of the Roma living in Ireland originate from Romania and the terms of accession for the above listed countries were more favourable, as nationals from these states were granted full access to the labour market, analysis of the impact on accession for Roma from these states is not fully considered in this report.

<sup>17</sup> Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (the "Directive") is given effect in Ireland by the European Communities (Free Movement of Persons) Regulations 2006 and 2008 (the "Regulations"). As stated previously, under the terms of accession for Bulgarian and Romanian Nationals access to the Irish labour market was restricted until February 2012.

<sup>18</sup> Here they are required to satisfy certain criteria set down in clause (i), (ii) or (iii) of the Directive.

<sup>19</sup> Protocol 29 on asylum for nationals of Member States of the European Union (1997) sets out specific procedures that are to be applied to the handling of any claim for asylum made by a national of a European Union member state. It provides that European Union member states shall be regarded as constituting 'safe countries of origin' in respect of each other for all legal and practical purposes in relation to asylum matters. Accordingly, applications for refugee status from European Union nationals shall be inadmissible for processing by another European Union member state, except in very exceptional circumstances.

<sup>20</sup> Council of Europe: Parliamentary Assembly, Roma asylum seekers in Europe, 6 October 2010, Doc. 12393, available at: <http://www.unhcr.org/refworld/docid/4d8b1a212>

<sup>21</sup> INIS Press Release 17 January 2007 "McDowell takes firm action to deal with influx of Romanian asylum seekers" <http://www.inis.gov.ie/en/INIS/Pages/PR07000138> (date accessed 06/05/2013).

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> INIS Press Release 17 January 2007 "McDowell takes firm action to deal with influx of Romanian asylum seekers" <http://www.inis.gov.ie/en/INIS/Pages/PR07000138> (date accessed 06/05/2013).



# Chapter 1: Introduction

It could be said that, from Ireland's perspective, it failed to adequately deal with the very human consequences of accession for Roma asylum seekers as it primarily viewed it as an immigration control issue as opposed to a human rights issue. Overnight the Roma were now entitled to the supranational protection of their human rights, at a time when they were losing their accommodation and their claims for asylum were no longer considered. Many Roma could be forgiven for thinking that their newfound status was hollow and their shiny new rights as EU nationals were unobtainable.

## 1.6 NASC'S WORK WITH THE ROMA COMMUNITY

Our main interaction with the Roma community has been through our free legal service. Between 2011-2012 we assisted 33 Roma people, all of whom are nationals of Romania. The issues were primarily to do with access to employment and social protection. Through this work clear patterns of discrimination, both institutional and social, began to emerge. The majority of Roma we worked with presented with a multiplicity of issues and in our view faced additional barriers in accessing their rights and entitlements. The need to provide a specific information and advocacy service for Roma people directly emerged because of the specific and multiple needs of this vulnerable group. Our work in this area resulted, for the first time to our knowledge in the city of Cork, in Roma people accessing information and assistance, and succeeding, in some exceptional cases, in accessing employment and social protection in the state.

There are approximately 40 Roma families living in Cork City making up approximately 300-400 people, who primarily originate from the same camp outside the village of Huedin in Romania. In 2011 our legal advocacy work with the community increased. There were a number of factors that contributed to this increase. As part of Nasc's capacity building work, a Nasc legal clinic was established one day per week in Blackpool Community Centre (Blackpool is where the majority of the community live in Cork). Nasc achieved a number of successful outcomes for individual members of the community thus promoting its reputation through word of mouth in the community and; as a lead organisation in the Cork

City Integration Forum, we identified the Roma as a group that were particularly marginalised and at risk of social exclusion. Additionally in mid 2011, Nasc were invited to participate in a Roma Research Project spearheaded by the Cork City Partnership which sought to address some of the issues the Roma community in Cork were encountering.

As a result of these efforts, Nasc decided that a multifaceted approach was required to affect positive change and further the integration of Cork Roma. In 2011 Nasc received funding from the Cork City Partnership to produce a short documentary looking at the journey of the community from Romania to Cork. As stated earlier, most of the Cork Roma community had originally come from one small area in Romania, a camp outside the village of Huedin. In October 1990 that camp was burned to the ground and this resulted in the first Roma coming to Cork to seek protection. The film 'Roma – From Huedin to Here' documents one man's journey from Huedin to Cork, looking both at the conditions in the camp and the people who remain there, to provide an insight into the Roma in Cork, where they have come from and why. The film was launched in April 2013.

Running in tandem with the film and our individual case work, Nasc also identified the potential for strategic litigation which emerged from the State's treatment of Bulgarian and Romanian nationals on foot of the European Court of Justice (ECJ) judgement in *Zambrano v Office National de l'emploi*.<sup>25</sup> The court effectively ruled that a Member State could not refuse the right to reside and work to the parent(s) of a host state dependent citizen child if to do so would result in the EU citizen child being deprived of the genuine enjoyment of their rights as an EU citizen – i.e. the refusal of the parent(s)' permission to work and reside would result in the EU citizen child's constructive removal from the EU.<sup>26</sup>

The *Zambrano* case concerned third country national parents and, as such, the Irish government initially took a very restrictive approach, limiting the application of the ruling to third country national parents of Irish Citizen children – which excluded Romanian and Bulgarian parents. As stated previously, Romanian and Bulgarian nationals had limited access to the labour market and were generally required to obtain a work permit.<sup>27</sup> Nasc argued that the continuing restrictions on access to the labour market for Romanian and Bulgarian parents of Irish citizen

children amounted to the deprivation of this cohort of Irish citizen children's full enjoyment of his/her rights as EU citizens as well as unequal treatment when contrasted with similarly situated third country national parents of Irish citizen children. Under principles of EU law, an EU citizen cannot be treated less favourably than a similarly situated third country national. A case was identified by Nasc through our legal clinics and a pro-bono legal opinion was sought through the Public Interest Law Alliance (PILA) which indicated that there were grounds for a legal challenge. *Pro-bono* representation was secured for the client and the state settled the case in February 2012, deciding that the issue was moot as they announced new policy lifting work permit requirements for all Romanian and Bulgarian parents of Irish citizen children.

Following this positive development in policy we continued to lobby for full and free access to the labour market for all Romanian and Bulgarian nationals and in July 2012 the Department of Jobs, Enterprise and Innovation removed the restrictions on labour market access for both nationalities.

Whilst these changes in policy have not been insubstantial, it is our contention that because of a number of factors, including a lack of understanding and awareness of the complexities of the residency permissions among service providers, officials in the Department of Social Protection and the prevalence of institutional racism against this particular ethnic group, vindication of these newly acquired rights for the Roma proved challenging. After working with a significant number of Roma in Cork, we began the process of undertaking an internal monitoring and evaluation of our work, seeking to deepen our understanding of the underlying challenges and begin to address the systemic issues facing this group. This became the genesis of this report.

## 1.7 A COMMUNITY ON THE MARGINS

In a modern day context Roma individuals and groups have been designated as 'delinquent citizens', refusing to conform or engage in societal norms.<sup>28</sup> Roma stereotyping and prejudice is so deeply rooted in European culture the stereotypes are often accepted as fact.<sup>29</sup> Nasc's experience in working with the community on a micro level would support this contention. The prevalence of racial stereotyping and the labelling of the Roma as 'delinquent citizens' becomes of itself a barrier to members of the community to even raise a claim of discrimination or unequal treatment. In the context of our work we have come across a number of Roma men and women who have been denied entry to business premises, shops, and nightclubs but remained unwilling to complain or lodge a claim with the Equality Tribunal.<sup>30</sup> The labelling<sup>31</sup> of a whole group as delinquent or criminal inculcates a deep sense of debilitating shame amongst members of the group which, in turn brings with it an expectation of and resignation to discrimination. It is Nasc's contention that in the Irish context, given the relatively small Roma population when contrasted with other EU states, the fact that so little has been done to address and reverse this negative stereotype which has now arguably become the dominant narrative, is in itself a wasted opportunity. This raises the uncomfortable question of whether or not this is as a result of the politics of neglect or the politics of intention.

The transition from asylum seeker to EU national has not been an easy one for Roma migrants and has resulted in their continuing marginalisation as second class citizens both in their countries of origin and in their host countries. It is an indication of the Roma community's lack of awareness of their rights as EU citizens as well as the lack of clarity around the status

<sup>25</sup> Case C-34/09, Gerardo Ruiz Zambrano v. Office national de l'emploi (ONEm) judgement of the Court of Justice (European Union).

<sup>26</sup> The court held that "Article 20 of the Treaty on the Functioning of the European Union must be interpreted as meaning that it precludes a Member State from refusing a third country national upon whom his minor children, who are European Citizens, are dependent, a right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that third country national, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen."

<sup>27</sup> The legislation on the issuing of work permits is governed by the Employment Permits Act (2003-2006). In order to be considered eligible to apply for a work permit, the position must not be on the ineligible list of jobs. Generally, work permits are aimed at skilled migrants to fill labour shortages in specific areas in Ireland. To be considered eligible for a work permit the position must be a full time one and have a minimum remuneration level of between €27,000 and €30,000 pa. The types of jobs considered eligible for work permits would generally not be suited to the Roma Community given the historic lack of access to education, numeracy and literacy problems. More information is available on the Department of Jobs, Enterprise and Innovation website: <http://www.djei.ie/labour/workpermits/employmentpermitspolicy.htm>

<sup>28</sup> Goldston, J. A. (2002). Roma Rights, Roma Wrongs. *Foreign Affairs*, 81(2), 146-162.

<sup>29</sup> European Network Against Racism & European Roma Information Office (2011) *Debunking Myths and Revealing Myths about Roma* (Brussels, ENAR & ERIO).

<sup>30</sup> This is discussed in detail in Chapter Three.

<sup>31</sup> H. Becker, *Outsiders: studies in the sociology of deviance* (New York, 1963).



of Roma migrants in the Irish state that none of our Roma clients were formally informed by the Department of Justice about their change in status from asylum seeker to EU national.

The exclusion of Roma European Union citizens from the society in their host states creates insurmountable obstacles to attaining formal employment and the ability to prove 'sufficient resources', both of which are requirements for long term residency under the Free Movement Directive. This affects their ability to register and consequently have access to key civil and political, economic and social rights.<sup>32</sup> The barriers to obtaining sustainable residence in an EU country

for many Roma individuals are significant but the options remaining are thus basically: to seek and be granted asylum outside the European Union, to live as irregular migrants, or to stay in their home country and face discrimination and potentially persecution. The first option should be considered a failure by the European Union to provide protection. The second option brings with it exclusion and extreme difficulty in accessing social rights and employment, health insurance or valid identity or travel documents. The last of the three options should never have to be an option for someone seeking asylum.

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<sup>32</sup> European Union Agency for Fundamental Rights, "The situation of Roma EU citizens moving to and settling in other EU Member States," (European Communities, 2009), p. 7.



# Chapter 2: Roma in Europe – Discrimination and Responses

## 2.1 INTRODUCTION

*‘Back in 1993 Vaclav Havel described the Roma issue as the litmus test for the new democracies. In 2012 it’s become a litmus test for democracies across the entire European Union. Today the reality for many Roma citizens remains one of dread and fear. The challenge facing Europe is to banish that fear, guarantee the safety and security of its citizens and ensure that the rule of law prevails without prejudice across all Member States.’*

Dr. Bernard Rorke,  
International Research and Advocacy Director,  
Roma Initiatives Office, Open Society Foundations<sup>33</sup>

This chapter will discuss the history of Roma in Europe and, in particular the EU, with an overview of both their historic and present-day experiences of discrimination. Although Roma have experienced discrimination for centuries it is only within the last few decades that the EU has formally acknowledged this and moved to put in place structures to effectively deal with this. The EU response to tackling the discrimination against Roma falls within three main areas: anti-discrimination legislation, formal integrated integration measures and increased funding for Roma specific projects. The success or otherwise of the legislative protections and the wider integration measures will be explored and evaluated in this chapter.

## 2.2 THE ROMA IN EUROPE

Although the EU’s largest minority, Roma have been at the fringes of social legitimacy since their arrival in Europe in the 11th century. Policies relating to Roma in Europe have been characterised by a pattern of

persecution, enslavement, and assimilation defined by the majorities’ perceptions of Roma as outsiders.<sup>34</sup> The Roma community in the EU consists of approximately 10 to 12 million people,<sup>35</sup> greater than the total population of a number of Member States. The 2004 EU Roma Report<sup>36</sup> described the treatment of Roma as amongst the most pressing political, social and human rights issues facing the EU. This conclusion is supported by numerous reports of the United Nations and Council of Europe bodies,<sup>37</sup> as well as jurisprudence from the European Court of Human Rights and the European Committee of Social Rights,<sup>38</sup> and cases that have come before individual member states.

Throughout its history, Europe has discriminated against Roma. While the past century has seen improvements in equality for many groups, the nomadic Roma are still treated as second-class citizens in many European nations.<sup>39</sup> Despite having a long history of settlement and co-existence, Roma remain the quintessential migrant group. Documented discrimination against the Roma goes back to the fourteenth century. When the Roma first came to the European continent in large numbers after the fall of the Byzantine Empire in 1453, they were enslaved in Wallachia and Moldavia (modern-day Romania).<sup>40</sup> Enslavement of Roma continued until 1860 in the Romanian principalities and intense discrimination, especially in those regions which had been part of the former Austro-Hungarian Empire, continued until the beginning of the 20th century.<sup>41</sup>

By the 18th century a connection between Roma and criminality was prevalent in European attitudes, and to a large degree these attitudes persist today. Cesar Lombroso, an 18th century Italian criminologist, sought to show that due to certain anthropological traits Roma were, a ‘living example of a whole race of criminals’.<sup>42</sup>

<sup>33</sup> Rorke, B. (2012) *Killing Time: The Lethal Force of Anti-Roma Racism*, available at: [www.soros.org/topics/roma](http://www.soros.org/topics/roma) (date accessed: 11 May 2013).

<sup>34</sup> Guglielmo and Waters, “Migrating Towards Minority Status: Shifting European Policy Towards Roma” *JCMS* (2005) Volume 43, Number 4, pp. 763-86.

<sup>35</sup> Communication from the Commission to the European Parliament, The Council, The European Parliament, The Council, The European Economic and Social Committee and the Committee of Regions, *National Roma Integration Strategies: a first step in the implementation of the EU Framework*, available at: [http://ec.europa.eu/justice/discrimination/files/com2012\\_226\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/com2012_226_en.pdf) (date accessed: 11 May 2013).

<sup>36</sup> EU Roma Report: Roma and the Structural Funds Report 2010.

<sup>37</sup> See further below.

<sup>38</sup> *The Situation of Roma in an Enlarged European Union*, European Commission Directorate-General for Employment and Social Affairs Unit D3, European Communities, 2004, report produced by a consortium comprising Focus Consultancy Ltd., the European Roma Rights Center, and the European Roma Information Office.

<sup>39</sup> Helen O’Nions, *Minority Rights Protection in International Law: The Roma of Europe* 6-8 (2007).

<sup>40</sup> Angus Fraser, *The Gypsies* 25-29 (1992) for a discussion of the etymological origins of the Romani’s names for themselves. Based on linguistic similarities, some believe that the Roma originated in India. Ian Hancock, *We Are the Romani People*.

<sup>41</sup> The Council of Europe, *Protecting the Rights of Roma* (2011).

<sup>42</sup> Sarah Cemlyn et al., *Equality and Human Rights Commission, Inequalities Experienced by Gypsy and Traveller Communities: A Review* (2009).



## Chapter 2: Roma in Europe – Discrimination and Responses

Discrimination against Roma continued into the 20th century. Eugenics became a popular theory amongst European elites in the early part of the 20th century and Roma were subjected to extensive experimentation.<sup>43</sup> Examples of the persecution of Roma in this period abound.<sup>44</sup>

The dehumanising impact of centuries of discrimination reached its peak in the Second World War when it is estimated that hundreds of thousands of Roma were killed. The Nazis subjected Roma to arbitrary internment, forced labour and mass murder, because of what was termed their ‘racial inferiority’.<sup>45</sup> Overall the Holocaust took the lives of approximately half a million Roma, nearly twenty-five percent of the European Roma population.<sup>46</sup>

### 2.3 ROMA POST ACCESSION

With the fall of the Iron Curtain in 1989, the treatment of the Roma once again came to the fore. The liberation of expression in the former communist countries with large Roma populations resulted in an increase in hate crime and discrimination against the Roma. Coupled with these societal factors, many Roma faced severe unemployment. Protected and low rent accommodation as well as the low rent schemes in place during the communist era were abolished resulting in many Roma becoming homeless and forcing them to move to the slum ghettos of the major cities.<sup>47</sup> Running counter to this was the lure of potential membership of the European Union for the newly democratised states of Central and Eastern Europe which was contingent upon the adoption of human rights standards which would effectively force them to address the situation of their Roma populations. With accession in 2004 and 2007 came a new supranational legal order, bringing with it a new bundle of justiciable human rights and respect for minorities with far reaching potential to vindicate and protect the rights of Europe’s largest minority, the Roma community.

Human rights instruments and enforcement bodies including the European Convention on Human Rights (ECHR), the EU Fundamental Charter of

Human Rights, the European Commission Against Racism and Intolerance (ECRI), the Framework Convention on National Minorities (FCNM), as well as several UN Conventions including the Convention on the Elimination of All Forms of Racial Discrimination (CERD), can be used as effective tools for tackling discrimination experienced by the Roma across Europe.<sup>48</sup> The most significant of these for the Roma are: the (ECHR),<sup>49</sup> which Ireland has transposed at sub-constitutional level by way of the European Convention on Human Rights Act 2003; the Racial Equality Directive<sup>50</sup>(RED); and the Charter of Fundamental Rights of the European Union<sup>51</sup> (The Charter).<sup>52</sup>

Running parallel with the development of a European wide human rights and anti-discrimination legislation has been an alarming rise in racism linked to the return of far-right movements throughout Europe. In respect of the Roma, this has been expressed in the form of growing anti-Roma violence and forced expulsions from some EU states.<sup>53</sup> Since the late 1990s, the case law before the ECtHR – the Court of the European Convention on Human Rights – draws a horrifying picture of state-sponsored and state-tolerated violence against the Roma at the hands of police forces, prosecutors, judges and hospital personnel, coupled with widespread private violence and discrimination.<sup>54</sup> The most notable of these were a series of high-profile French expulsions of Roma migrants in 2010. Overall Europe reacted quite strongly to these expulsions. Viviane Reding, the European Commissioner for Justice, Fundamental Rights and Citizenship stated that the French expulsions were ‘a situation [she] had thought Europe would not have to witness again after the Second World War’; further noting that the EU would open infringement proceedings – the main tool the EU has to punish states that violate EU laws – against France.<sup>55</sup> Although ‘collective expulsions’ are expressly forbidden in both the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the EU Charter for Fundamental Rights,<sup>56</sup> the French have stated that because they were deporting only those Roma who were in France ‘illegally’, so they have done nothing wrong.<sup>57</sup>



<sup>43</sup> Henry Friedlander, *The Exclusion and Murder of the Disabled*, in *Social Outsiders in Nazi Germany* (2001).

<sup>44</sup> For example in Germany during the Weimar period, police had the authority to detain for up to two years in a work camp any Roma over the age of sixteen who could not prove steady employment. See Richard J. Evans, *Social Outsiders in German History: From the Sixteenth Century to 1933*, in *Social Outsiders in Nazi Germany* 20, 31-32 (Robert Gellately & Nathan Stoltzfus eds., 2001).

<sup>45</sup> Sybil H. Milton, "Gypsies" as Social Outsiders in Nazi Germany, in *Social Outsiders in Nazi Germany*, supra note 35, at 212, 212. Although considered an Aryan people the Third Reich's official stance was that "through migration, the Roma had absorbed the blood of the surrounding peoples" and thus had become a racial mixture. Fisher, supra note 33, at 520520. Roma and Sinti in the German "fatherland" were for the most part taken to Auschwitz-Birkenau. Twenty-three thousand Roma were housed at that concentration camp alone; nineteen thousand of them died there (Genocide of European Roma (Gypsies), 1939-1945, U.S. Holocaust Memorial Museum, <http://www.ushmm.org/wlc/en/article.php?ModuleId=10005219>). Pseudoscientific experiments on their Roma captives (Genocide of European Roma (Gypsies), Supra Note 20).

<sup>46</sup> There was no mention of this genocide in the Nuremberg Trials and no compensation was made to Roma who survived the concentration camp.

<sup>47</sup> Smith Pamina, "The Roma in Europe: Paving a brighter future," *Harvard International Review* Summer 2011.

<sup>48</sup> Drawing attention to its Resolution 1740 (2010) on the situation of Roma in Europe and relevant activities of the Council of Europe, the Parliamentary Assembly in its 2010 report urged the member states of the Council of Europe to comply fully with their obligations under international human rights law, including the European Convention on Human Rights, by preventing attacks on Roma, and eradicating practical impunity by effectively and promptly investigating all crimes against Roma. This includes examining whether the crimes have racist motivations, bringing the perpetrators to justice and, if found guilty, punishing them, <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/ERES1740.htm>.

<sup>49</sup> Convention For The Protection Of Human Rights And Fundamental Freedoms 1950 4 November 1950, as amended by Protocol No. 11 of 11 May 1994.

<sup>50</sup> Directive 2000/43/EC.

<sup>51</sup> European Union, Charter of Fundamental Rights of the European Union, 7 December 2000, Official Journal of the European Communities, 18 December 2000 (OJ C 364/01).

<sup>52</sup> Analysis of Article 14, the anti discrimination provision of the ECHR will not be considered in detail in this research. Article 14 ECHR is a general provision prohibiting discrimination. The Article is not a standalone provision as it has to "attach" to a breach of the rights outlined in the Convention. Article 14 provides; Prohibition of discrimination: The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

<sup>53</sup> For example, the rhetoric of the Jobbik party in Hungary, which explicitly links societal problems to 'Gypsy crime' and frequently organises anti-Roma demonstrations. See P. Smith, "The Roma in Europe" (2011), p. 35.

<sup>54</sup> Mathias Moschel, 'Is the European Court of Human Rights 'Case Law on Anti-Roma Violence' Beyond Reasonable Doubt?' *Human Rights Law Review*, 4 October 2012. In the past ten years, the European Court of Human Rights (ECtHR) has ruled on more than forty cases involving anti-Roma violence. Most of those cases claim Article 2 (right to life), Article 3 (prohibition of torture, or inhuman or degrading treatment or punishment) and Article 14 (non-discrimination) violations. The ECtHR repeatedly positions the former two provisions among the most fundamental of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In the consideration of Article 14 the ECtHR often confirms that racial discrimination is an affront to human dignity and requires a vigilant response from authorities but lacks legislative enforcement.

<sup>55</sup> Mariane Niosi, *Roma Expulsion Orders Called into Question by Lawyers*, France 24, available at: <http://www.france24.com/en/20101014-france-roma-expulsion-orders-documents-identical-justice-EU-law-police-montreuil> (date accessed: 10 May 2013).

<sup>56</sup> See Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms Securing Certain Rights and Freedoms Other than Those Already Included in the Convention and in the First Protocol Thereto, art. 4, Sept. 16, 1963, E.T.S. No. 5, available at <http://conventions.coe.int/Treaty/en/Treaties/html/005.htm> [hereinafter Protocol 4 to the European Convention on Human Rights]. See also Charter of Fundamental Rights of the European Union, art. 19, Dec. 18, 2000, 2000 O.J. (C 364).

<sup>57</sup> Sarkozy Defends Deportations of Roma Migrants from France, RTT News (Sept. 16, 2010), <http://www.rttnews.com/Content/GeneralNews.aspx?id=1421215&SM=1>. The Free Movement Directive allows for expulsions from a host country if people 'become an unreasonable burden on the social assistance system of the host Member State during an initial period of residence'. Even in an Irish context expulsion of a group of Roma occurred in 2007. Over 100 Roma individuals from Romania claimed conditions in a camp on the M50 in the Ballymun area of Dublin were better than at home. The Romanian Ambassador went on the record in response, decrying those selling their homes in Romania, to come to Ireland, despite the fact that Ireland did not allow free labour access or social welfare access to Romanian and Bulgarian nationals. In July 2007 the group was deported by the Minister for Integration Policy at that time. See E. Ring, "Last of Roma abandon M50 camp" *Irish Examiner* 26 July 2007, available at: <http://www.irishexaminer.com/archives/2007/0726/world/last-of-roma-abandon-m50-camp-38218.html> (date accessed: 11 May 2013). 58 Kim Wilsher, "Leaked Memo Shows France's Expulsion of Roma Illegal, Say Critics," *The Guardian* 14 Sept 2010. 59 See, e.g., European Roma Rights Ctr., Submission to the European Commission in Relation to the Analysis & Consideration of Legality Under EU Law of the Situation of Roma in France: Factual Update 2 (2010), available at: <http://www.errc.org/cms/upload/file/france-ec-legalbrief-27-sept-2010.pdf> (stating that the French government has not met the requirement of the 2004 Directive on Free Movement to examine personal conduct of individuals).

## Chapter 2: Roma in Europe – Discrimination and Responses

### FRENCH EXPULSIONS

In September 2010, a French Interior Ministry memo was leaked. The memo, dated August 5, 2010, stated, “Three hundred camps or illegal settlements must be evacuated within three months; Roma camps are a priority . . . It is down to the prefect [state representative] in each department to begin a systematic dismantling of the illegal camps, particularly those of the Roma.”<sup>58</sup> This memo caused international outcry as the discriminatory purpose behind departmental policies was revealed. In October 2010 the EU suspended infringement proceedings against France following an assurance from the French government that the transposition of the 2004 Directive, the ‘Free Movement Directive’, would take place in the Spring of 2011. Taken together the 2004 Directive and the French immigration law that requires an employment permit before entry, means that an individual who does not obtain an employment permit within the 3 months specified or is deemed to have become a burden on the social welfare system of a Member State can be termed an “illegal” immigrants and is consequently removed From the State.

As highlighted by the European Roma Rights Centre<sup>59</sup> the French expelled the Roma without meeting the necessary administrative and investigatory requirements of the 2004 Directive. The French made no attempt to investigate the individual circumstances of Roma who were deported from France. At times, France as even failed to verify whether they had been in the country for more than the requisite three months.

When one considers that Roma were the specific target of the current French crackdown, and that no exact allegations were made against anyone removed by the French government, it becomes clear the French used the Free Movement Directive to facilitate the expulsion of the community rather than providing the right to ‘move and reside freely’.

### 2.4 EVIDENCE OF DISCRIMINATION THROUGHOUT EUROPE AND IRELAND

What separates Roma from other protected racial or ethnic minority groups in Europe is the extent of the poverty and deprivation they are subjected to. Many Roma live in segregated settlements that one would more readily associate with a developing country than the European Union. The United Nations Committee on the Elimination of All Forms of Racial Discrimination (CERD) described ‘the place of the Roma communities among those most disadvantaged and most subject to discrimination in the contemporary world’.<sup>60</sup>

In the case of Roma the issue is not merely discrimination but the ‘structural discrimination’ of the community. Structural discrimination denotes segregation and institutional discrimination. The involuntary physical separation between Roma and non-Roma, prevalent throughout Europe in the areas of housing and education constitutes segregation, whereas institutional discrimination describes the collective failure of an organisation to provide an appropriate and professional service. This institutional

discrimination is not necessarily the result of departmental policies but can be the consequence of unwitting prejudice, ignorance, thoughtlessness and racist stereotyping.

In April 2009 the European Union Agency for Fundamental Rights (FRA) first ever EU-wide survey demonstrated that discrimination, harassment and racially motivated violence are far more widespread than recorded in official statistics.<sup>61</sup> The survey suggests that ethnic minorities lack confidence in mechanisms to protect victims of discrimination, harassment or ethnically motivated violence. In FRA’s EU-MIDIS Focus Report on Roma, this group reported the highest levels of discrimination, with one in two respondents saying that they were discriminated against in the last 12 months.<sup>62</sup> The findings in a more recent FRA and UNDP report in 2012 raises key questions about the real impact of previous and current social policies concerning Roma in employment, housing, healthcare, social services, education and human rights protection in Member States. The type and high levels of discrimination against Roma are seen to be incompatible with the founding values of the EU.<sup>63</sup>



Similar findings were reported in the 2008 Eurobarometre Report which found that one quarter of Europeans admit to being uneasy with the idea of having Roma for neighbours and in 2009 one in five Roma claimed to have been the victim of a racially motivated crime at least once during the previous 12 months.<sup>64</sup>

In 2012 the European Commission released a new Eurobarometre Report which looked at discrimination in the European Union. The 2012 report measured the perceived effectiveness of national efforts to integrate Roma and also gauged the public's perception of the community as a whole. This survey looks into attitudes and perceptions of Europeans towards discrimination, based on different grounds (gender, ethnic origin, religion or beliefs, age, disability, sexual orientation and gender identity).<sup>65</sup> The study included a set of questions that measured perceptions of discrimination amongst Roma and acknowledges that most Roma are EU citizens but many face prejudice, intolerance, discrimination and social exclusion in their daily lives.<sup>66</sup> Overall 45% of respondents say that national integration efforts are ineffective, 26 % consider the efforts to be moderately effective and 12% believe the efforts made are very effective. The report concludes that Europeans are far more critical of the efforts made to integrate Roma than of the general efforts to combat discrimination.

The report also makes the assertion that the plight of Roma appears to be a rather 'unknown' issue in some countries where an average of 14% of respondents were unable to rate the effectiveness of their country's efforts in relation to Roma although the report also found that three out of four Europeans

believe that Roma are a group at risk of discrimination. Overall the report finds the majority of Europeans are in favour of better integration of Roma. 53% believe society would benefit from a better integration of Roma. But again the report states that attitudes vary considerably between countries: in Ireland 38% 'totally disagree' that society could benefit from better integration of the Roma community and 37% 'totally agree' and 25% 'didn't know'. By contrast, in Sweden 87% agree that society could benefit from better integration of the Roma and there is also broad support for the integration of Roma in Finland (78%), Lithuania (74%) and Hungary (72%).

#### 2.4.1 FINDINGS ON IRELAND – THE EUROBAROMETER

The findings of the Eurobarometer report in relation to Ireland are worth examining in greater details as they highlight the unease that exists in Irish society with regard to the Roma community. As outlined above the rate of 'don't know' in response to questions is comparatively high and there is a relatively even split between positive and negative responses, which may suggest a lack of understanding or knowledge of the conditions experienced by Roma in Ireland.

In Ireland, when asked if they thought the efforts made for the integration (in the fields of education, health, housing and employment) of its Roma population are effective, 34% of respondents found the efforts to be not effective, 27% moderately effective and 18% effective.<sup>67</sup> The survey also aimed to capture how well the Roma are accepted in the

<sup>58</sup> Kim Wilsher, "Leaked Memo Shows France's Expulsion of Roma Illegal, Say Critics," The Guardian 14 Sept 2010.

<sup>59</sup> See, e.g., European Roma Rights Ctr., Submission to the European Commission in Relation to the Analysis & Consideration of Legality Under EU Law of the Situation of Roma in France: Factual Update 2 (2010), available at: <http://www.errc.org/cms/upload/file/france-ec-legalbrief-27-sept-2010.pdf> (stating that the French government has not met the requirement of the 2004 Directive on Free Movement to examine personal conduct of individuals).

<sup>60</sup> CERD, General Recommendation No. 27: Discrimination Against the Roma (2002), available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/11f3d6d130ab8e09c125694a0054932b](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/11f3d6d130ab8e09c125694a0054932b) (date accessed: 11 May 2013).

<sup>61</sup> EU Fundamental Rights Agency (FRA), EU-MIDIS At a Glance (2009), available at: [http://fra.europa.eu/sites/default/files/fra\\_uploads/414-EU-MIDIS\\_GLANCE\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/414-EU-MIDIS_GLANCE_EN.pdf) (date accessed: 11 May 2013).

<sup>62</sup> EU Fundamental Rights Agency (FRA), EU-MIDIS Data in Focus Report 1: The Roma (2009), available at: [http://fra.europa.eu/sites/default/files/fra\\_uploads/413-EU-MIDIS\\_ROMA\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/413-EU-MIDIS_ROMA_EN.pdf) (date accessed: 11 May 2013).

<sup>63</sup> European Union Fundamental Rights Agency, EU-MIDIS *European Union Minorities and Discrimination Survey* (Vienna, FRA), United Nations Annual Report 2012.

<sup>64</sup> European Commission, Eurobarometre Report 296: Discrimination in the EU (2008), available at: [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_296\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_296_en.pdf) (date accessed 11 May 2013).

<sup>65</sup> European Commission, Eurobarometre Special Report 393: Discrimination in Europe 2012 (2012), available at: [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_393\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_393_en.pdf) (date accessed: 11 May 2013).

<sup>66</sup> European Commission (Justice), EU and Roma, available at: [http://ec.europa.eu/justice/discrimination/roma/index\\_en.htm](http://ec.europa.eu/justice/discrimination/roma/index_en.htm) (date accessed: 11 May 2013).

<sup>67</sup> European Commission, Eurobarometre Special Report 393: Discrimination in Europe 2012 (2012), available at: [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_393\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_393_en.pdf) (date accessed: 11 May 2013).



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Member States by asking respondents to indicate on a scale from 1 to 10 how comfortable citizens in their country would feel if their children had Roma schoolmates. Indirectly, the question also captures respondents' own feelings towards the Roma. Overall, 34% of Irish respondents indicated that citizens in their country would feel uncomfortable if their children had Roma schoolmates (28% answered fairly comfortable and 25% answering comfortable). Again the Irish response was marked by a relatively high 'don't know' rate (14%) in comparison to their EU counterparts. (Greece and Finland 1%).

Within this social and political context, it remains now for Europe and Ireland to 'secure the fundamental human rights of Roma in practice'.<sup>68</sup>

### 2.5 NEW LEGAL OPPORTUNITY – THE RACIAL EQUALITY DIRECTIVE (RED)

In this report we will consider the EU's Racial Equality Directive (RED) in some detail as it is underpinned by the rights enshrined in the ECHR, and the firm commitment to equality in our Constitution. In addition, it gives substance to the values espoused in Article 6 of the Treaty of the European Union which provides:

*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail*<sup>69</sup>

Critically, the Race Directive has the potential to provide an innovative new legal opportunity to vindicate rights that are underpinned by broader constitutionally entrenched rights. The effectiveness or otherwise of the RED to improve access to justice and provide effective redress for marginalised groups such as the Roma depends to some degree on how member states incorporate the RED into their domestic legal order. As with all directives, the RED establishes a set of minimum standards and it is up to member states to go beyond the minimum standards set down.

The scope of the RED is very broad as it goes beyond employment and covers social protection, including social security and healthcare, social advantages, education, access to and supply of goods and services available to the public including housing and matters which fall outside the range of gender equality legislation and the Framework Employment Directive 2000/78 of 27 November 2000 for combating discrimination on grounds of religion or belief, disability, age or sexual orientation.<sup>70</sup> When viewed together these directives constitute significant steps toward guaranteeing the principle of equal treatment and anti-discrimination throughout the EU.

#### 2.5.1 BRIEF OVERVIEW OF THE RED

When the Amsterdam Treaty came into effect in 1999, the EU Council acquired the competence to introduce legislation to combat discrimination on a range of grounds, including racial or ethnic origin. Shortly thereafter, the Commission developed proposals leading to the adoption of Directive 2000/43/EC – the Racial Equality Directive – and Directive 2000/78/EC – the Framework Directive. EU Member States were required to implement the principle of equal treatment between persons irrespective of racial or ethnic origin (RED) and for equal treatment in employment and occupation (the Framework Directive).

The Race Directive contains a number of very innovative and positive features. Firstly, it admits no derogations on any grounds and makes no reference to derogation on the grounds of public policy.<sup>71</sup> Secondly it requires member states to establish national enforcement institutions charged with the promotion of equal treatment, to conduct research on discrimination and 'provide independent assistance to victims of discrimination in pursuing their complaints'.<sup>72</sup> In the Irish context the Equality Authority<sup>73</sup> is Ireland's national enforcement institution.

The Directive outlines and reaffirms the principle of equality and provides a clear definition of the concepts of indirect and direct discrimination.<sup>74</sup> This is a positive development as it shows a move away from traditional and limiting conceptions of overt racial hatred and discrimination and recognises the concept of 'disadvantage' as a form of discrimination.

Article 2 of the RED provides:

1. For the purposes of this Directive, the 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 where 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) indirect discrimination shall be taken to occur where 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.

Member States are under an obligation to give Roma (like other EU citizens) non-discriminatory access to education, employment, vocational training, health-care, social protection and housing through RED. The rigorous monitoring of the implementation of this Directive can be a useful instrument for measuring the integration of Roma.<sup>75</sup> In the context of French expulsions (see above), the European Commission by invoking EU anti discrimination legislation had the effect of softening the anti-Roma rhetoric emanating from certain quarters in France and led to the withdrawal of administrative circulars which contained explicit reference to the Roma as a group.

Access to justice for complainants is greatly enhanced by a number of key provisions in the RED. Firstly, it significantly expands the scope of legal protection to encompass both private and public sectors,<sup>76</sup> enabling individuals to address the discriminatory practices of a wide swathe of institutions. Secondly, it shifts the burden of proof from the complainant to the respondent in civil cases once a *prima facie* (initial) claim of discrimination has been established.<sup>77</sup> The traditional formulation of the burden of proof would require the complainant to prove discrimination (on the balance of probabilities). The shifting of the burden of proof is significant in cases where discrimination is claimed as it shifts the balance in favour of complainants who may be disadvantaged and marginalised when contrasted with that of the respondent who can be a state body or employer who occupy positions of relative advantage.

Perhaps the provision that contains the greatest potential to address discrimination faced by Roma is Article 7 which forms part of the sections on remedies and enforcement.<sup>78</sup> Article 7 (2) provides:

2. Member States shall ensure that associations, organizations 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 the Directive.

Simply put, this provision has the potential to allow NGOs and other civil society organisations to take an

<sup>68</sup> Council of Europe Commissioner for Human Rights, Human Rights of Roma and Travellers in Europe (Council of Europe, 2012), p. 224, available at: [http://www.coe.int/t/commissioner/source/prems/prems79611\\_GBR\\_CouvHumanRightsOfRoma\\_WEB.pdf](http://www.coe.int/t/commissioner/source/prems/prems79611_GBR_CouvHumanRightsOfRoma_WEB.pdf) (date accessed: 11 May 2013).

<sup>69</sup> Consolidated Version Of The Treaty On European Union - 2012/C 326/01, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012M/TXT:EN:NOT> (date accessed: 08/05/2013).

<sup>70</sup> Hepple Bob, "Race and Law in Fortress Europe," The Modern Law Review Volume 67 January 2004 No 1.

<sup>71</sup> Deqhurst Elaine, "Access to Justice for Migrant Workers," (2008) Hibernian L.J., p. 5.2

<sup>72</sup> Article 13, RED.

<sup>73</sup> See further Chapter 3.

<sup>74</sup> Article 2 RED.

<sup>75</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2009).

<sup>76</sup> Article 3 RED 77 Article 9 RED.

<sup>77</sup> Article 9 RED.

<sup>78</sup> RED Chapter II Remedies and Enforcement Article 7 Defence of rights.

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action under the Directive on behalf of, or in support of, a complainant. The wording of this Article, in particular the insertion of the word ‘may’, leaves it to the discretion of member states to grant NGOs and interest groups *locus standi* (standing before the court).<sup>79</sup> Walsh<sup>80</sup> notes that a 2008 judgment from the European Court of Justice (ECJ) interpreted this provision as ‘allowing’ but not requiring member states to make provisions to permit associations ‘to bring legal or administrative proceedings . . . without acting in the name of a specific complainant’. This interpretation of the provision serves to dilute its effectiveness and potential as a valuable tool in the EU’s anti-discrimination arsenal.

In the Irish context to establish standing, a complainant must demonstrate that they have a personal or proprietary interest in the action, in other words they have been directly affected by the alleged impugned conduct. NGO’s involvement can be limited to the provision of legal representation and making submissions on the general context to the tribunal. Nasc experience dictates that it can be difficult to find a victim of discrimination who is willing to lodge a complaint. Aggrieved parties that do take a case tend to be educated, well informed and very rights aware. In our work with the Roma, who have limited socio-economic rights, poor educational attainment and for whom discriminatory conduct has been normalised as an everyday experience, there is a marked reluctance to take any legal action to address their experiences of unfair treatment. In addition they do not wish to be ‘singled out’ amongst their community or fear that the bringing of a case would negatively impact upon their security of residence. By granting NGOs standing and the ability to initiate an action, the personal is effectively removed from the action and the focus is squarely placed on the alleged conduct. To expand the *locus standi* provisions to include NGOs and other interest groups would be of benefit not only to the Roma but to all ethnic minorities in Ireland, resulting in greater access to justice and strengthening the use of the law as a tool for social change.

The challenge now facing all EU and member states is how to transform these formal guarantees of equality into concrete reality. It is clear that efforts to date to ensure equality for Roma in Europe have failed to produce any significant improvement. The way forward must come through a multi-faceted response

which incorporates legislation such as the RED with proactive integration measures and targeted funding to promote the social inclusion of this marginalised community. The challenges have been and remain enormous: deeply embedded institutional discrimination within government structures, widespread anti-Gypsyism, extraordinarily high levels of poverty and social exclusion, and segregated systems in housing, education and social welfare.<sup>81</sup>

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### 2.6 ROMA INTEGRATION

European policy to tackle the discrimination against the Roma has gone through several ideological shifts in the last few decades. Whereas in the 1990s, the Roma were seen as a potentially destabilising migration ‘problem’ with EU enlargement, associated largely with Eastern Europe, with concerted lobbying by Roma Rights groups and the development of anti-discrimination legislation in Europe, anti-Roma discrimination has come to be seen – rightly – as a human and minority rights issue. Although concerns about the migration of the Roma across Europe persist,<sup>82</sup> European states now must consider how to integrate the Roma successfully. The EU has made several proposals for Member States to promote the social and economic integration of Roma.<sup>83</sup> However according to the European Commission’s Roma Task Force findings, strong and proportionate measures are not yet in place to tackle the social and economic problems of a large part of the EU’s Roma population.<sup>84</sup>

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#### 2.6.1 THE DEVELOPMENT OF EUROPEAN ROMA INTEGRATION POLICIES

Since the early 1990s there has been an evolution in European institutions’ policy towards the Roma, from an open concern with the potentially destabilizing effects of westward migration to an increasing rhetorical emphasis on discrimination and positive minority rights. This shift in attitude and policy is exemplified in two major reports addressing the situation of Roma drafted by one of the pre-eminent European institutions addressing minority issues during the 1990s, the High Commissioner on National Minorities (HCNM) of the Organization for Security and Co-operation in Europe (OSCE).<sup>85</sup>

Although the EU and other European institutions were initially concerned with externally oriented migration control, the fact that the case for enlargement was articulated in terms of 'common values'<sup>86</sup> compelled EU Member States to elaborate a more internally oriented, rights-based approach to minority protection and towards Roma. Concerns about migration, security and integration that surfaced at the beginning of the accession process continued to persist, but minority protection has decisively entered European policy and Europe's self-image.

In many ways 1993 was a benchmark for the development of Roma integration policies. At the outset of enlargement in the early 1990s the European Community (EC) had no minority policy of its own. However, EC Member States were concerned about ethno-national conflicts in some CEE (Central and Eastern Europe) candidate states and the possibility of Roma migration flows into the EC.<sup>87</sup> Lacking a legal and policy framework to address these issues, the EC took significant steps. Firstly, it urged acceding countries to improve conditions for their Roma populations through its annual Progress Reports.<sup>88</sup> Secondly, it included 'respect for and protection of minorities' in the Copenhagen criteria for accession adopted by the European Council in June 1993.<sup>89</sup> This condition allowed Roma Rights activists and groups in acceding countries to push for better policies towards the Roma in those states.<sup>90</sup> However the criteria applied only to candidates, so the EC was able, at least initially, to develop a minority policy for

candidate states without affecting policy *within* the EC. In some respects however this exacerbated the perception that the Roma were an Eastern European 'problem' and allowed long-standing prejudices against the Roma to continue.

Clearly, there were competing visions within European institutions as to whether the problems of Roma were a security issue, a social issue, or a rights issue, or indeed what the proper relationship between security, socio-economic reform, and rights was for policy addressing marginalized groups. By 2000 the EU enlargement process was at the centre of debates about the eastward expansion of Europe, and an at least rhetorical commitment to 'common values' and integration appeared to have replaced the preoccupation with security. In the context of its enlargement policy, this orientation extended to the championing of positive discrimination in favour of historically marginalized 'minorities' such as the Roma, and the EU institutions continue to this date to argue for the implementation of policies that foster the social inclusion of Roma.<sup>91</sup>

Although the Roma were now identified as an human rights issue the implementation of the integration policies and funding structures provided a standard of minority protection for which there was no foundation in EU law, no definition, no monitoring mechanism, and widely varying practice between Member States.<sup>92</sup> Migration concerns surfaced repeatedly between 1993 and 2000. For example the Commission's Directorate-General on

<sup>79</sup> Lawrence, S.E. (1990) *The Poor in Court: The Legal Services Program and Supreme Court Decision Making* (Princeton, NJ: Princeton University Press).

<sup>80</sup> Walsh Judy, *Equal Status Acts 2000- 2011 Discrimination in the Provision of Goods and Services* (ICCL, Blackhall Publishing 2012).

<sup>81</sup> Lanna Hollo, *Equality for Roma in Europe: A roadmap for Action*, (Open Society Institute, 2006).

<sup>82</sup> European Parliament Policy Department Economic and Scientific Department, *The Social Situation of Roma and their improved access to the labour market*, (2008), available at: <http://www.europarl.europa.eu/document/activities/cont/201107/20110718ATT24290/20110718ATT24290EN.pdf> (date accessed: 11 May 2013).

<sup>83</sup> Communication From The Commission, *The social and economic integration of the Roma in Europe*, (2010) 133.

<sup>84</sup> European Commission, "Roma Integration: First Findings of Roma Task Force and Report on Social Inclusion," available at: [http://europa.eu/rapid/press-release\\_MEMO-10-701\\_en.htm](http://europa.eu/rapid/press-release_MEMO-10-701_en.htm) (date accessed: 11 May 2013). The European Commission established a Roma Task Force to assess Member States' use of European Union funds.

<sup>85</sup> The HCNM reports (1993; 2000) are a useful framing device for examining trends in European minority policy. First, the reports were influential in policy formulation in other institutions: the European Commission relied on the HCNM and the Council of Europe in preparing its regular reports on accession, for example, while the HCNM's 2000 report recommendations formed one of the bases for the guiding principles adopted by the European Council at Tampere (Cocoon Group, 1999). Second, the fact that a single institution produced these two reports at the beginning and latter stages of the accession process allows us to inquire into ways in which rhetoric and policy changed and interacted during the 1990s.

<sup>86</sup> Schimmelfennig, F. (2001) 'The Community Trap: Liberal Norms, Rhetorical Action and the Eastern Enlargement of the European Union'. *International Organization*, Vol. 55, pp. 47–80.

<sup>87</sup> See Council of the European Community (1991); European Council (1992). *The European Community*.

<sup>88</sup> Sobotka and Vermeersch, *Governing Human Rights and Roma Inclusion*, "Human Rights Quarterly 34 (2012), p. 803; Copenhagen Criteria, 1993, Sec. 7.A.iii). Became the European Union on 1 November 1993.

<sup>89</sup> Copenhagen Criteria, 1993, Sec. 7.A.iii). Became the European Union on 1 November 1993.

<sup>90</sup> Sobotka and Vermeersch, *Governing Human Rights and Roma Inclusion* (2012), p. 803.

<sup>91</sup> Commission of the European Communities DG Enlargement, Directorate E Evaluation Unit (2004) 'Review of the European Union Phare Assistance to Roma Minorities'. Report ZZ/MIN/03082, 9 December. See Also Commission Report 2010/2011.

<sup>92</sup> Hughes, J. and Sasse, G. (2003) 'Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs'. *Journal on Ethnopolitics and Minority Issues in Europe*, No. 1.



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Justice and Home Affairs commissioned a report through the Odysseus Programme,<sup>93</sup> which funded a range of exchanges, training and research projects on asylum and immigration, including an examination of 'Current Irregular Migration of Roma to the Member States' by the International Centre for Migration Policy Development (ICMPD).<sup>94</sup> The project's report revealed persistent concerns about Roma as migrants.<sup>95</sup> The report suggests that restrictive policies are necessary and justified to deter bogus asylum applicants, but downplayed possible human rights implications. Consistent with the report's logic, migration concerns led individual EU Member States to adopt highly restrictive immigration policies clearly aimed at discouraging the entry of Roma.<sup>96</sup>

Thus perhaps the greatest shift between 1993 and 2000 was towards a compartmentalization of functions and an increased rhetorical sophistication, rather than any consensus on the underlying conceptualizations of policy in relation to Roma integration.<sup>97</sup> European institutions recognized Roma as a minority, referred to the rights dimension of their situation, and responded to the socio-economic marginalization of Roma with increased investment.<sup>98</sup> Yet to the extent that they continued to migrate westwards, or were thought likely to, Roma were still seen as a 'problem', albeit one preferably resolved by persuading them to stay where they were rather than by resort to explicitly anti-immigration measures that could damage the EU's image as a 'community of values'.

The development of minority rights in Europe has been hindered by a continued disjunction between the EU's rhetorical commitments on the one hand, and its motivations in allocating resources to prevent migration on the other. Similarly, its insistence on respect for minority rights in Member states was not grounded in internal EU standards and policies, which contradicted its commitment to 'common values'. This disjunction may have undermined the legitimacy and efficacy of EU policies towards minorities and Roma in particular. As the day of 2007 accession grew closer, the question became increasingly salient of what would happen when candidates were transformed into members and their Romani populations into citizens of an EU with no clear policies for minority protection.<sup>99</sup>

With accession in 2007, the social, rights, and security issues surrounding Roma became *internal* EU issues.<sup>100</sup> With accession, a Union whose members had

gone to great lengths to restrict Roma migration now on a single day admitted over a million Roma, who had become both citizens of the Union and members of its largest minority. Even if Europe had previously principally been concerned with Roma migration, with accession it became apparent that a migration model was insufficient. The EU's fundamental equality norms meant that simply by staying where they were and in the conditions in which many of them lived Roma had become a concern for an EU that had come to them.

As outlined above in the past, the EU relied on the method of enlargement conditionality in order to promote better protection of minorities in the accession states. As this had no direct impact on existing member states, since 2007 the EU has made, both discursively and in practice, a policy decision in favour of more broadly defined strategies of fostering social inclusion.<sup>101</sup> The situation of the Roma has mostly become an internal EU policy matter and various institutions have indeed been of key importance in pushing the issue higher on the political agenda. Several resolutions issued by the European Parliament illustrate this development. In a resolution in 2005, the European Parliament called on the European Commission to adopt an 'action plan' with recommendations on how to 'bring about better economic, social and political integration of the Roma'.<sup>102</sup> In making this recommendation, the European Parliament reflected growing calls from Roma Rights groups for the European Union to coordinate its Roma related activities and adopt an overarching comprehensive policy strategy in order to increase the effectiveness of its actions to promote the equal treatment of Roma across the European Union.<sup>103</sup> In the same resolution, the European Parliament called for more state efforts in the fight against anti-Gypsyism, and did so again in 2008. It urged the EU Agency for Fundamental Rights (FRA) to be attentive to the problems of anti-Gypsyism and Romophobia, and consider them of the highest priority.<sup>104</sup>

Additionally, reactions to growing anti-Roma violence and the large-scale expulsions of Roma in France and Italy prompted the need to look for a new way to tackle discrimination against the Roma throughout Europe. Whereas previously, the Roma 'problem' was largely seen as confined to Eastern Europe, the expulsions in France crystallised that

firstly, discrimination of the Roma was a human rights issue and not a migration issue; and secondly that it was now necessary for Western Europe to tackle its own prejudices and promote the integration of the Roma in its own States.

## 2.6.2 ROMA INTEGRATION GOALS SINCE 2007

As Pamina Smith has noted, the French expulsions of 2010 played an ironically useful role in putting Roma on national and European political agendas.<sup>105</sup> It demonstrated starkly that all European member states need to be combating the social exclusion of the Roma and promoting integration – not just the countries with the largest Roma populations. The expulsions led the Council of Europe, the European Parliament and the European Commission to take a more proactive stance on Roma integration. While the EU continues to engage in promoting anti-discrimination norms and advancing legislative instruments, policymakers have come to recognise that to change the situation

fundamentally for the Roma, the EU must also emphasise socioeconomic inclusion.

Some of the first EU institutional initiatives post-accession to promote Roma integration include the Integrated Roma Platform in 2007, which brings together civil society organisations and government representatives to discuss ‘good practice and experience’ on the inclusion of the Roma, and the development of the Common Basic Principles of Roma Inclusion,<sup>106</sup> which advocate an ‘integrated approach’ to policymaking concerning the Roma. The Roma Inclusion Road Map, adopted during the Spanish EU Presidency in 2010, further developed the Roma Platform.<sup>107</sup> In a direct response to the Roma expulsions in France in 2010, the European Commission established a Task Force to look at the use and impact of the Structural Funds in promoting human rights. As these initiatives have developed, the greater inclusion of key stakeholders, including Roma Rights groups, interested civil society organisations and NGOs and particularly Roma, have been emphasised.

<sup>93</sup> [http://europa.eu/legislation\\_summaries/other/133050\\_en.htm](http://europa.eu/legislation_summaries/other/133050_en.htm)

<sup>94</sup> The project also received funding from the governments of Norway, Switzerland and the UK (see ICMPD, 2001, p. 4; Commission Report to the Parliament, 2000, p. 51).

<sup>95</sup> The project was motivated by the ‘increased number of asylum requests by citizens from European states that are considered to be safe and are to become EU Members’ and aimed to analyse the background to these recent flows . . . to find out which measures can be taken to avoid them and how to react when they take place, without compromising the existing asylum procedures or putting a strain on relations with Candidate States by imposing visa obligations. (ICMPD, 2001, p. 4).

<sup>96</sup> For example, in 2001, the British Home Office concluded an agreement with the Czech government allowing ‘pre-screening’ of passengers by British immigration officials in Prague’s airport to turn back suspected asylum claimants; one investigation found that Roma were 400 times more likely to be turned back. The Law Lords ruled that this system ‘was inherently and systemically discriminatory on racial grounds against Roma, contrary to section 1(1)(a) of the Race Relations Act’ (House of Lords, 2004). Interestingly, the HCNM, in his 1993 report, had anticipated that this type of problematic situation might arise (HCNM, 1993, p. 13).

<sup>97</sup> Guglielmo and Waters, “Migrating Towards Minority Status: Shifting European Policy Towards Roma,” JCMS 2005 Volume 43. Number 4. pp. 763–86.

<sup>98</sup> The European Council at Tampere signaled support for the HCNM’s recommendations by adopting them together with the recommendations of the CoE’s specialist group, giving them added weight in EU policy and programming (Cocen Group, 1999).

<sup>99</sup> See Schimmelfennig (2001). Many commentators have questioned the extent to which the emphasis placed on improving the situation for Roma in the accession process has in fact led to meaningful improvements in most CEE Romani communities (see HCNM, 2000; EUMAP, 2002; Kovats, 2003; Guy, 2001).

<sup>100</sup> Transitional restrictions on free movement will continue, but with a clear timeline for their termination, after which CEE citizens will have identical movement rights as other EU citizens (see Rigo, 2005, pp. 16–17).

<sup>101</sup> Presidency Conclusions, Brussels European Council (14 Dec. 2007), available at [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/97669.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/97669.pdf). The document called for a coordinated response to the problems facing the Roma. It stated that “the European Council, conscious of the very specific situation faced by the Roma across the Union, invites Member States and the Union to use all means to improve their inclusion.” This followed an earlier commitment of the EU to social inclusion more broadly. Since the early 2000s the EU has had the declared objective of making a decisive impact on the eradication of poverty and social exclusion among its member states. Hugh Frazer and Eric Marlier, Social inclusion in the European Union: Where do we stand, where are we going? 5-7 (13 June 2010), available at <http://europeandcis.undp.org/news/show/F824B0D1-F203-1EE9-B2CA8B129FFB0A32> (date accessed: 11 May 2013).

<sup>102</sup> European Parliament. Resolution on the situation of the Roma in the European Union. RC\565094EN.doc, 25.04.2005, paragraph 6.

<sup>103</sup> See, European Roma Rights Center, “Binding States to Roma Inclusion” in Roma Rights Quarterly, 1/2005: Positive action to ensure equality, [http://www.errc.org/Romarights\\_index.php103](http://www.errc.org/Romarights_index.php103).

<sup>104</sup> European Parliament Resolution on the Situation of the Roma in the European Union, eur.parl. doc. P6\_TA(2005)0151 (2005), available at : <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2005-0151&language=EN>

<sup>105</sup> Pamina Smith, The Roma in Europe 2011 p. 35.

<sup>106</sup> The 10 Common Basic Principles on Roma Inclusion were presented at the first Platform meeting on 24 April 2009. They were annexed to the Council conclusions of 8 June 2009. They comprise: 1) constructive, pragmatic and non-discriminatory policies 2) explicit but not exclusive targeting 3) intercultural approach 4) aiming for the mainstream 5) awareness of the gender dimension 6) transfer of evidence-based policies 7) use of EU instruments 8) involvement of regional and local authorities 9) involvement of civil society 10) active participation of Roma.

<sup>107</sup> Sobotka and Vermeersch 2012, p. 805.

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### 2.6.3 DECADE OF ROMA INCLUSION

The Decade of Roma Inclusion has been an important and long-ranging inclusion initiative, designed to bring together governments, international partner organisations and civil society, to accelerate progress towards Roma inclusion and review such progress in a transparent and quantifiable way.<sup>108</sup> It is an unprecedented pan-European initiative that channels the efforts of national governments as well as inter-governmental and non-governmental organisations to eradicate racial discrimination and bring about tangible improvements to the plight of the world's most populous marginalized community. The idea of the Decade emerged from a high-level conference on Roma held in Budapest, Hungary, in 2003, co-sponsored by the Open Society Institute, the World Bank, and the European Union. Prime Ministers of the first eight participating governments signed the Declaration of the Decade of Roma Inclusion in Sofia, Bulgaria, on February 2, 2005.

Since its inception four additional states have signed up to the Decade. The twelve countries currently taking part in the Decade are: Bulgaria, the Czech Republic, Hungary, Romania, Slovakia, Spain as well as Albania, Bosnia and Herzegovina, Croatia, FYROM, Montenegro and Serbia. Slovenia and the United States have observer status. The international

partner organisations of the Decade are the World Bank, Open Society Institute, UNDP, Council of Europe, Council of Europe Development Bank, OSCE, ERIO, ERTF, ERRC, UNHABITAT, UNHCR, and UNICEF. Each of the participating countries have developed a Decade Action Plan that specifies the goals and indicators in the priority areas. Additional countries are encouraged to sign up to the goals and aims of the Decade.

The duration of the Decade is from 2005 to 2015 and aims to maximize resources for improving the general economic and social position of the Roma, while addressing the racial stereotyping and discrimination they face.<sup>109</sup> The Decade of Roma Inclusion focuses on four priority areas—education, health, employment, and housing, with specific actions to be taken over the 10 year period. The participation of Roma is a key tenet of the Decade, and the participation of Roma civil society organisations and groups is emphasised. One of the central initiatives of the Decade is the Roma Education Fund (REF), which seeks to expand educational opportunities for Roma in Central and Eastern Europe. The Decade of Roma Inclusion did obtain clear commitments from Member States and national, regional and local authorities to become involved with Roma community.





## 2.6.4 EU FRAMEWORK FOR NATIONAL ROMA STRATEGIES

An April 2011 communication from the EU Commission entitled 'An EU Framework for National Roma Integration Strategies up to 2020' directed that member states should adopt or develop a comprehensive approach to Roma integration.<sup>110</sup> Member States were requested to prepare or revise their national Roma integration strategies and present them to the Commission by the end of December 2011. These strategies for Roma were envisaged to be the best way to ensure the level of coordinated, multilayered activity that is required across all sectors and to coordinate a combination of targeted measures to achieve the strategy's objectives.

The Communication requested that Member States' national strategies should pursue a targeted approach which will, in line with the Common Basic Principles on Roma Inclusion, actively contribute to the social integration of Roma in mainstream society and to eliminating segregation where it exists. They should fit into and contribute to the broader framework of the Europe 2020 strategy – Europe's current 'growth strategy'<sup>111</sup> – and should therefore be consistent with national reform programmes. When developing national Roma integration strategies, Member States should bear in mind the need to set achievable national goals for Roma integration to bridge the gap with the general population. These targets should address, as a minimum, the four EU Roma integration goals relating to access to education, employment, healthcare and housing. The identification of communities that are the most deprived, using already available socio-economic and territorial and consequent allocation of sufficient funding from national budgets. According to the EU Commission, this funding would be complemented where appropriate by international and EU funding.<sup>112</sup>

After the Strategies were submitted to the EU Commission in 2011, the Commission conducted an EU-wide assessment of Member States' national

strategies. The Commission's assessment of the National Roma Integration Strategies concluded that Member States are making efforts to develop a comprehensive approach towards Roma integration but acknowledged that much more is necessary for the successful socio-economic inclusion of Roma. In the effort to adhere to their commitments Member States will need stronger efforts to live up to their responsibilities, by adopting more concrete measures, explicit targets for measurable deliverables, clearly earmarked funding at national level and a sound national monitoring and evaluation system. In relation to providing an account of integration of the Roma community each Member State was asked in future years to systematically address the issue of Roma inclusion in their National Reform Programmes. When reporting on the application of the EU's Race Equality Directive the Commission will address legal issues with a particular emphasis on those aspects relevant to Roma integration. To this end the report advocated that Member States need to ensure that anti-discrimination legislation is effectively enforced in their territories. In relation to monitoring the progress of each Member State, the EU's Fundamental Rights Agency will continue its surveys across the EU and work closely with the Member States to support them in developing robust national monitoring systems. The Commission committed to a continuation of support in mobilising capacity within Member States. A review of the implementation of the National Roma Integration Strategies will occur annually and be reported to the European Parliament and the Council.

The EU Framework for National Roma Integration Strategies provided the opportunity for joining forces at all levels (EU, national, regional) and with all stakeholders, including the Roma, to address one of the most serious social challenges in Europe: putting an end to the exclusion of Roma. It is complementary to the existing EU legislation and policies in the areas of non-discrimination, fundamental rights, the free

<sup>108</sup> <http://www.romadecade.org/about>

<sup>109</sup> Kirova I. The Decade Of Roma Inclusion, UN Chronicle [serial online]. September 2007;44(3):36-38. Available from: UK & Ireland Reference Centre, Ipswich, MA. Accessed February 20, 2013.

<sup>110</sup> Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions, An EU Framework for National Roma Integration Strategies up to 2020, available at: [http://ec.europa.eu/justice/policies/discrimination/docs/com\\_2011\\_173\\_en.pdf](http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf) (date accessed: 10 May 2013).

<sup>111</sup> [http://ec.europa.eu/europe2020/index\\_en.htm](http://ec.europa.eu/europe2020/index_en.htm)

<sup>112</sup> Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions, An EU Framework for National Roma Integration Strategies up to 2020, available at: [http://ec.europa.eu/justice/policies/discrimination/docs/com\\_2011\\_173\\_en.pdf](http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf) (date accessed: 10 May 2013).



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movement of persons, and the rights of the child.<sup>113</sup> The framework spells out EU-level goals for Roma integration to be achieved at national, regional and local level. Whether those ambitious goals have been reached in the Irish context will be addressed in the following Chapters.

The European Commission, the European Parliament, the European Council, Committee of the Regions and the European Social and Economic Committee have endorsed the EU Framework for National Roma Integration Strategies. The EU framework seeks to make a tangible difference to Roma people's lives; non-discrimination alone is not sufficient

to combat the social exclusion of Roma. It is a means to complement and reinforce the EU's equality legislation and policies by addressing, at national, regional and local level, but also through dialogue with and participation of the Roma, the specific needs of Roma regarding equal access to employment, education, housing and healthcare. The strategies marked a change from a decade of EU institutions regularly calling on Member States to improve the social and economic integration of Roma to actual concrete action.

Ireland's National Roma/Traveller Integration Strategy is discussed in detail in Chapter Two.

### ECONOMIC ADVANTAGES TO INTEGRATION

Integrating the Roma people will not only bring social benefits, but will also economically benefit both Roma people as well as the communities they are part of. According to a recent research by the World Bank, full Roma integration in the labour market could bring economic benefits estimated to be around €0.5 billion annually for some countries. Greater participation of Roma in the labour market would improve economic productivity, reduce government payments for social assistance and increase revenue from income taxes.<sup>114</sup> According to the same World Bank study, the tax benefits of Roma integration in the labour market are estimated to be around € 175 million annually per country. All of these important economic and financial consequences of Roma integration could in turn foster a climate of greater openness to the Roma people with the general public and thereby contribute to their smooth integration in the communities of which they are part of.

From its inception, the Europe 2020 strategy has taken into account the situation of the Roma population.<sup>115</sup> The EU's Europe 2020 strategy for a new growth path – smart, sustainable and inclusive growth – leaves no room for the persistent economic and social marginalisation of what constitutes Europe's largest minority. While primary responsibility for that action rests with public authorities, it remains a challenge given that the social and economic integration of Roma is a two-way process which requires a change of mindsets of the majority of the people as well as of members of the Roma communities.<sup>116</sup> Member States need to ensure that Roma are not discriminated against but treated like any other EU citizens with equal access to all fundamental rights as enshrined in the EU Charter of Fundamental Rights.

In many Member States, Roma represent a significant and growing proportion of the school age population and therefore the future workforce. The Roma population is young: 35.7% are under 15 compared to 15.7% of the EU population overall. The average age is 25 among Roma, compared with 40 across the EU. The vast majority of working-age Roma lack the education needed to find good jobs. It is therefore of crucial importance to invest in the education of Roma children to allow them later on to successfully enter the labour market. In Member States with significant Roma populations, this already has an economic impact. According to estimates, in Bulgaria, about 23% of new labour entrants are Roma, in Romania, about 21%.<sup>117</sup> A significant number of Roma living in the EU are legally residing third-country nationals. They share the same severe living conditions as many Roma holding EU citizenship, whilst facing also challenges of migrants coming from outside the EU. These challenges are addressed in the context of EU policies to stimulate integration of third-country nationals, while taking into account the needs of especially vulnerable groups.<sup>118</sup>

Economic integration of the Roma will also contribute to social cohesion and improve respect for fundamental rights, including the rights of persons belonging to minorities, and help eliminating discrimination based on someone's race, colour, ethnic, social origin or membership of a minority.<sup>119</sup>

## 2.7 TACKLING DISCRIMINATION AGAINST THE ROMA

Despite these considerable efforts, it is widely recognised that strategies implemented by national governments fail to adequately address what are deeply-rooted socioeconomic problems, coupled with widespread discrimination and negative stereotyping, and have had minimal effects on combating the social exclusion of the Roma in Europe.<sup>120</sup> A commitment to integration and social inclusion alone is not capable of tackling discrimination and empowering this marginalised community. There is a growing recognition that governments need to learn from European-wide efforts to date and apply a more strategic and multi-faceted approach to ending discrimination against the Roma. Spain has become in many respects a 'model' for how other EU countries can effectively and proactively achieve integration.<sup>121</sup> Ireland must follow in the steps of its fellow EU member states and do the same. There are opportunities within European Union policy and legislative arenas that have the potential to move forward an enhanced plan of action for equality for Roma throughout Europe.<sup>122</sup>

In addition to integration, policy and legislative initiatives spearheaded by EU institutions, the Roma Rights movement has played an integral role in raising awareness of discrimination and pressuring the EU to incorporate pro-Roma policies and implementing anti-discrimination legislation. It has also been essential in building the capacities of the Roma community to become more aware of their rights as EU citizens, and of the opportunity for legal advocacy in promoting the rights of Roma throughout Europe.

Following the incorporation of post-communist

countries with high Roma populations into the European Union, the two trends of the assertion of Roma Rights and the success of European integration policies in respect of the Roma converged.<sup>123</sup> The integration of the Roma has come to be seen as a major test of Europe's constitutional pretensions. The perception of Roma as an impoverished and disenfranchised group, coupled with the identification of discrimination against this group both systematic and institutional, questions the individual justice model of EU legal instruments that turn on a private individual bringing and pursuing a claim against inherently biased institutions.

The EU has committed to enlargement and to the protection of 'common values'; this commitment has compelled it to elaborate an internal approach to minority protection and human rights. The legal landscape of the EU in the field of human rights has further broadened with the EU championing a liberal policy in the face of discrimination perpetrated by local and national governments in support of the popular prejudices of the sort described. The EU is, from this perspective, an important defender of the cosmopolitan values of tolerance and integration – a 'normative power'<sup>124</sup> – in the face of the sovereign and securitising excesses of far-right nationalism manifest in the vilification of Roma.

Whatever their formal consistency, policies designed to discourage freedom of movement do not seem compatible with the fundamental commitments, the 'common values', of the Union. At the least, such policies suggest a different Union, one in which identity and community are protected as much by separation as by integration. That may be an acceptable vision and many aspects of the present European

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<sup>123</sup> Communication from the European Commission, An EU Agenda for the Rights of the Child, COM(2011) 60.

<sup>124</sup> World Bank, Roma Inclusion: An Economic Opportunity for Bulgaria, the Czech Republic, Romania and Serbia, September 2010.

<sup>125</sup> The Integrated Guidelines for economic and employment policies (no 10) contain an explicit reference to Roma. Furthermore, the "Platform against Poverty and Social Exclusion" flagship initiative outlines how to address the integration of Roma within the overall policy to fight poverty and social exclusion. Other Guidelines for the employment policies promote employability in a way which helps the socioeconomic integration of Roma people.

<sup>126</sup> COM(2010) 133, p.5.

<sup>127</sup> World Bank, Roma Inclusion: An Economic Opportunity for Bulgaria, the Czech Republic, Romania and Serbia, September 2010.

<sup>128</sup> Communication from the European Commission, A European Agenda for the Integration of Third-Country Nationals (2011), available at: [http://ec.europa.eu/homeaffairs/news/intro/docs/110720/1\\_EN\\_ACT\\_part1\\_v10.pdf](http://ec.europa.eu/homeaffairs/news/intro/docs/110720/1_EN_ACT_part1_v10.pdf) (date accessed 11 May 2013).

<sup>129</sup> Treaty on the European Union, Article 2 and Charter of Fundamental Rights of the European Union, Article 21.

<sup>120</sup> Pamina Smith, *The Roma in Europe 2011*, p. 33.

<sup>121</sup> Pamina Smith, *The Roma in Europe (2011)*, p. 33.

<sup>122</sup> Lanna Hollo, *Equality for Roma in Europe: A roadmap for Action*, Open Society Institute (2006).

<sup>123</sup> Goldston, J. A. (2002). Roma Rights, Roma Wrongs. *Foreign Affairs*, 81(2), 146-162.

<sup>124</sup> Manners, "Normative Power Europe: A contradiction in terms?" *JCMS* (2002) Volume 40, Number 2, pp. 235-258.

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project suggest it is – but it may not serve the interests of individuals and communities such as the Roma who do not form a majority in any one Member State.

Given the determinative role of majority prejudice, an effective policy may be to identify common interests in security and in the success of the integrative Union project, by seeking to demonstrate to majorities their interest, with minorities, in protection of cultural

differences and in assuring each community's participation in policy-making within a Union that has no majority.<sup>125</sup> It is submitted that any extension of protection against discrimination is a positive development, as it improves the situation of victims of discrimination, and this might, ultimately, lead to more equality for all people in the EU.

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<sup>125</sup> Guglielmo and Waters, "Migrating Towards Minority Status: Shifting European Policy Towards Roma," *JCMS* (2005) Volume 43. Number 4. pp. 763–86

## Chapter 3: Ireland's Legislative and Policy Framework

### 3.1 INTRODUCTION

*“The True Measure of Any Society can be found in how it treats its most vulnerable members”*

– Ghandi

Equality and respect for fundamental human rights form the cornerstone of a modern liberal democratic state. An expression of a state's commitment to uphold these core democratic values can be found in the laws a state enacts. Generally, it can be said that Ireland scores well here. We became a member of the United Nations on 14 December 1955 and have signed and ratified a number of key international human rights instruments.<sup>126</sup> We have incorporated, the European Convention on Human Rights, (ECHR) into our domestic legal order by way of the European Convention on Human Rights Act 2003. The ECHR provides for the protection of not only civil and political but also social and economic rights<sup>127</sup>. These rights can be invoked in our national courts<sup>128</sup>.

When viewed together, Ireland has signed up to a large corpus of laws that protect fundamental human rights and equality. Recently, Ireland was elected as a member of the UN Human Rights Council and will sit on the council for a three year term. On the day it was announced the Tánaiste Eamon Gilmore stated “This is a great day for Ireland and for the values which are dear to us,” he added, “Human rights and the protection of human rights are a cornerstone of Irish foreign policy.”<sup>129</sup> What is notable about the Tánaiste's statement was that he framed the protection of human rights solely in the context of Irish foreign policy to the exclusion of Irish domestic policy. It is through domestic law and policy that we can truly gauge a state's commitment to the core democratic values of human rights and equality. This is especially true of equality as it has a clear internal dimension. In the next section we will look at Ireland's commitment to

attaining equality for one of the more vulnerable members of our society, the Roma, through the lens of our equality framework, criminal legal provisions and our National Roma Integration Strategy.

### 3.2 IRELAND'S EQUALITY FRAMEWORK

#### 3.2.1 THE IRISH CONSTITUTION

Irish constitutional law and domestic legislation recognises the principle of equality.<sup>130</sup> The Irish Constitution was adopted on 29 December 1937 and all laws enacted in Ireland must be compatible with it. The Constitution contains a number of fundamental rights, both enumerated and unenumerated, and the Irish courts have acknowledged and affirmed the existence of these rights.

Article 40.1 of Constitution outlines Ireland's commitment to equality which provides;

*All citizens shall as human persons be held equal before the law. This shall not be held to mean that the State shall in its enactments have due regard to differences of capacity, physical and moral and of social function.*<sup>131</sup>

This is a liberal and progressive equality declaration given its historical context. Not only does it guarantee equality to all citizens but it also embodies ‘differences’. It was summarised by Walsh J. in *de Burca and Anderson v Att. General*:<sup>132</sup> ‘Article 40 does not require identical treatment of all persons without recognition of differences in relevant circumstances but it forbids arbitrary discrimination. It imports the Aristotelian concept that justice demands that we treat equals equally and unequals unequally’. It is beyond the scope of this report to provide an in-depth analysis of the Irish court's interpretation of the provision but it does

<sup>126</sup> 1 UN Declaration of Human Rights (1948), UN Convention Relating to the Status of Refugees (1951), UN Protocol Relating to the Status of Refugees (1967), UN International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965), UN International Covenant on Civil and Political Rights (ICCPR) (1966) UN International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966), UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979), UN Convention on the Rights of the Child (CRC) (1989), UN Convention on the Rights of Persons with Disabilities.

<sup>127</sup> These Rights include; Article 1 Respecting rights, Article 2 Right to life, Article 3 Prohibition of torture, ill-treatment, Article 4 Prohibition of slavery and forced labour, Article 5 Right to liberty and security, Article 6 Right to a fair trial, Article 7 No punishment without law, Article 8 Right to respect for private and family life Article 9 Freedom of thought, conscience and religion, Article 10 Freedom of expression, Article 11 Freedom of assembly and association, Article 12 Right to marriage, Article 13 Right to an effective remedy Article 14 prohibition of discrimination.

<sup>128</sup> It is beyond the scope of this research to provide an in-depth analysis of International Human Rights Law and the ECHR as it pertains to the Roma in Ireland.

<sup>129</sup> “Ireland gets ‘major endorsement’ with UN Human Rights Council seat” Irish Times 13 November 2012.

<sup>130</sup> See below for Domestic legislative provisions concerning equality.

<sup>131</sup> Bunreacht na hÉireann, Article 40.

<sup>132</sup> 1976 J.L.R. 38 at 68.



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provide an additional form of redress for victims of discrimination especially in arenas that fall outside the Equal Status Acts, which are discussed below. A challenge can be brought by way of judicial review which is an expensive and lengthy process.

### 3.2.2 EQUALITY LEGISLATION IN IRELAND

*Basic equality imports the widely accepted idea that at some very basic level all human beings have equal worth and importance, and are therefore equally worthy of concern and respect.*<sup>133</sup>

The Employment Equality Acts 1998-2011 and the Equal Status Acts 2000-2011 (hereinafter 'the Acts') are the principle legislative provisions in Ireland that set down distinct rights and specifically outlaw discrimination when it occurs. Both direct and indirect discrimination are defined under the Acts. Both of these statutes have been amended on a number of occasions to give effect to legislative developments at an EU level, to ensure compliance with the Racial Equality Directive (RED) and the Framework Directive (discussed in Chapter Two). Combined, these statutes prohibit discrimination in employment, vocational training, advertising, collective agreements and the provision of goods and services. Specifically, goods and services include professional or trade services; health services; access to accommodation and education; facilities for banking, transport and cultural activities.

Discrimination has a specific meaning under the Acts and it provides for a number of different categories of discrimination, including indirect discrimination, discrimination by imputation and discrimination by association.<sup>134</sup> The definition of direct discrimination is broad and goes beyond that provided for in the RED. Discrimination under the Acts is defined as the treatment of a person in a less favourable way than another person is, has been or would be treated in a comparable situation on any of the nine grounds which exists; existed; may exist in the future; or is imputed to the person concerned. An instruction to discriminate is also prohibited.<sup>135</sup> Indirect discrimination occurs where there is less favourable treatment in effect or by impact. It happens where people are, for example, refused employment or training not explicitly on account of a discriminatory reason but because of

a provision, practice or requirement which they find hard to satisfy.<sup>136</sup>

Under the Acts discrimination under nine distinct grounds is unlawful. These grounds are: gender; civil status; family status; sexual orientation; religion; age; disability; race and membership of the Traveller Community.<sup>137</sup>

In his analysis of selected Irish equality case law, David Fennelly notes:

*Ireland's equality legislation has now been in force for over a decade. At the time of their enactment, the Employment Equality Act 1998 and the Equal Status Act 2000 represented a milestone in the development of Irish law and, indeed in many respects, of Irish society.*<sup>138</sup>

What is most notable and progressive about these innovative legislative provisions in the Irish context is the fact that they were enacted in compliance with our obligations under International Law, in particular the UN Conventions on Women's Rights and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>139</sup> The State's hand, for the most part, was not forced by compliance with our obligations under EU law.

Whilst the equality provisions provide a good framework and clearly articulate the State's commitment to equality and anti-discrimination, there exists a number of exemptions that serve to dilute the effectiveness of the legislation and have implications for addressing the structural discrimination facing the Roma and other marginalised communities in Ireland.

### Exemptions

For the purposes of this report the exemption that raises the greatest concern in the context of the Roma is the exemption for actions as required by law.<sup>140</sup> Effectively this means that discrimination is permitted if it is provided for by either domestic or EU legislation.

This is a wide sweeping, broadly drawn exemption that significantly undermines the effectiveness of the Acts.<sup>141</sup> In practical terms the Acts cannot be used to challenge all laws or enactments that are discriminatory in nature. This exemption also extends to enactments that grant the Gardaí or immigration authorities the discretion to behave in a discriminatory

manner targeting specific groups or nationalities whilst still remaining within the four corners the legislation.

The implications of the exemption comes into sharp focus when we consider the operation of the Criminal Justice (Public Order) Act 2011 (hereinafter ‘the Act’) or the ‘begging legislation’ as it is commonly referred to. This legislation was introduced following a decision of the High Court<sup>142</sup> which found that Section 3 of the Vagrancy (Ireland) Act 1847 was vague as it lacked the precision required for an activity to be criminalised. The legislation was struck down as the court found it to be incompatible with the constitutional right to free expression and communication as guaranteed by Article 40.6.<sup>143</sup> The impugned act was replaced by the Criminal Justice (Public Order) Act 2011.

Under the Act begging in and of itself is not an offence. An offence is only committed if a person engaged in begging harasses, intimidates, assaults or threatens another person or blocks the passage of people or vehicles.<sup>144</sup> In addition, it is also an offence under the Act to beg in certain locations including an entrance to a dwelling, an ATM, vending machine or night safe.<sup>145</sup> The act confers wide discretionary powers to the Gardaí to arrest without warrant any person he/she suspects upon reasonable grounds of having

committed an offence.<sup>146</sup> The Act was introduced by the then Minister for Justice Dermot Ahearn as a ‘humane and progressive’ approach to begging.<sup>147</sup>

Throughout the debates in the Dail, the focus was squarely on the Roma and other ‘Foreign Nationals’. Much of the debate centred around the perceived problem of ‘Roma Beggars’ and a number of references were made to the existence of a culture of begging amongst the Roma.<sup>148</sup> Deputy Brendan Kennelly stated that:

*Many of those who are involved in begging are foreigners. Although some of them are Irish, in my experience most of them are foreigners. Many of them come from countries that have a culture of begging. They are bringing that culture to Ireland by continuing to beg here. It is not part of our culture. We need to stamp it out as much as we can.*<sup>149</sup>

Deputy Pat Rabbit questioned if begging for the Roma community was ‘cultural or organised’.<sup>150</sup> In total, over three short Dáil debates, the words ‘Roma’ or ‘Roma Gypsy’ were referenced twelve times and ten references were made to ‘non-nationals’. It becomes clear from the debates that the motivation behind the legislation was the policing and regulation of the Roma community. The legislation became colloquially known

<sup>133</sup> Walsh, *Equal Status Acts 2000 – 2011* (ICCL/Blackhall Publishing, 2011).

<sup>134</sup> *Equal Status Act, 2000*, Section 3(1) - 3 (3)a

<sup>135</sup> *Ibid.*

<sup>136</sup> *Ibid.*

<sup>137</sup> Section 3(2)(a-i) *Equal Status Act 2000-2008* and section 6(2)(a-i) *Employment Equality Act 1998-2008*.

<sup>138</sup> David Fennelly, *Selected Issues in Irish Equality Case Law 2008–2011* (The Equality Authority, 2012), p. 4.

<sup>139</sup> Walsh, *Equal Status Acts 2000 – 2011* (ICCL/Blackhall Publishing, 2012).

<sup>140</sup> *Equal Status Acts, 2000*, Section 14.

<sup>141</sup> For an detailed overview of the case law and its implications see further Walsh, *Equal Status Acts 2000 – 2011* (ICCL/Blackhall Publishing, 2012), pp. 50 - 56.

<sup>142</sup> *Dillon v DPP* [2007] IEHC 480.

<sup>143</sup> 6. 1° The State guarantees liberty for the exercise of the following rights, subject to public order and morality: CONSTITUTION OF IRELAND – BUNREACT NA hÉIREANN - i. The right of the citizens to express freely their convictions and opinions. The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State. The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law. ii. The right of the citizens to assemble peaceably and without arms. Provision may be made by law to prevent or control meetings which are determined in accordance with law to be calculated to cause a breach of the peace or to be a danger or nuisance to the general public and to prevent or control meetings in the vicinity of either House of the Oireachtas. iii. The right of the citizens to form associations and unions. Laws, however, may be enacted for the regulation and control in the public interest of the exercise of the foregoing right.

<sup>144</sup> Section(2) Criminal Justice Public Order Act 201 provides: 2.—A person who, while begging in any place—(a) harasses, intimidates, assaults or threatens any other person or persons, or (b) obstructs the passage of persons or vehicles, is guilty of an offence and is liable, on summary conviction, to a class fine or imprisonment for a term not exceeding one month or both.

<sup>145</sup> Section 3(2)The Act.

<sup>146</sup> Section 4(1)The Act.

<sup>147</sup> See <http://debates.oireachtas.ie/dail/2010/05/25/00023.asp> accessed on 10/05/1013.

<sup>148</sup> See <http://debates.oireachtas.ie/dail/2010/05/25/00023.asp> (date accessed: 10 May 2013); <http://debates.oireachtas.ie/dail/2011/01/12/00020.asp> (date accessed: 10 May 2013) and <http://debates.oireachtas.ie/dail/2010/06/10/00007.asp>, (date accessed: 10 May 2013).

<sup>149</sup> *Ibid.*

<sup>150</sup> <http://debates.oireachtas.ie/dail/2011/01/12/00020.asp> (date accessed: 10 May 2013).

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as the 'Roma Begging Law'. Within an 8-month period of its enactment, more than five hundred arrests were made in Dublin city centre alone. Two-thirds of these were foreign nationals, mainly from the Roma community.<sup>151</sup>

When we review the Dáil debates from that time – which were at best ill-informed and populist in nature and at worst overtly racist – and examine the wide discretionary powers afforded to the Gardaí under Section 4(1) of the Act, it is not difficult to conclude that the legislation is discriminatory both in its nature and in application. As there is no specific reference to the Roma in the Act, a Constitutional challenge on the grounds of incompatibility would be difficult to raise. Additionally, a challenge cannot be brought under the Acts by virtue of the exemption outlined above, which seriously undermines the effectiveness of the legislation and can leave victims without redress. This exemption is further bolstered by exemption on Nationality grounds, which we detail below.

### Nationality Exemption

Under the Equal Status Acts, the race ground<sup>152</sup> encompasses race, ethnic origin, colour, nationality and national origins. Here again we see a dilution of the effectiveness of the Acts as a tool to counter discrimination and racism, as the nationality ground is the subject of a number of exemptions. Despite the fact that exemptions on nationality in the Irish context are more favourable than Article 3(2) of RED,<sup>153</sup> a number of concerns remain. Firstly, the nationality exemption extends to the actions of public authorities, including Health and Local Authorities.<sup>154</sup> This leaves the door open to the potential to lawfully discriminate against the Roma, albeit on the narrow basis of nationality, across a number of critical areas including access to housing, healthcare.

To ensure that the rights of all minorities in the State are adequately protected, especially the rights of particularly vulnerable minorities, we would recommend that the exemptions on the basis of legislation and nationality be reviewed. The right to non-discrimination must be construed broadly while any limitation to these rights must be construed narrowly<sup>155</sup> if we are to give true substance to the rights outlined in the Acts and to protect and uphold the rights of the Roma. The inclusion of such far-reaching exemptions in Ireland's equality legislation could amount to a form of state-sanctioned discrimination.

### Institutional Racism and Ethnic Profiling Under the Acts

It is Nasc's contention that the anti-discrimination provision as provided for under both the RED and the Acts are not robust enough to adequately deal with structural or institutional discrimination faced by the Roma. As stated above, the Acts provide for both direct and indirect discrimination. Indirect discrimination is not, however, the same as institutional or structural racism.<sup>156</sup> The Macpherson Inquiry into the death of Stephen Lawrence defined institutional discrimination as:

*The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantages minority ethnic people.*<sup>157</sup>

This definition denotes the existence of a culture within and throughout an organisation. Nasc's experience of advocating on behalf of the Roma to a range of state bodies (including: the Department of Social Protection, the Department of Jobs Innovation and Enterprise, and the Department of Justice) would point to the existence of an organisational culture where 'unwitting prejudice, ignorance, thoughtlessness and racist stereotyping'<sup>158</sup> can prevail. This is discussed in more detail in Chapter Four. To point to a finding of indirect discrimination requires that a specific 'provision, criterion or practice' be identified in the organisation, as opposed to a general culture of discrimination and/or ignorance. A claim of institutional racism would be difficult to raise under the Acts in their current form. Nasc would recommend that institutional racism be specifically provided for under the Acts.

Similarly, there is no prohibition on racial or ethnic profiling by the Gardaí. Racial profiling can be defined as:

*The use by police, security, immigration or customs officials of generalisations based on race, ethnicity, religion or national origin – rather than individual behaviour or objective evidence – as the basis for suspicion in directing discretionary law enforcement actions.*<sup>159</sup>

As detailed in Chapter Four, the Roma community are subject to racial or ethnic profiling by the Gardaí – a practice which is not outlawed in Ireland. The European Commission against Racism and Intolerance (ECRI)<sup>160</sup> in its recent report on Ireland<sup>161</sup> noted that our current legislation does not proscribe racial or ethnic profiling by An Garda Síochána. A number of NGOs in the area have consistently called upon the government to enact legislation to address this gap in our anti-discrimination provisions. This should be accompanied by adequate and appropriate training for all Gardaí.

### 3.2.3 IRELAND'S EQUALITY BODIES

#### The Equality Tribunal

The Equality Tribunal (hereinafter 'the Tribunal') was established to hear complaints under the Acts.<sup>162</sup> The Tribunal is a statutorily independent institution that was established to investigate and mediate in complaints of discrimination as defined under the Acts. The Tribunal is quasi-judicial in nature. Complaints before the Tribunal are resolved either through mediation or through a formal hearing. The Tribunal has the jurisdiction to interpret and apply EU anti-discrimination law in Ireland and as such is an

'organ of the State' for the purposes of the European Convention on Human Rights Act 2003. This obligates the Tribunal to carry out its functions in compliance with the Convention.<sup>163</sup> Unlike a formal court, the Tribunal assumes an investigative role in the hearing of all complaints. Complainants may represent themselves, and costs may not be awarded against either the complainant or the respondent. This increases the accessibility of the Tribunal, improving access to justice for victims of discrimination.

The Tribunal is a very progressive and innovative body in that it is structured in a way that greatly improves access to justice for victims of discrimination. Key to this is the fact the decisions are binding and that costs cannot be awarded against either party. However there are a number of key concerns that serve to undermine the efficacy of the Tribunal. Chief among them is the delay factor. There is currently a wait time of two to three years for cases to progress to hearing. This poses great difficulty for all those seeking a remedy under the Acts. For the Roma who may be seeking to raise a claim to access a very basic and urgent right such as access to social protection payment or admission to a school, a delay of this magnitude is unacceptable and any finding in their favour could amount to a hollow victory and a denial of justice.

<sup>151</sup> The Irish Times, More than 500 hundred arrested in Dublin under begging law, 31 October 2011.

<sup>152</sup> Section 3(2)(a-j) Equal Status Act 2000-2008 and section 6(2)(a-i) Employment Equality Act 1998-2008.

<sup>153</sup> Article 3(2) provides: 2. This Directive does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

<sup>154</sup> Section 14(2) of the Acts defines public authorities as, (a) a Minister of the Government, (b) an immigration officer appointed or deemed to have been appointed under section 3 of the Immigration Act 2004, (c) the Commissioners of Public Works in Ireland, (d) a local authority within the meaning of the Local Government Act 2001, (e) the Eastern Regional Health Authority, (f) an area health board within the meaning of the Health (Eastern Regional Health Authority) Act 1999, Certain activities not discrimination, (g) a health board, (h) a harbour authority within the meaning of the Harbours Act 1946, (i) a board or other body (not being a company) established by or under statute, (j) a company in which all the shares are held by, or on behalf of, or by directors appointed by, a Minister of the Government, or (k) a company in which all the shares are held by a board or other body referred to in paragraph (i), or by a company referred to in paragraph (j).

<sup>155</sup> Section 5(2)(l) permits discrimination where it can be categorised as "differences, not otherwise specifically provided for in this section, in the treatment of persons in respect of the disposal of goods, or the provision of a service, which can reasonably be regarded as goods or a service suitable only to the needs of certain persons of the Equal Status Acts 2000-2004.

<sup>156</sup> Hepple Bob, "Race and Law in Fortress Europe," The Modern Law Review (Volume 67 January 2004 No 1).

<sup>157</sup> The Stephen Lawrence Inquiry: Report of the Inquiry by Sir William Macpherson of Cluny (London:HMSO,1999) para 6.34.

<sup>158</sup> Ibid.

<sup>159</sup> European Network against Racism, [http://cms.horus.be/files/99935/MediaArchive/publications/ENAR\\_OSII%20factsheet%20ethnic%20profiling%20Oct09.pdf](http://cms.horus.be/files/99935/MediaArchive/publications/ENAR_OSII%20factsheet%20ethnic%20profiling%20Oct09.pdf)

<sup>160</sup> ECRI is a human rights body of the Council of Europe, which monitors problems of racism, discrimination on grounds of ethnic origin, citizenship, colour, religion and language, as well as xenophobia, anti-Semitism and intolerance, in EU member states. prepares reports and issues recommendations to member States.

<sup>161</sup> ECRI Report on Ireland (fourth monitoring cycle). Adopted on 5 December 2012. Published on 19 February 2013, <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ireland/IRL-CbC-IV-2013-001-ENG.pdf>

<sup>162</sup> It is possible to take cases on the basis of multiple/double discrimination, under both of the anti-discrimination statutes. In *Nyamphosa v. Boss Worldwide Promotions* it was held that the complainant was discriminated against on the grounds of both gender and race; in *Golovan -v-Porturlin Shellfish Ltd*, where the complainant claimed discrimination on the grounds of gender and race, the Equality Officer found discrimination on the basis of race only.<sup>38</sup> Section 1 and 3 of the European Convention on Human Rights Act 2003.

<sup>163</sup> Section 1 and 3 of the European Convention on Human Rights Act 2003.



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### Standing before the Tribunal

As the Tribunal follows an individual justice model, only those who have a personal or proprietary interest in the action can bring a case before it. In other words, they have to have been directly affected by the alleged impugned conduct. As stated in Chapter Two, Article 7 of the RED permits, but does not compel, third parties such as NGOs to initiate an action. It also provides for third parties to refer general instances of discrimination where there is no actual victim.<sup>164</sup> Ireland's transposition of the RED limits NGO involvement to the hearing of representations or submissions from interested parties. Whilst this can impact positively on the development of anti-discrimination case law,<sup>165</sup> it does limit the potential for strategic litigation. A further limiting factor is the fact that there is no provision for class action.<sup>166</sup> Viewed together, these twin limitations curtail the potential to further the equality agenda in the State and to affect systemic change.

Broadening the scope of the Acts to grant NGOs standing would improve access to justice and create an effective and low cost legal opportunity to the systemic discrimination faced by the Roma and other marginalised groups, who for a variety of reasons are very reluctant to take an action under the Acts. It would also send out strong message that racism and discrimination will not be tolerated in Irish society.

When we consider the exemptions and limitations outlined above it is not difficult to conclude that in Ireland, while all citizens are equal, some are more equal than others.

### The Future of the Equality Tribunal

It is worth noting here that the Tribunal, with several other employment rights bodies including the National Employment Rights Authority, the Labour Relations Commission and the first instance functions of the Employment Appeals Tribunal, may be merged into one unified body called a Workplace Relations Commission. The proposed legislation, the Workplace Relations (Law Reform) Bill 2012, is set to be introduced this year.<sup>167</sup> It has not yet been confirmed whether complaints under the Equal Status Acts, which are not employment or workplace disputes, will be brought before this body but some commentators believe this to be the 'most likely course of action'.<sup>168</sup> As a member of the Equality and Rights Alliance, Nasc

would echo condemnations of this 'cost-saving strategy' as it reflects a lack of commitment by the Irish government to the protection of rights and equality in Ireland.<sup>169</sup>

### The Equality Authority

The Equality Authority is the body charged with the promotion of equal treatment in Ireland. It was established under the Employment Equality Act 1999 and formally came into being on 18 October 1999.

The Equality Authority (the Authority) is an independent body with extensive powers. The functions and remit of the Authority are set out in Section 39 of the Equal Status Act<sup>170</sup> which provides:

- (a) To work towards the elimination of prohibited conduct;
- (b) To promote equality of opportunity in relation to the matters to which this Act applies; and
- (c) To provide information to the public on and to keep under review the working of this Act and, whenever the Authority thinks it necessary, to make proposals to the Minister for its amendment.

To date the Authority has been a critical player in advancing the equality and anti-discrimination agenda in Ireland. In addition to its information provision role, the Authority has the competency through the use of strategic litigation to provide free legal assistance to complainants under the Acts.<sup>171</sup> This is an extremely progressive provision that serves to ameliorate the limitation on standing as outlined above. The Authority has its own in-house legal team, and because of limited resources, potential cases are assessed on the basis of an established criteria including but not exclusively; the circumstances of the complainant, the complexity of the case, if proceedings will or are likely to have a beneficial impact for the development of equality policies or practices, and the capacity of the complainant.<sup>172</sup> In 2011 the Authority provided preliminary advice and assistance in 156 new case-files. 25 applications for substantial assistance were considered, of those 23 were granted and 2 were refused. Given the fact that the resources of the Authority have been eroded since 2009 (its budget was slashed by 43%), the granting of substantial assistance to 23 out of 25 complainants is an extraordinary outcome.<sup>173</sup>



Through our work with the community, Nasc has learned that generally the Roma are very reluctant to assert their rights. This may be as a result of the treatment they have received over the centuries leading to an acceptance of discriminatory treatment. Also, as outlined in Chapter Four, the community have a very difficult relationship with state bodies which results in a feeling of alienation and mistrust of the law and its institutions. Broadening the scope of the locus standi provision as mentioned above is one means of addressing this; another would be the development of a targeted campaign by the Authority to support the community to engage, evoke and realise their rights.

## The Future of the Equality Authority

The future capacity of the Equality Authority remains uncertain. The current Government is in the process of merging the only other Irish human rights body, the Irish Human Rights Commission, with the Authority. Nasc, as a member of the Equality and Rights Alliance

(ERA), would have significant concerns with the merger as proposed in the Heads of Bill to establish the Irish Human Rights and Equality Commission (IHREC) 2011, ranging from the considerable control given to the Minister for Justice in the body's oversight, the criteria for appointments, the limited definition of equality, the powers and functions of the body, the duty on public bodies in relation to discrimination, and the provision of sufficient resources.<sup>174</sup>

The NGO Alliance Against Racism (NAAR) Shadow Report to CERD in 2011, to which Nasc contributed, noted that:

*The capacity of the Equality Authority to carry out its central legal functions has been diminished due to the funding cuts; the number of complaints taken under the Equal Status Acts 2000-2008 has fallen. Key members of staff have left and the position of the legal advisor to the Authority has not been refilled due to the hiring embargo, leaving the body without an advisor to fulfil its strategic litigation or legislative analysis role.*<sup>175</sup>

<sup>164</sup> Walsh, Equal Status Acts 2000 – 2011 (2012), pg.330

<sup>165</sup> Walsh, Equal Status Acts 2000 – 2011 (2012), pg.331.

<sup>166</sup> There is however provision for grouped cases but it must comprise of individual claims.

<sup>167</sup> <http://www.djei.ie/press/2012/20120706.htm>

<sup>168</sup> David Fennelly, Selected Issues in Irish Equality Case Law 2008–2011 (The Equality Authority, 2012), p. 5.

<sup>169</sup> <http://eracampaign.org/press-coverage-1/n-6/page:9/m:6,93>

<sup>170</sup> They are also mirrored in Section 39 Employment Equality Act

<sup>171</sup> Section 67 Employment Equality Act.

<sup>172</sup> See further <http://www.equality.ie/en/Information/Criteria-for-Representation/>

<sup>173</sup> <http://www.equality.ie/Files/Annual-Report-2011.pdf>

<sup>174</sup> Equality and Rights Alliance, Submission on the Heads of Irish Human Rights and Equality Commission Bill 2012 to the Oireachtas Committee on Justice, Equality and Defence, available at: <http://www.eracampaign.org/uploads/Equality%20Rights%20Alliance-%20submission%20on%20Heads%20of%20Bill%20Merger%20of%20IHRC%20and%20EA%20%20June%202012.pdf> (date accessed: 9 April 2013).

<sup>175</sup> NAAR Shadow Report 2011, available at: <http://www.nascireland.org/wp-content/uploads/2012/02/NAAR-Shadow-Report-to-CERD-final.pdf>

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The Opinion of the Advisory Committee on the Framework Convention for National Minorities<sup>176</sup> made several recommendations on the merger of the Human Rights Commission and the Equality Authority. In relation to Equality and Legislation Mechanisms<sup>177</sup> in place in Ireland, the Advisory Committee called upon the authorities to ensure that the new Irish Human Rights and Equality Commission fully complies with the Paris Principles<sup>178</sup> and that the planned structures to replace the Equality Tribunal are established without delay.<sup>179</sup> In its Comments to the Advisory Committee's Opinion, Ireland confirmed that there will be no avoidable delay in establishing the Irish Human Rights and Equality Commission and it will be fully compliant with the Paris Principles.<sup>180</sup>

The merger of Ireland's primary human rights bodies coupled with the abolition of the National Consultative Committee on Racism (NCCRI), the lack of a new National Action Plan Against Racism, (which was not redrafted or monitored past 2008), the removal of the Office of the Minister for Integration and the deletion of a Ministerial post charged with promoting integration show that equality and anti-discrimination appear to be viewed as luxuries that the state can ill afford in times of austerity. There is now a significant vacuum in Government policy arising from the fact that there is no longer an expert body to advise on anti-discrimination and integration and no longer a dedicated plan to deal with these critical issues. These acts clearly question the state's 'concern' or commitment to deal with discrimination and promote equality at a time when arguably it is most needed.

### 3.3 CRIMINAL LEGAL PROVISIONS

#### 3.3.1 THE PROHIBITION OF INCITEMENT TO HATRED ACT 1989

There is a link between discrimination in employment and access to goods and services which are dealt with the civil legal provisions outlined above, and racist crime.<sup>181</sup> Both emerge from the same ideology of bias, prejudice, and stereotyping. Taylor contends that:

*[t]he enduring stereotyping of minority groups provides the justification for day to day discrimination in employment and services. At the same time, these same enduring ideas and*

*stereotyping facilitate the targeting of groups and individuals via hate crime – the stereotypes help dehumanise groups and thereby provide some form of perverse rationale for such activities as denying someone a job, failing to provide an appropriate service through to such potentially criminal acts as racial attacks.*<sup>182</sup>

Racial attacks are very serious in their nature; they impact not only on the individual but on communities as a whole, and serve to severely undermine societal cohesion. A clear, robust legislative response is required to send out a clear signal racism will not be tolerated.

The only legislation in Ireland that deals specifically with racially motivated behaviour is the Prohibition of Incitement to Hatred Act 1989 (hereinafter the Act). This was enacted to ensure compliance with our international legal obligations, in particular Article 20.2 of the United Nation's International Covenant on Civil and Political Rights (ICCPR) which provides that 'any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law'. The provisions in the Act are confined to what is termed 'expression offences' and was never intended to deal with criminal acts where incitement is not a factor. The Act criminalises behavior and expression if they are intended to provoke hatred against a group of persons on account of their race, colour, nationality, religion, ethnic or national origins, and membership of the Travelling community or sexual orientation. The Act is silent on a definition of both incitement and hatred. Critically, to secure a conviction under the Act the prosecution is required to prove the acts were intended to stir up or incite hatred. It is insufficient that the material, expression or behavior itself was likely to incite hatred. This high threshold goes some way to explaining the Acts underuse and paucity of convictions.<sup>183</sup>

In the absence of a specific provision in our criminal law to deal with racially aggravated offences, prosecutions of this nature are usually brought under a number of other criminal legal provisions, which include: the Criminal Justice (Public Order) Act (1994), the Non-Fatal Offences Against the Person Act (1977) and the Criminal Damage Act (1991). Here, criminal acts borne out of racial hatred are treated in the same manner as acts committed without a hate or race element. It is only at the sentencing stage that

racist motivation can be considered as an aggravating factor, which could lead to a harsher sentence being imposed. In the absence of sentencing guidelines or binding precedent, this consideration is entirely at the discretion of the judge.

It is not contended that reform of our criminal law is the panacea that will cure the ill that is racism in our society; a multifaceted approach is required here. However, the introduction of a specific provision to deal with racially aggravated offences coupled with clear sentencing guidelines covering racially motivated crimes would send out a strong signal that racism is not tolerated in this jurisdiction. In addition, it is our contention that the introduction of a provision is required to ensure our compliance with the E.U. Framework Decision on Combating Racism and Xenophobia (2008). This decision requires member states to have 'an effective proportionate and dissuasive penalty where racist or xenophobic motivation is an aggravating circumstance'. Such a penalty is absent from our current legislative framework.

### 3.3.2 CYBER RACISM

The Act has also proven ineffective when it comes to dealing with cyber racism. Cyber racism is a new and increasing phenomenon which, given its potential as a vehicle for the widespread dissemination of hate speech and racist ideology it requires immediate and urgent attention by the legislature and policy makers. Through Nasc's third party racist reporting mechanism we are receiving an ever increasing number of complaints and reports of online racism. This can be extremely damaging on a personal as well as a community level.

We recently received a report on what could only be termed a racist Facebook page, entitled 'Athlone Con Artists'. This page was set up to urge the good citizens of Athlone to come together to 'kick the Roma out of town'. Supporters of this page were asked to take photos of the Roma in the town and post them on the page, which they duly did. In a few short days the page had almost 200 followers. The contents of the page were racist and abusive, and the language was extremely inflammatory. It was Nasc's contention that this page came under the Act as it set out to incite or stir up hatred of the Roma and had a clear call to action. Nasc staff made a formal complaint under the Act to the Gardaí as did members of the Roma community in Cork. The complaint was sent to the Athlone Garda Station where it was investigated. The site was removed from Facebook within 24 hours of the submission of the complaint but not before it caused extreme anger and upset to all Roma who viewed its contents. The removal of the page could be viewed as a solution in and of itself but this hampered a full investigation of the complaint. Herein lies the difficulty: to fully investigate the complaint would have meant that the page had to remain active. This could have ultimately lead to an attack causing harm to a member of the Roma community. Investigation of complaints of this nature becomes extremely difficult, once the site or 'page' is removed. It is also extremely complex as it entails the possibility of extra-territorial judicial issues if the site is formally hosted outside Ireland. In this particular case Nasc was informed by the Gardaí that to fully investigate pages of this nature on a social media outlet such as Facebook, the process is too prohibitive. If the comment or post or Facebook page has been deleted, then the Gardaí are required to attain a warrant from

<sup>176</sup> FCNM Advisory Committee Opinion on Ireland and Comments (2011), available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_3rd\\_Com\\_Ireland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_Com_Ireland_en.pdf)

<sup>177</sup> Article 4 of the Framework Convention on the Protection of National Minorities

<sup>178</sup> Paris Principles were adopted by General Assembly resolution 48/134 of 20 December 1993 and are a set of core minimum recommendations adopted by the United Nations General Assembly relating to the status and functioning of national institutions for the protection and promotion of human rights. To conform with the Paris Principles institutions must: Be independent of the Government, with such independence guaranteed either by statutory law or constitutional provisions; Be pluralistic in their roles and membership; Have as broad a mandate as possible, capable, in the context of the Convention, of collectively promoting, protecting and monitoring the implementation of all aspects of the Convention through various means, including the ability to make recommendations and proposals concerning existing and proposed laws and policies; Have adequate powers of investigation, with the capacity to hear complaints and transmit them to the competent authorities; Be characterized by regular and effective functioning; Be adequately funded and not subject to financial control, which might affect their independence; and Be accessible to the general public and, in the context of the Convention, particularly to persons with disabilities, including women with disabilities and children with disabilities, and their representative organizations.

<sup>179</sup> Paragraph 56

<sup>180</sup> [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_3rd\\_Com\\_Ireland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_Com_Ireland_en.pdf)

<sup>181</sup> Millward Brown Lansdowne, Immigrant Policy Survey Commissioned by the One Foundation (2012).

<sup>182</sup> Séamus Taylor "Responding to Racist Incidents And Racist Crimes in Ireland" An Issues Paper for the Equality Authority September 2010 accessed at: [www.equality.ie](http://www.equality.ie)

<sup>183</sup> For further analysis of the Act see, J Schweppe and D. Walsh (2008) Combating Racism and Discrimination Through the Criminal Law. A Report Commissioned by the National Action Plan Against Racism 2008, available at: <http://integration.ie/website/omi/omiwebv6.nsf/page/other-publications> (NCCRI)



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the Federal Bureau of Investigation for all US hosted sites. This warrant must be obtained within 60 days of the date of deletion. Once the 60 days have elapsed very little can be done, as Facebook then delete the content themselves, leaving no evidence.

In this incidence a file was sent to the DPP and Nasc was informed that it was unable to proceed to prosecution due to lack of evidence. The creator of the page and its followers could not be prosecuted and are free to peddle their particular brand of hatred against the Roma on Facebook again should they chose to do so.

In the European context, there are moves to address cyber racism through the Council of Europe's Convention on Cybercrime<sup>184</sup> and particularly the Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. This Convention is an international treaty that seeks to harmonize national laws on cybercrime, improve national capabilities for investigating such crimes, and increase cooperation on investigations. Nasc calls on the Government to ratify the Convention as a positive first step in tackling cyber racism. This would send a strong message of Ireland's commitment to treating online racism as a crime.

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### 3.4 ROMA INTEGRATION POLICIES:

#### 3.4.1 IRELAND'S STRATEGY FOR INTEGRATION

The development of integration policy in Ireland has been somewhat haphazard and lacking in a clear policy direction which is reflective of the state's commitment to adequately address the integration needs of our migrant population. We have adopted a somewhat *laissez-faire* approach to Integration<sup>185</sup> – we are crossing our fingers and hoping that it will just 'happen'. The only formal statement on integration and diversity in Ireland is 'Migration Nation' which was produced by the now disbanded Office of the Minister for integration. This statement outlines a number of key principles for the promotion of integration in Ireland. These principles are as follows:

- A partnership approach between Government and non-Governmental organisations as well as civil society bodies, to deepen and enhance the opportunities for integration.

- A strong link between integration policy and wider state social inclusion measures, strategies and initiatives.
- A clear public policy focus that avoids the creation of parallel societies, communities and urban ghettos, i.e. a mainstream approach to service delivery to migrants.
- A commitment to effective local delivery mechanisms that align services to migrants with those for indigenous communities.

The new integration policy focuses on the role of local authorities, sporting bodies, faith-based groups and political parties in building integrated communities and the plans to target funding in these areas.<sup>186</sup>

It is Nasc's contention that the only principle that was adhered to and developed was the final one – a focus on the role of local authorities faith based groups etc. in building integrated communities. The state effectively devolved all responsibility for integration to local authorities without the provision of targeted funding. In the context of the Roma, the state was obliged by the EU Commission to develop a Roma specific integration strategy. This strategy will be considered below.

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#### 3.4.2 IRELAND'S STRATEGY FOR INTEGRATION

Ireland's National Traveller/Roma Integration Strategy<sup>187</sup> was developed following a communication from the EU Commission, entitled 'An EU Framework for National Roma Integration Strategies' (April 2011) which directed that member states should adopt or develop a comprehensive approach to Roma integration as discussed previously in Chapter Two. Ireland submitted its National Traveller/Roma Integration Strategy in 2011. This was Ireland's first national strategy for Roma integration and provided an ideal opportunity for the state to examine and address the integration of the Roma in Ireland.

As discussed above, the European Commission compelled Member States' to adopt and develop national strategies, to address the integration of the Roma in line with the EU Common Basic Principles on Roma Inclusion.<sup>188</sup> These strategies sought to actively contribute to the social integration of Roma

into mainstream society and to eliminating segregation where it exists. The strategies were to fit into and contribute to the broader framework of the Europe 2020 strategy and should therefore be consistent with national reform programmes.

When developing national Roma integration strategies, Member States were required bear in mind the need to set achievable national goals for Roma integration to bridge the gap with the general population. The goals had to address, as a minimum, the four EU Roma integration goals relating to access to education, employment, healthcare and housing.

The European Commission and the European Roma Policy Coalition have strongly criticised Member States strategies overall, revealing that ‘many of them [are] so deeply flawed that they cannot even be regarded as a first step forward. They reflect a complete lack of political will. This complacency is neither acceptable nor sustainable’.<sup>189</sup> The Commission has also called on Member States to address discrimination ‘convincingly’ and ‘to ensure that anti-discrimination legislation is effectively enforced in their territories’ (ERPC, 2012).

Many of the international human rights monitoring bodies have noted that the Strategy is not sufficient in relation to the Roma. The Advisory Committee of the Framework Convention for the Protection of National Minorities Opinion notes with regret that:

*Although the Roma are given mention in the title of the National Traveller/Roma Integration Strategy adopted in 2011, and there is some reference to selected initiatives addressing their specific needs, the policy on Roma has not been given due attention by the authorities. While recognising that Roma are for most part recent migrants from other European*

*countries, the Advisory Committee notes that major problems faced by them as regards discrimination, access to health care, employment and housing require focused attention and specific policy measures by the authorities.*<sup>190</sup>

In the following section we will critically assess Ireland's Roma Integration Strategy.

## Ireland's National Roma Strategy – a critical analysis

Ireland's national Roma Strategy<sup>191</sup> was produced in 2011. It includes relevant strategies that already exist under the Programme for Government (March 2011), the National Reform Programme for Ireland under the Europe 2020 Strategy, the most recent social partnership agreement *Towards 2016 and the National Action Plan on Social Inclusion 2007-2016*, in the four crucial areas of education, employment, healthcare and housing. It also mentions initiatives in place in the same areas to assist the Roma community who are citizens of the European Economic Area and are legally resident in the country.

The Irish National Strategy for Travellers and Roma (2011) is an example of a flawed strategy. It simply restates and summarised strategies that are already in place.<sup>192</sup> Although the document is principally concerned with Ireland's indigenous Traveller community, there are some references to non-Traveller Roma (migrant Roma) as well<sup>193</sup> in the education section but only linked to developing proficiency in the language and again briefly under employment and housing. However there is no mention of Roma under Health despite the Health Service Executive (HSE) child protection concerns.<sup>194</sup>

<sup>184</sup> The Convention is available on the website of the Council of Europe at <http://conventions.coe.int/Treaty/en/Treaties/Html/185.htm>

<sup>185</sup> Boucher Gerry Ireland's Lack of a Coherent Integration Policy Migration and Citizenship Research Initiative, University College Dublin Volume 3 Issue 1 Spring 2008.

<sup>186</sup> Policy Statement: Migration Nation accessed at: <http://www.integration.ie/website/omi/omiwebv6.nsf/page/aboutus-migrationnation-en>

<sup>187</sup> Department of Justice, Ireland's National Traveller/Roma Integration Strategy (2011), available at: <http://www.justice.ie/ga/JELR/Ireland%E2%80%99s%20National%20Traveller%20Roma%20Integration%20Strategy%202011.pdf/Files/Ireland%E2%80%99s%20National%20Traveller%20Roma%20Integration%20Strategy%202011.pdf> (date accessed: 25 April 2013).

<sup>188</sup> The 10 Common Basic Principles on Roma Inclusion were presented at the first Platform meeting on 24 April 2009. They were annexed to the Council conclusions of 8 June 2009. They comprise: 1) constructive, pragmatic and non-discriminatory policies 2) explicit but not exclusive targeting 3) intercultural approach 4) aiming for the mainstream 5) awareness of the gender dimension 6) transfer of evidence-based policies 7) use of EU instruments 8) involvement of regional and local authorities 9) involvement of civil society 10) active participation of Roma.

<sup>189</sup> European Roma Policy Collation (ERPC) Chair, 2012.

<sup>190</sup> [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_3rd\\_OP\\_Ireland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_OP_Ireland_en.pdf)

<sup>191</sup> hereinafter The Strategy.

<sup>192</sup> Murray, Colette A Minority within a Minority? Social Justice for Traveller and Roma Children in ECEC, European Journal of Education, Vol. 47, No. 4, 2012.

<sup>193</sup> See The term ‘Roma’ in the Introduction for a discussion of the term and its usage in this report.

<sup>194</sup> Pavee Point and Health Service Executive (HSE) (2012) *Roma Communities in Ireland and Child Protection Considerations* (Dublin, Pavee Point & HSE).

## Chapter 3: Ireland's Legislative and Policy Framework



The Strategy does note that the Roma community in Ireland are EU citizens and as such have the same rights 'as any other citizen from their country of origin legally resident in the State'.<sup>195</sup> However there are clear disadvantages to the lack of attention to non-Traveller Roma in the Strategy, as it shows a failure to articulate the unique issues and barriers Roma experience in Ireland and the lack of targeted policies and initiatives to address those issues. Additionally, it is unclear from the Strategy whether Roma are entitled to partake in initiatives and schemes aimed specifically at Travellers, for instance membership on the National Traveller Monitoring & Advisory Committee. The Framework Convention for National Minorities most recent Opinion on Ireland noted in particular the lack of Roma on any consultative committees.<sup>196</sup>

It is our contention that in drafting Ireland's inaugural National Roma Integration Strategy that the Common Basic Principles on Roma Inclusion (CBPRI) were not adhered to, particularly in relation to the meaningful inclusion of key stakeholders such as the Roma, local authorities and civil society

organisations. In addition, while it was accurate to describe non-Traveller Roma in Ireland as entitled to the same rights as any other citizen legally resident in the State, the experiences of Nasc's service users suggest that Roma who live in Ireland deal with specific forms of racism, discrimination, poverty and social isolation in ways that had not been appropriately documented or analysed in the development of the Strategy. While some of the barriers Roma experience overlap with those experienced by the Traveller Community, many of them are distinct and relate to their migrant and nomadic status. Finally, there is little or no research conducted by the State into Roma living in Ireland. Until such time as a survey of Roma people living in Ireland is conducted, the State will not be in a position to begin to consider what particular strategies are indicated in respect of them. The design, implementation and evaluation of policies and projects should not be based on preconceptions but on the actual situation of the Roma.

To develop a clear targeted Roma specific strategy the following actions are required by the Irish Government:

1. The State must undertake research and a meaningful consultation process with key stakeholders, including civil society organisations, social partners and academics;
2. Regional and local authorities must be involved in the design, monitoring and evaluation of the Strategy
3. Active participation of the Roma in the development of the strategy must be sought
4. We must develop a Strategy that takes into account the complexity of the issues facing the Roma – as distinct from Traveller – people living in Ireland;
5. Specific measures must be set down to address the discrimination and racism experienced by the community.

The manner in which Ireland drafted its Roma Integration Strategy, coupled with the inadequate and at times poor legislation in place to address the discrimination the community face, is a poor reflection of Ireland's stated commitment to equality and human rights. It also expresses a complete lack of political will to address the situation of the Roma in Ireland. One consequence of the adoption of this *laissez-faire* attitude by the state is the creation of an underclass of people and a deepening of the social divide in Ireland. This could have a detrimental impact on the future of young Irish Roma who are growing up in a state that has essentially abandoned them. Neither legislation and policy alone are sufficient to address the situation of the Roma in Ireland, what is required is robust anti discrimination laws, underpinned by a clear policy commitment and action to effectively integrate the Roma into Irish society.

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<sup>195</sup> National Strategy, p. 3

<sup>196</sup> [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_3rd\\_OP\\_Ireland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_OP_Ireland_en.pdf), p. 2



## Chapter 4: Roma in Ireland – Findings and Discussion

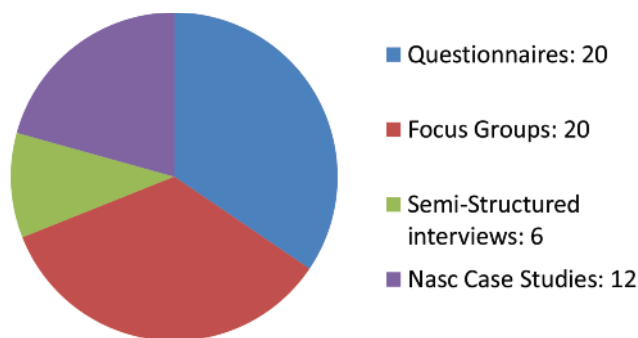
### 4.1 INTRODUCTION

This chapter will look at our findings in relation to the structural discrimination experienced by the Roma in Ireland. While discrimination in general is about the social exclusion of groups based on preconceived conceptions and functions via direct and indirect means such as racism, xenophobia, etc., structural discrimination relates to the ways in which legislative, institutional and social norms can function to obscure discriminatory intent. Structural discrimination against the Roma means that, in practice, the legislative and policy framework at international, EU and Irish levels are failing to adequately address – and indeed colluding in – the ongoing marginalisation of the Roma community. Structural discrimination can be open or hidden, intentional and unintentional, but its consequences enforce the exclusion of marginalised communities, resulting in inequality.

These findings for this report are based on data acquired from targeted questionnaires<sup>1</sup> (N=20); focus groups (two focus groups of 8 men and 12 women, total (N=20)) and semi-structured interviews conducted during the questionnaires (N=6) with Nasc clients from the Roma community. As an NGO based in Cork, this research necessarily focused on findings ascertained from the Roma community living in Cork. However, through our communications with other NGOs working with the Roma such as Pavee Point Travellers Centre, Crosscare Migrant Project and the Irish Network Against Racism (ENAR Ireland), we believe the findings can be generalised to reflect the common experience of Roma living in Ireland.

Nasc also conducted an interview with the Executive Director of the European Roma Rights Centre who provided insight into the structural litigation and advocacy available to Roma clients in a European context. Nasc's Roma Rights Officer met Mr. Gergely in Budapest in October 2012 while filming the documentary 'Roma – From Huedin to Here'.

Questionnaires and interviews were conducted on a one-to-one basis by Nasc's Roma Rights Officer. They took place either in the Nasc office in Cork City Centre or in the Blackpool Community Centre. This centre is in the north of the city which is an area where the majority of the Roma community in Cork live. Nasc, working in cooperation with the Citizens Information Centre in Blackpool, operated a drop in clinic from this centre to address the specific needs of the Roma community in Cork. Focus groups were



Research Data Collection Methods

conducted in the Public Library in Blackpool, and the sessions were recorded and transcribed. Where necessary a member of the Roma community translated for other members.

Additional findings come from an analysis of Nasc's case work, compiled over two years of work with Roma clients. For the purposes of this report Nasc focused only cases where there existed an underlying right or entitlement to the right claims. Between March 2011 and January 2013 a total of 33 cases of Romanian clients who identified themselves as Roma sought advocacy at Nasc. The majority of the cases dealt with were related to employment and access to a social protection payment.

In January 2013, a review of the cases was carried out. Of the 33 cases considered, 9 resulted in a successful outcome with no current ongoing issue; 10 presented at our drop in service seeking basic information or were deemed to have had no underlying right to the service, or social protection benefit sought; 7 applications were lodged and remained pending; and the remaining 7 cases were referred to other appropriate services or agencies. Specific issues emerged from the review based on clients' interactions with other agencies, including the Department of Social Protection, the Department of Enterprise, Jobs and Innovation, FÁS, An Garda Síochána and other agencies.

When analysing the files we identified the following themes occurring in relation to Roma clients' interactions with these agencies:

- Whether there had been an erroneous refusal of an application for employment, housing, healthcare and social protection
- Reasons given for this refusal
- Whether a complaint had been made
- Whether there had been an unreasonable delay in providing a decision

- Unreasonable information requests
- Delays in implementing decisions
- Whether the individual felt discriminated, harassed or victimised when accessing the service

These became the criteria for determining structural discrimination. We also noted from case files whether a client had experienced the following impacts related to their case:

- Risk of Homelessness
- Destitution
- Child Poverty
- Employment Issues
- Use of criminal begging legislation by the Garda Síochána
- Retention of Identity documents

We then identified 12 clients that have experienced particularly poor treatment and their case studies have been used in the relevant sections of this report. These cases were considered to be the most complete and indicative of the difficulties repeatedly encountered by the clients attending Nasc, based on the above criteria. The remaining cases also included areas of discrimination but were either incomplete or referred to another agency so they have not been included in the findings.

All 12 cases were identified by Nasc's legal team as having an underlining eligibility for the service or social protection payment applied for. In our review, Nasc did not consider cases where there was no underlying entitlement to such a payment or service. Through our work, Nasc would have considerable experience in assisting migrants in vindicating a wide range of their rights and entitlements. The cases clearly highlight the structural discrimination faced by the Roma when trying to vindicate and access their basic rights and entitlements.

There are a number of Roma who came to Ireland following the accession of Bulgaria and Romania and as such this cohort are debarred from accessing a range of services including social protection, education and training, and social housing, unless they are employed in the State. In Nasc's view, this group of Roma are extremely vulnerable and in many cases destitute, compelling them to engage in strategies for survival, such as begging, that can at times bring them into

conflict with the law. The manner in which the Gardaí interact with members of the community who through no choice of their own have to beg to put food on the table for their children is also considered in this chapter.

The research explored 7 key areas that we have identified as presenting particular barriers to integration for the Roma community and are areas where structural discrimination occurs. The findings are thus organised under these 7 key areas, including: 1) access to employment, 2) education, 3) healthcare, 4) housing, 5) social protection, 6) treatment by the Gardaí, and 7) treatment of Roma women.

The first four areas outlined above come within the scope of RED and the Equal Status Acts in the Irish context (see Chapters Two and Three). They are also in line with the EU Roma integration goals (discussed in Chapter Two) which identify access to employment, education, healthcare, and housing as key drivers for the successful integration of Roma. Minimum standards in these areas should be based on common, comparable and reliable indicators and their achievement is important to help Member States reach the overall targets of the EU Framework for the National Roma Integration Strategies (see Chapter Two). Additionally the findings look at access to social protection, treatment by the Gardaí and the ethnic profiling of Roma women, as in the course of the research conducted in compiling the report these areas were highlighted by Nasc clients.



Key Areas of Structural Discrimination

## 4.2 FINDINGS

Overall the findings point to the existence/prevalence of both individual and structural discrimination faced by the Roma across a number of areas. The case files, questionnaires, focus groups, interviews and case studies

## Chapter 4: Roma in Ireland – Findings and Discussion

articulate the difficulties Roma clients experience accessing their basic human rights. Issues include the prevalence of what Nasc would consider as disproportionate delays and maladministration, and the subsequent impact that this has upon the Roma leading to loss of employment, homelessness, deprivation, ill health and child poverty. Differential treatment by a number of statutory agencies including: FÁS, the Department of Social Protection, Department of Jobs, Enterprise and Innovation, An Garda Síochána and Cork City Council, was a common theme that emerged in the research. This is illustrated in the following comment from one of the focus groups:

*Yes we are treated badly, like when we go there [e.g. Social Welfare Office], they say they don't have time to attend to us.*

(Focus Group comment)

This was echoed in Nasc questionnaire results with 90% of respondents revealing that they had felt discriminated against when dealing with organisations and public bodies. When the results of female respondents are considered separately this percentage rose to an alarming 100%.

Difficulties with counter staff were mentioned repeatedly in the course of the interviews and questionnaires. Participants in the questionnaires were asked if, when dealing with organisations responsible for the provision of social benefits (e.g. social welfare, healthcare), they felt that they treated differently from those of other ethnic groups in Ireland, an alarming 100% of participants answered 'Yes'. We find these figures an astoundingly strong condemnation of the provision of much-needed services to this community; however this supports our experiences when advocating on behalf of Roma in social assistance applications.

The findings are now discussed under the key areas

### 4.2.1 ACCESS TO EMPLOYMENT

In this section we address the barriers in accessing employment as identified by Roma. As was noted in Chapter One, the majority of Roma in Ireland have migrated to Ireland from Romania and Bulgaria; all of the Roma clients Nasc have worked with originate from Romania. As stated previously, Roma

of Romanian and Bulgarian nationality were faced with a significant employment barrier until February 2012. Although previously eligible to apply for asylum in Ireland, with the accession of Romania in 2007, Roma individuals of Romanian or Bulgarian origin were now no longer afforded that option (this is discussed in detail in Chapter One). Of the 12 cases highlighted in this study, 8 individuals originally arrived to Ireland as asylum seekers. Thus this policy change affected a significant number of Nasc clients.

With accession, Romanian nationals were now EU citizens with the same rights as all other EU citizens residing in Ireland. However in contrast to the 2004 accession where Ireland permitted open access to the labour market, the State restricted access to labour for Romanian and Bulgarian national following their accession in 2007. As a result of the removal of the work permit restrictions in July 2012, Romanian and Bulgarian nationals now have free access to the labour market.

As illustrated in Chapter Two, this is a community that is characterised by low levels of education and low literacy rates, making the majority of those Roma actively seeking work tending to fall into low-skilled labour. These are virtually impossible jobs to get in difficult economic times. Yet even within this sector of the labour market, Roma experience significant levels of discrimination from employers. One Roma client reported hiding his Roma identity in order to get employment.

Many participants in this research described difficulties in accessing employment in Ireland and some linked this to discrimination experienced when looking for work:

*I was out looking for work some day. They looked at me and they saw I am from Romania. I was turned down. It's really hard for us.*

(Focus Group Comment)

This sentiment was echoed by many of our Roma clients throughout the research. In our experience working with this community, we see that Roma men particularly want to work and actively seek employment. Employment is closely linked with social standing within the community, and particularly Roma men who gain employment are seen to have high social status. Our work with the community and our research indicates that Roma men are discriminated against by employers. This makes it difficult to

## CASE STUDY 1

### APPLICATION FOR A WORK PERMIT

Arthur, a Romanian national and member of the Roma community, arrived in Ireland in March 2006 and applied for asylum. He informed Nasc that his application for asylum was moot following the accession of Romania to the EU in 2007. Arthur was employed in the State for two years from September 2007 to September 2009. He informed that neither he nor his employer were aware that he was required to hold a work permit. In the course of our clinic work, we found this to be a common issue for both employers and Romanian and Bulgarian nationals. Arthur was informed of this requirement upon renewal of his contract by his employer. He was forced to stop work and apply for a work permit to the Department of Enterprise, Trade and Employment. His employer agreed to reemploy him once the permit was issued. The application was submitted on September 2009. Following a delay of 16 months in the processing of the application, the work permit was finally issued on the 14th of December 2010. Arthur did not receive any social assistance payment during this time.

In January 2011, Arthur's place of employment closed. As each employment permit is registered to a specific employer, this rendered Arthur's work permit invalid. Arthur returned the work permit to the Department in August 2011.

Arthur found further employment on October 2011 and an application for a work permit was submitted by Nasc on his behalf. Although the wage requirement of €30,000 per annum was not satisfied by the employment offer, Nasc requested that, in consideration of his employment history in the State and his status as an EEA national, the application be accepted as an exceptional measure. The Department agreed to accept his application for processing. However, Arthur once again encountered an inordinate delay of over 9 months in the processing of his application. By July 2012 when the requirement for an employment permit was lifted, a decision had still not been reached regarding Arthur's application. As Arthur no longer required an employment permit, Nasc requested a full refund of the €1,000 processing fee paid by Arthur on submission of the application. This was provided after 4 months of repeated requests by Nasc.

attain and retain work and creates a knock on effect where all other rights and entitlements, for example access to social protection, begin to fall, leaving members of the community at high risk of poverty and destitution.

### The Work Permit System As a Barrier to Employment

Between 2007 and 2012, Romanian nationals were given only restricted access to the labour market. They were required to apply for an employment permit subject to the Employment Permits Act 2003<sup>197</sup> and 2006<sup>198</sup>. Owing to their unique status as EEA nationals, Romanian and Bulgarian nationals were treated more favourably than non-EEA nationals and were exempt from satisfying certain employment permit conditions.<sup>199</sup> Despite the more favourable treatment, the Roma struggled to attain employment. This difficulty was expressed in the focus groups, questionnaires and in the one to one interviews. The main reasons cited were a lack of suitable skills and

qualifications, poor educational attainment, and the high salary threshold (€27,000 and later €30,000). Participants in the study said that they encountered a marked reluctance amongst prospective employers to employ Roma.

Through our work with the community we are of the view the majority of Roma males are very keen to work, to support their family. During the course of the interviews many expressed great pride in the fact that they had worked previously in Romania, a factor that seemed to increase their social standing within the community. They experienced great difficulties in accessing employment in the Ireland for the reasons outlined above. This is exemplified by the fact that of all of those interviewed during the course of the research, only 1 attained employment that fit the work permit criteria. Once that hurdle was crossed the application process was then plagued by unreasonable delays, leading eventually to a loss of employment on two occasions for the same individual (see Case Study 1). The lengthy delays in processing work permit

<sup>197</sup> [www.djei.ie/publications/labour/2003/employmentpermitsact.pdf](http://www.djei.ie/publications/labour/2003/employmentpermitsact.pdf)  
[www.djei.ie/publications/labour/2003/employmentpermitsact.pdf](http://www.djei.ie/publications/labour/2003/employmentpermitsact.pdf)

<sup>198</sup> [www.djei.ie/publications/labour/2006/emppermitsact2006.pdf](http://www.djei.ie/publications/labour/2006/emppermitsact2006.pdf)  
[www.djei.ie/publications/labour/2006/emppermitsact2006.pdf](http://www.djei.ie/publications/labour/2006/emppermitsact2006.pdf)

<sup>199</sup> They were not required to fulfil the labour market means test, the ineligible jobs category was less onerous, employers were not required to satisfy the requirement that not more than 50% of their employers were non-EEA Nationals.



## Chapter 4: Roma in Ireland – Findings and Discussion

applications for EU citizens entitled to work is a clear indication of structural discrimination.

In this case, repeated and undue delays in processing of the work permit ultimately resulted in the loss of employment. This particular client was married and had five children to support and in the intervening period was reliant on family members and St. Vincent De Paul. The delays encountered in this case were way in excess of the delays experienced in the processing of work permit applications for non Roma clients, which in our experience takes an average of 6–9 weeks, leading to a finding of structural discrimination. As delays of this magnitude and nature result in employers being reluctant to employ Roma or other work permit required individuals, it raises the question of whether or not this is a deliberate policy in these straitened economic times.

This case study additionally demonstrates the lack of clarity in the employment permit process which lead to considerable confusion for members of the Roma community and their employers. It became evident during the course of this study that, prior to 2012, some members of the Roma community engaged in employment with the understanding that as European nationals, they were entitled to enter the labour force without a work permit or they believed their employer had acquired a work permit on their behalf. When they were discovered to be working illegally, their employment ceased and they were ineligible for any type of social protection.

A comment from a member of the focus groups emphasises this:

*I have been here since 1980. I have a daughter who works here...I used to work here too but when they found out that I don't have a work permit, they stopped me.*

(Focus group comment)<sup>200</sup>

Difficulties in obtaining a work permit not only impacted Roma individuals but also their dependent families. As discussed in Chapter One, Nasc argued for the removal of work permit conditions based on the European Court of Justice (ECJ) judgement in *Zambrano v Office National de l'emploi*.<sup>201</sup> Nasc contended that the continuing restrictions on access to the labour market for Romanian and Bulgarian parents of Irish citizen children amounted to the

deprivation of this cohort of Irish citizen children's full enjoyment of his/her rights as EU citizens as well as unequal treatment when contrasted with similarly situated third country national parents of Irish citizen children. Here again we have to question the discriminatory nature of the State's initial policy which prevented Irish citizen children of Romanian and Bulgarian national parents, a sizable number of whom were Roma, from attaining a secure and sustainable residency.

Following this positive development, we continued to lobby for full and free access to the labour market for all Romanian and Bulgarian nationals and in July 2012 the Department of Jobs, Enterprise and Innovation lifted the restrictions on labour market access for both nationalities. Whilst this is very welcome change and one that was met with joy by the Roma access to suitable and sustainable employment will only improve if adequate adult education and training supports are provided for the Roma. This is discussed in more detail below.

Although the majority of Roma clients when attending Nasc prior to February 2012 sought advice and representation in relation to an employment permit application, only two clients satisfied the requirements to apply for a work permit. Only one of these, as highlighted in the case study above, was accepted. This clearly indicates that contrary to popular stereotypes, Roma are seeking to engage in employment in the State even as they encounter institutional barriers to acquiring employment. It emphasises the multiplicity of issues Roma experience: migrants coming from situations where they were at one stage eligible to claim asylum, where they lack education, training and other resources, translates into a barrier to attaining jobs that fit the necessary criteria for a work permit. The few Roma who do manage to acquire jobs face structural discrimination in accessing the necessary documentation to do so. In addition, in a community where the literacy level and documentation available to the applicant may not be sufficient, their lack of awareness of their rights and regulations caused them to be vulnerable to exploitation by employers. Thus, the barrier to integration that the employment permit requirement caused for an already vulnerable community had far reaching implications for the participants in this study.

## Employment and Roma women

Roma women experience unique and multiple barriers to accessing employment, both from within and outside their communities. Roma culture traditionally identifies women's role as primarily in the home, taking care of the family and minding children. The majority of Roma women throughout Europe tend to marry and have children very young and rarely engage in secondary or third level education.<sup>202</sup> In the Irish context, Roma women can be quite isolated from Irish society, thus they very often have poor English skills. This means they are often ill-equipped to engage in employment outside the home. Begging is prevalent amongst Roma women as they often have no alternative sources of income.

The lack of access to employment experienced by Roma women and the consequential vulnerability of Roma and Traveller women is specifically noted in the Framework Convention on National Minorities (FCNM) Advisory Committee Opinion on Ireland.<sup>203</sup> The Committee notes the adoption of the National Women's Strategy 2007–2016<sup>204</sup> but calls on the authorities to pursue developing, resourcing and implementing programmes in co-operation with Traveller and Roma women, with a particular view to establishing effective strategies for women's empowerment and equality. It is notable that women are only mentioned in the National Traveller/Roma Integration Strategy in relation to access to health, and only in relation to Traveller women's health.<sup>205</sup>

A review of our case files indicate that none of the Roma women who attended Nasc since 2011 inquired about employment or work permit related issues. Only one woman in the Focus Group had previously worked and experienced difficulties in getting a work permit. A number of women in this study expressed their difficulties in accessing employment despite the absence of the work permit restriction:

*We don't need any work permit but we still get the same treatment as before. When we apply for a job, we don't get a reply.*

(Focus Group comment)

Clearly, this is a group who require significant attention in order to develop their capacities and education levels, be able to seek employment and effectively integrate into Irish society.

## Self-Employment

Even before the removal of the employment permit requirements Romanian and Bulgarian nationals were permitted to enter into self-employment without obtaining Business Permission<sup>206</sup> in the State. The findings of the questionnaires conducted revealed that only one Roma client out of twenty participants had ever been self-employed. Additionally, none of the Roma women who had completed the questionnaires or focus groups had engaged in self-employment.

Therefore although this option was available, the support structures necessary for a member of this community, to avail of the self-employment option were not in place. Difficulties in this area can be common amongst migrant communities due to a variety of factors such as language and literacy barriers, lack of understanding about regulations regarding entrepreneurial enterprises, lack of access to micro-credit, lack of sufficient local and national networks to provide a client base. A recent study conducted by the Integration Centre called for more support for migrant entrepreneurship, as it is seen to be a key aspect of economic integration.<sup>207</sup> That members of the Roma community experience significant barriers in this regard seems evident from the questionnaire and focus group results.

<sup>200</sup> The fact that this client suggested they had been in the State since 1980 implies that they most likely submitted an asylum application and that this application was potentially pending until the accession of Romania in 2007.

<sup>201</sup> Case C-34/09, Gerardo Ruiz Zambrano v. Office national de l'emploi (ONEm) judgement of the Court of Justice (European Union).

<sup>202</sup> ODIHR, Press Release: On International Women's Day, ODIHR Director stresses role of education in improving situation of Roma and Sinti women (2013) <http://www.osce.org/odihr/100034>.

<sup>203</sup> [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_3rd\\_OP\\_Ireland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_OP_Ireland_en.pdf)

<sup>204</sup> <http://www.justice.ie/en/JELR/NWS2007-2016en.pdf/Files/NWS2007-2016en.pdf>

<sup>205</sup> National Traveller/Roma Integration Strategy (2011), p. 15.

<sup>206</sup> A non-EEA National who intends to come to Ireland in order to establish a business will require the permission of the Minister for Justice and Equality to do so ('Business Permission'). Non-EEA nationals applying for business permission must create employment (other than their own) and show personal investment of €300,000 or more. <http://www.inis.gov.ie/en/INIS/Pages/WP09000012>

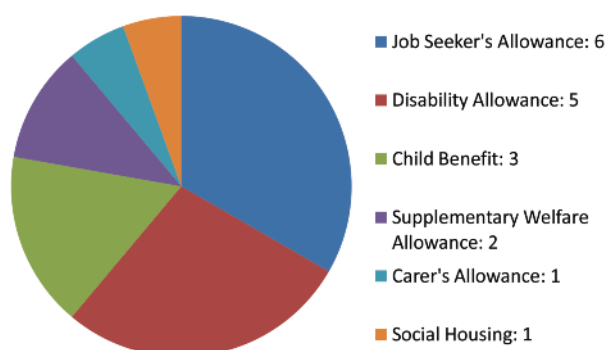
<sup>207</sup> The Integration Centre, Migrants and the Irish Economy (2012), available at: <http://www.atlanticphilanthropies.org/sites/default/files/uploads/report-migrants-irish-economy.pdf> (date accessed 11 May 2013).

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Empirical evidence and research on the socio-economic situation of Roma support the above findings and show that there is a significant gap between their employment rate and the rest of the population. For example, the World Bank found that Roma employment rates (especially for women) fall well behind those of the non-Roma majority.<sup>208</sup> This together with the findings of this research indicate that the EU Framework target for ‘cutting the employment gap between Roma and the rest of the population’<sup>209</sup> will require substantial efforts from EU Member States, including Ireland. It is clear from these findings however that access to employment for Roma requires access to education and resources as well as tackling structural discrimination in employment agencies and bodies and lack of understanding and awareness amongst employers and the Roma community itself. An integrated, multi-agency strategy is necessary to break the cycle of social exclusion and marginalisation of this community.

### 4.2.2 ACCESS TO SOCIAL PROTECTION

From an overall view of the 33 case files we initially reviewed for this report, there were 18 applications for social protection. In the context of the Roma this is the single greatest issue presenting in Nasc legal clinics. 2 of the social protection applications were for Supplementary Welfare Allowance<sup>210</sup> (SWA), 5 were for disability allowance, 1 for Carers Allowance, 6 for Job Seekers Allowance<sup>211</sup>, 3 for Child Benefit and 1 for Social Housing. Additionally 4 clients submitted applications for an Emergency Needs Payment, a payment in place to assist applicants when they are in crisis and need a payment urgently.<sup>212</sup> All cases



Applications for Social Assistance Schemes

considered were deemed to have an underlying entitlement to the benefit claimed.

In the course of the research two persistent structural barriers were identified:

1) *the habitual residence requirement*

2) *the availability to work requirement*

The report *Person or Number?* co-authored by Nasc, Crosscare Migrant Project and Doras Luimní revealed that migrants in general are experiencing a number of barriers in accessing social protection. These include: poor information provision, verbal abuse, processing delays and lack of knowledge about the rights and entitlements of migrants to accessing social protection.<sup>213</sup>

We have found that the situation is amplified for the Roma. A number of barriers have been identified in the research here; a lack of knowledge about the complexities of Romanian and Bulgarian nationals' rights and entitlements amongst counter staff and deciding officers, significant delays in the processing of applications, obstruction in the processing of applications, a marked resistance to grant a payment to the Roma, misapplication of the Habitual Residence Condition (HRC, verbal abuse and discriminatory behaviour and excessive requests for additional and unnecessary documentation.

For example, one comment from a focus group was:

*They ask us to come indefinitely and at the end they tell us we are not entitled to allowance.*

(Focus group comment)

At times, Roma clients were subject to racist comments from counter staff in a Social Welfare Office. When describing his interaction with front line staff, one man in the focus group commented:

*Yes. I was told to go to my country to apply for your own payments.*

(Focus group comment).

### Habitual Residence Condition

Through our client work, we have found that the HRC is often the first point of refusal for Roma across all applications for social protection payments.

To qualify for a social welfare payment in the State a member of the Roma community, as with all EU migrants, must be deemed to be habitually resident in

the State. The HRC was initially introduced by the government in the context of EU enlargement and the accession of new Member States in 2004<sup>214</sup> to prevent what was commonly termed ‘welfare tourism’.<sup>215</sup> In order to be deemed habitually resident, the applicant has to fulfil the following five criteria:

- a) the length and continuity of residence in the State or in any other particular country;
- b) the length and purpose of any absence from the State;
- c) the nature and pattern of the person’s employment;
- d) the person’s main centre of interest; and
- e) the future intentions of the person concerned as they appear from all the circumstances.<sup>216</sup>

The habitual residence condition is unlike other qualifying criteria for social protection in that its core element is the level of connection to Ireland (‘centre of interest’). This is less amenable to accurate and objective measurement than other qualifying criteria such as income, age family status or illness.<sup>217</sup> Application of the test is a complex process that must be carried out by looking in the context of all the facts of the case; even then it is still open to the varying opinion of deciding officers.

The habitual residence requirement is strongly linked to access to employment, the barriers to which have been discussed above. The misapplication of these conditions, as well as a lack of knowledge about the variations on residency rights for Romanians and Bulgarians, creates significant barriers for Roma seeking to access payments. It is our view that the habitual residence condition is used in a deliberate manner as a means to deny the Roma benefits to which they are entitled. This contention is supported by the fact that the majority of applications are granted upon appeal. The use of the rule in this manner for this vulnerable community results only in perpetuating poverty, deprivation and social exclusion.

The following 2 case studies below (Case Study 2 and Case Study 3) highlight how misapplication of the Habitual Residence Requirement can impact upon an individual and their family members.

All 12 clients highlighted in the case studies in this report were initially refused access to social protection on the basis that they did not meet the habitual residence requirements. From these, only one case remains pending, while the other 11 were all found to be habitually resident on appeal.<sup>218</sup> These clients had significantly different immigration statuses, backgrounds, periods of residence in the State, family circumstances and employment histories but all experienced a strikingly similar process of refusal at first instance then a grant of the benefit on appeal. All incurred significant delays leading to further complications and extreme deprivation and hardship for

<sup>208</sup> World Bank, *Roma Inclusion: An Economic Opportunity for Bulgaria, the Czech Republic, Romania and Serbia* (2010).

<sup>209</sup> EU Framework for National Roma Integration Strategies, available at: [http://ec.europa.eu/justice/policies/discrimination/docs/com\\_2011\\_173\\_en.pdf](http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf)

<sup>210</sup> The Supplementary Welfare Allowance scheme and its related supplements were previously administered by the Health Service Executive. From 1 October 2011, this function has transferred to the Department of Social Protection. Community Welfare Officers who administered the payment are now employees of the Department of Social Protection and are referred to as the Department’s representatives.

<sup>211</sup> Section 141 of the Social Welfare (Consolidation) Act 2005.

<sup>212</sup> Eligibility for an Exceptional Needs Payment is at the discretion of the Community Welfare Officer. You may be eligible for an Exceptional Needs Payment if: You are living in the State / You satisfy a means test / You have applied for any other benefit or allowance you may be entitled to / You have registered to work with FÁS (if you are of working age).

<sup>213</sup> Crosscare, Doras Luimní and Nasc, *Person or Number? Issues Faced by Immigrants Accessing Social Protection* (2012), available at: [content/uploads/2012/05/Person%20or%20Number%20report%20Feb%202011.pdf](http://content/uploads/2012/05/Person%20or%20Number%20report%20Feb%202011.pdf) (date accessed 13 May 2013).

<sup>214</sup> ANNEX VII Act of Accession: Transitional measures, Romania - particular relevance outlines the transitional provision which temporarily limits Directive 2004/38/EC (the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States).

<sup>215</sup> See s.246 of the Social Welfare Consolidation Act 2005. S.30 & s. 30 of the Social Welfare and Pensions Act 2007.

<sup>216</sup> This inserted an additional subsection into s. 246 of the Social Welfare Consolidation Act 2005.

<sup>217</sup> Crosscare, Doras Luimní, Nasc, *Person or Number?* (2011), p. 20.

<sup>218</sup> From these 11 cases all applicants were, at some point in the application process, refused on the basis they were not deemed to be habitually resident in the State. Initial decisions by Deciding Officers to refuse the client on the basis of habitual residence were then appealed to the Social Welfare Appeals Office. In order to appeal a decision, it is necessary to get a written refusal from the decision-maker which he or she is obliged to provide under Article 191 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 [S.I. No. 142 of 2007]. The written refusal has to set out the reasons for the refusal. An appellant must then submit an appeal form and indicate on this form whether he/she wishes to attend an oral hearing regarding the case. In the absence of an oral hearing the decision will be based solely on the written evidence provided to the Chief Appeals Officer.



## Chapter 4: Roma in Ireland – Findings and Discussion

### CASE STUDY 2

#### APPLICATION FOR CARERS ALLOWANCE

Rachel entered the State in 1998 and submitted an asylum application. When Rachel presented at Nasc in 2011, she was not aware of the status of this application. Nasc contacted the solicitor who had represented Rachel on her asylum claim and was informed that the application had remained pending until 2007 when Romania acceded to the European Union and was now moot.

Rachel was in receipt of Carers Allowance for her two disabled children, from 1999 to 2011. In June 2011 Rachel's Carers Allowance payment ceased as she was deemed not to meet the habitual residence requirements. Rachel submitted an appeal in July 2011.

Nasc lodged an appeal on her behalf and also requested a review of the decision from the local social welfare office. Nasc queried the decision in light of the Guidelines for Deciding Officers on the determination of Habitual Residence available from the Department of Social Welfare. These guidelines outline the departmental policy on consistency of decision making, which states if a person has been found to satisfy the habitual residence condition then that decision will stand unless it is clear that it was an incorrect decision in light of new evidence or that there has been a significant change of circumstances since it was given.

Nasc argued Rachel was considered habitually resident at the commencement of her payment for Carers Allowance and that in order to receive the payment at first instance the deciding officer would have found Rachel compliant with the habitual residence requirement. Therefore, as there was no indication that the claim was awarded in error there was, in our view, no basis in law for the review of a claim on the grounds of habitual residence without the occurrence of a change of circumstances.

The appeal was successful and Rachel's Carers Allowance was subsequently reinstated in August 2012. The delay of the application amounted to 13 months. This delay placed Rachel and her five children (2 of whom are disabled) in severe poverty.

individuals and their families. In all of the successful 11 cases, while the decision to refuse habitual residence was successfully appealed, the application for social assistance schemes were subsequently refused again for other reasons including: lack of documentation, not satisfying the availability to work requirement (the non-provision of an employment permit), and insufficient evidence of genuinely seeking employment, requiring a second appeal and oral hearing. In all of the cases reviewed the decision was eventually overturned.

The fact that all 11 of these cases were eventually overturned on appeal points to the existence of structural discrimination against the Roma within the Department of Social Protection. It is our contention that a misunderstanding or misapplication of the habitual residence condition alone does not provide a satisfactory explanation for the refusal of an essential payment. This becomes apparent when fresh reasons to refuse were used once applicants were deemed to be habitually resident in the state. What emerges here is a marked reluctance by Department of Social

Protection staff to grant the Roma a benefit payment to which they are clearly entitled.<sup>219</sup> Behind every refusal and delay sits a family that are experiencing deprivation and poverty. It is notable that following consultation with St. Vincent de Paul in Cork, Nasc was informed that approximately 35 Roma families are being assisted by them. This support often provides the only form of financial assistance available to members of the Roma community during this long and arduous process.

### Availability for Work

In order to qualify for Job Seekers Allowance, a claimant must be deemed 'to be available for employment. To prove availability, a person must provide proof of work readiness and work preparedness; they must also show evidence that they have looked for work. If a person is studying they are deemed to be unavailable for work. The criteria for assessing availability for work is defined as follows: a person will not be regarded as being available for

### CASE STUDY 3

#### REPEATED REFUSAL OF APPLICATION

Tom entered the State in 1998 and applied for asylum upon entry. He was granted permission to remain in the State on the basis of his parentage of an Irish citizen child.

Tom had made repeated applications for Supplementary Welfare Allowance in 2010 and 2011; all were refused because Tom was not considered to be habitually resident in the State. In January 2012 he attended Nasc and sought assistance. He explained that he had submitted an application for Supplementary Welfare Allowance repeatedly and had been refused. Following consideration of his case, Nasc found Tom met the habitual residence requirements and began advocating on his behalf.

Nasc submitted an appeal of the Supplementary Welfare Allowance refusal in February 2012 outlining why Tom met the habitual residence requirements. In July 2012 Tom was deemed to be habitually resident. However he did not receive any payment. Instead in September 2012 he was informed that his application had been refused again as he had no long term employment record in the state. This was the first time that his application had been refused on this ground. Nasc submitted an appeal which included medical documentation demonstrating that during the period in question Tom was unable to work due to illness. This appeal was disallowed on the same grounds. The appeal went to oral hearing stage in April 2013. Nasc represented Tom at the oral hearing and outlined Tom's medical condition, job seeking efforts and habitual residence in the State. Tom was informed that the appeal was successful in May 2013 and payment commenced.

It is apparent that the refusals of Supplementary Welfare Allowance from 2010 to July 2012 were in error, as Tom was subsequently deemed to be habitually resident. The further refusal of Tom's appeal relating to his period of unemployment extended the delay by 8 months. It is also noteworthy that no new information was provided at oral appeal stage. The documentation that was previously submitted was accepted and considered sufficient to determine Tom's compliance with all requirements necessary to receive Supplementary Welfare Allowance in the State.

As a result of the delays, Tom had been homeless for a period of two years. He now attends an English language course and is actively seeking employment.

employment if he or she imposes unreasonable restrictions on (a) the nature of the employment, (b) the hours of work, (c) the rate of remuneration, (d) the duration of the employment, (e) the location of the employment, or (f) other conditions of employment that he or she is prepared to accept.<sup>220</sup>

In the 11 cases cited that were initially refused on the basis of habitual residence, payment was refused in 6 of the cases that had been successfully appealed. The reason given for the second refusal was the 'availability to work' criteria.

The availability to work requirement is interpreted by the Department as requiring all applicants to hold or have held a work permit in the previous twelve months. This clearly falls outside the Department's own definition of availability for work as stated above. This places the Roma in a 'catch 22' situation. A work permit is only granted if the applicant has found work; if the applicant has found work he/she is no longer

available for work and is therefore not entitled to a benefit. Work permits are tied to specific employers and are not transferrable. If a Roma applicant held a work permit in the past, this is not evidence of his availability for work – it is merely evidence that he was previously employed. This application of the criteria is clearly incorrect and it would seem to be *ultra vires* of the Department's own assessment criteria. 5 of the 6 cases in the study never required a work permit because of the nature of their residency rights but were still required by the Department to produce one. In all 5 cases the decision was overturned on further appeal.

The following case study (Case Study 4) demonstrates the impact that this can have on children from the Roma community. It additionally illustrates the complexities that can arise as a result of their changed status in Ireland and the lack of understanding by authorities.

<sup>219</sup> FLAC The Position of EU Jobseekers in the Republic of Ireland In 2011, according to the Minister for Social Protection: (79%) Jobseekers Allowance refusals related to non-Irish EU nationals disallowed on the basis of the HRC.

<sup>220</sup> A claimant must be deemed 'available for employment' under Art. 15 of the Social Welfare (Consolidated Claims, Payments & Control) Regulations, 2007.

## Chapter 4: Roma in Ireland – Findings and Discussion

### CASE STUDY 4

#### AVAILABILITY TO WORK

Ray, a Romanian national, had resided in the State since 2006 and was deemed habitually resident. In September 2011, Ray submitted an application for Supplementary Welfare Allowance while his application for Job Seekers Allowance was being processed. Ray's application was refused on the grounds that he was neither available for work nor genuinely seeking work.

In response, Nasc submitted extensive evidence of Ray's efforts to seek work and requested information regarding how Ray could satisfy the availability to work requirements as he met all the requirements of the definition set out in Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007.

The Department of Social Protection stated that to be available for employment Ray must be in possession of a work permit (as is required by law) to enable him to engage in lawful employment in the State and therefore be available for employment.

### Delays in appeals

The Department of Social Protection has its own complaints process.<sup>221</sup> Appeals about decisions in relation to social welfare can be directed to the Social Welfare Appeals Office. If the outcome from the Department's complaints process or the Social Welfare appeals process is not acceptable, a person can lodge a complaint with the Office of the Ombudsman who can investigate 'maladministration' as defined in the Ombudsman Act 1980. This includes an action that was or might have been 'improperly discriminatory'.

In October 2012, FLAC launched a report that recommends comprehensive reform of Ireland's system of processing appeals on refusals of social welfare applications.<sup>222</sup> Entitled *Not Fair Enough*, the report is a legal analysis of how the appeals system meets basic human rights standards on issues like fairness, transparency and access to justice. This report acknowledges that the appeals process is a 'labyrinth of mechanisms that is sometimes confusing and hard to navigate' and calls for support for appellants in terms of both information and representation. In addition the current delays in the appeal system are identified as a persistent problem. The report draws attention to the lack of time limits and the increase in the volume of decisions.<sup>223</sup> The report calls for significant steps to reduce the current delays in the appeals process.

In view of the acknowledged difficulties in the appeals system and the complex application process, the recurring refusals of applications and subsequent entrance into the appeals system is a daunting process

for a community with acknowledged low literacy levels and language barriers.

### Documentation

It is accepted that many Roma may not have the standard documentation required by the Department of Social Protection. This is often the case with marginalised groups. For example, few Roma have bank accounts, rental agreements or utility bills, which are standard requirements as evidence of residency, income and means. This is because the Roma tend to live as part of large extended families within the same area and often move from family to family, which is in keeping with their cultural norms and traditions.

When interacting with state authorities such as the Department of Social Protection they are interacting with a body whose rules and regulations are governed by Irish and Western European cultural norms and traditions and it is here that two cultures collide. This causes difficulty for the Department as the community cannot conform and hardship for the community because of its inability to conform. Our research would indicate that there seems to be very little flexibility or understanding of this, resulting in as a culture of disbelief and a presumption that the Roma are 'hiding' or not declaring income for the purposes of an application for a state benefit. The perception of the Roma as criminals, thieves and beggars serves to dehumanise the community, as they are viewed as undeserving of assistance. This attitude manifests itself in the repeated refusal of payment on a number of

## CASE STUDY 5

### REQUEST FOR DOCUMENTATION/OBSTRUCTION

David has secure and sustainable residency in Ireland granted on the basis of his parentage of an Irish citizen child, James. James is disabled; he has limited mobility and requires constant medical attention. Following a breakdown of his marriage, David moved with his son from Athlone to Cork in December 2011. David had not secured accommodation in Cork and he lived with family members and friends.

David submitted an application for Supplementary Welfare Allowance (SWA) in December 2011. The SWA application was refused on the basis that David had not provided evidence that he had obtained a work permit in the State. As a parent of an Irish citizen child, David was not required to hold a work permit to engage in employment. Additionally, a work permit is not proof of residence, merely proof that the holder is eligible to work for the named employer.

Nasc appealed this decision on that basis and provided the requisite supporting evidence. In May 2012, the Department of Social Protection accepted Nasc's argument but required further evidence that James was in fact Irish. James' original Irish passport was not deemed sufficient and they requested a 'Letter from the Department of Justice and Law Reform confirming the Irish citizenship of the Irish child'. James' Irish citizenship derived from his birth in the state in accordance with the citizenship laws at that time. A letter of this nature is never provided upon the birth of an Irish citizen in the state.

In late June 2012 the Department of Social Protection requested the details of David's work efforts from February 2012. These documents were provided within the time allotted. In July the HSE became concerned about David's ability to adequately support his child financially as David was now homeless and sleeping rough. James was being cared for by his sister who was living on limited means. Nasc met with the social workers concerned and explained that there was a delay in David's application for SWA. We assured the HSE that we were confident that David would eventually receive a payment and they agreed not to move to place James in state care.

At this time David was forced to beg in the streets to support his son. This was his only source of income. The Community Welfare Office was informed of the urgency of David's situation and the risk that James would be taken into care at a substantial cost to the state. The Office responded with a request for further information, which included his sister's PPS number as he had resided with her for a short period upon his arrival in Cork, as well as further bank statements. Finally they sought evidence of David's income and whereabouts for the past two years. All requested documentation was provided. Finally payment was granted in September 2012, nine months after the initial application was lodged. David now lives with his son James, in the home of a family member. James is attending school and doing very well. David is currently seeking employment and access to a FÁS course.

grounds; if one ground fails, than another one is used, followed by repeated requests for unnecessary and excessive documentation and information. It is only through the persistence and expertise of advocates and NGOs working with the community that a payment is finally granted. Without the support of NGOs many of the Roma would be destined to eke out a living on the margins of society. The case study above clearly demonstrates the excessive requests for documentation and the hardship it causes.

It is important to note that in 11 of the case files highlighted in this study, Roma clients after an appeal had been made, shown to be habitually resident in the State and eligible to claim social protection. In view of this, the lengthy delays and unnecessary documentation requests exemplify the structural discrimination Nasc wishes to bring to light. In addition to causing hardship and deprivation for families, these types of persistent difficulties accessing State services result in a mistrust of the system and ultimately act as a barrier to integration of the Roma community.

<sup>221</sup> See: <http://www.welfare.ie/EN/Publications/SW104/Pages/CommentsorComplaints.aspx>

<sup>222</sup> FLAC, Not Fair Enough: Making the case for reform of the social welfare appeals system (2012).

<sup>223</sup> In 2011 the average decision took 32.5 weeks.



## Chapter 4: Roma in Ireland – Findings and Discussion

### 4.2.3 ACCESS TO HOUSING

While the EU ‘Decade of Roma Inclusion’ (2005–2015) and the National Roma/Traveller Strategy in Ireland (discussed in Chapters Two and Three) have both established housing as a key priority area, there are currently no estimates concerning access to housing for the Roma in Ireland.<sup>224</sup> It is therefore difficult to put access to housing in context on a national or local scale. However, it is known that housing and settlement are issues of particular significance for Roma at an EU-wide level. A large proportion of Roma in Europe have been identified as living in colonies or settlements, that is, isolated habitats characterized by severely inadequate conditions.<sup>225</sup> Poor housing conditions include inadequate access to public utilities such as water, electricity or gas and non-sedentary Roma often have difficulty finding sites with access to water.<sup>226</sup> This has a negative impact on their health and overall integration in society.

The right to adequate housing has been summarized by a wide variety of international bodies, including; the United Nations Organisation, for the Security and Cooperation in Europe, Council of Europe, European Union and Racial Equality Directive regulatory provisions, within the context of recognition and preservation of certain economic, social and cultural rights.<sup>227</sup> The European Committee of Social Rights<sup>228</sup> has also amassed a substantial body of existing jurisprudence on housing rights<sup>229</sup> and Roma Rights.<sup>230</sup>

In course of our client work with the Roma we have found that Roma experience barriers in accessing housing. This is reflected in the questionnaire results which show that an overwhelming majority of the Roma in Cork either live in rented accommodation or with family. 65% of respondents at present live in private rented accommodation while the remaining 35% are living with family. One is currently homeless. None of the respondents in this study have been offered social housing in the State.

As stated above, the Roma tend to live as part of a large extended family and remain in the family home after marriage. In Cork, the majority of the Roma community live together in one housing estate, often in cramped and overcrowded conditions. All residents in this estate are in private rented accommodation. The estate is in a socially deprived area of the city which makes the Roma and the local community

uneasy bedfellows. Either by accident or design the Roma community are segregated and concentrated in one small area. The findings from the focus groups indicated that individual racism, structural discrimination in accessing social housing and risk of homelessness were the greatest areas of concern for the Roma.

Many of the Roma who participated in this research expressed difficulties when trying to rent private accommodation; experiencing discrimination and racism from landlords. For example one person commented in the focus groups:

*We have similar experience when we want to get a house to live in, when the landlord finds out that we are Romanian, he won't give us the house.*

(Focus Group comment)

When asked in the questionnaire if they had ever been homeless since arriving in Ireland 45% (N=9) confirmed that they had; 1 was currently homeless. This percentage rose to 50% when we look only at the female respondent's results (N=6 out of 12 of female respondents). This is an alarming figure and one that is of great concern to Nasc. Lack of access to any kind of income, either from employment or social protection, has been a major contributing factor to homelessness amongst the Roma.

### Access to Social Housing and Rent Supplement

As noted above, none of Nasc's Roma clients are currently residing in social housing. In Ireland, the policy governing assessment for social housing are contained in the Social Housing Assessment regulations.<sup>231</sup> It sets out that in general, EEA citizens who are resident in Ireland longer than three months and are working (i.e. are in line with the EU Directive on Free Movement) are eligible to apply for social housing and are entitled to housing support.

Until 2012, in order to be eligible for social housing and listed as a qualified household,<sup>232</sup> Romanian and Bulgarian nationals were required to provide evidence that they had obtained an employment permit and engaged in work in the State for a period of twelve months. If they could not provide an employment permit, they were required to supply documentation to demonstrate that they had obtained residency permission in the State before accession in 2007. This

## CASE STUDY 6

### HOUSING

Roger entered the State in 1998 and submitted an application for asylum. He was granted permission to remain in the State based on his parentage of an Irish citizen child. Subsequently, Roger applied for social housing to Cork City Council in March 2002 for himself and his family. However, he did not receive a letter confirming the completion of the assessment and his eligibility for social housing until November 2010.

made access to social housing virtually impossible for many Roma; as asylum seekers, Roma would have only secured residency once they had been granted refugee status. The difficulties experienced by Roma asylum seekers in relation to this documentation have been outlined in the introductory chapter of this report and these continue to have a knock-on impact on the ability of Roma to access social housing. As many Roma were unable to meet these requirements, they have been debarred from entrance to the Housing List and consequently access to rent supplement. An applicant for rent supplement<sup>233</sup> must be deemed to be in need of housing following a housing needs assessment conducted by the local authority in that area.<sup>234</sup>

Our legal service at Nasc would not deal with housing list applications on a regular basis; we would primarily refer clients with housing issues to other agencies such as Threshold. However we are aware that Roma clients are experiencing a multiplicity of access issues, where difficulties accessing housing overlaps with difficulties accessing employment and social protection. While the majority of Roma clients at Nasc live in private rented accommodation, many have difficulties in accessing rent allowance. Following the pattern of access to other social welfare schemes, our Roma clients experience significant delays, unreasonable requests for documentation and other

forms of obstruction to their applications for rent allowance.

The above case study (Case Study 6) demonstrates the delays experienced in admission to the Housing List.

### Homelessness within the Roma community

It was apparent from the questionnaires and interviews that the risk of homelessness is very real among the community, in particular for Roma women. Many Roma informed us of experiencing intermittent homelessness, where they live for a period of time with family members and then are homeless for a period of time. The vulnerable individual can only remain in the residence for a short time because their staying negatively impacts the family providing refuge. It can lead to overcrowding. Additionally if the person providing the assistance is in receipt of the social assistance payment, they will be asked by the Department of Social Protection to account for the additional resident in their home. Therefore a pattern has emerged of Roma experiencing homelessness for short periods of time throughout their residence in the State. In the questionnaires this type of homelessness was identified when participants were asked if they had ever been homeless in Ireland:

<sup>224</sup> Pavee Point, *The Roma Community in Ireland* (2009), Available from: [http://www.paveepoint.ie/progs\\_roma.html](http://www.paveepoint.ie/progs_roma.html) (date accessed: 11 May 2013).

<sup>225</sup> European Commission *The Situation of Roma in an Enlarged European Union*, European Commission Directorate General for Employment and Social Affairs, Brussels (2004) <http://www.errc.org/cms/upload/media/00/E0/m000000E0.pdf>

<sup>226</sup> Fundamental Rights Agency, *Housing conditions of Roma and Travellers in the European Union*, Comparative Report, 2009.

<sup>227</sup> Marie-Claire Van Hout & Teresa Staniewicz, "Roma and Irish Traveller housing and health – a public health concern", *Critical Public Health*, (2012) 22:2, 193-207.

<sup>228</sup> The mission of the European Committee of Social Rights (ECSR) is to judge that States party are in conformity in law and in practice with the provisions of the European Social Charter.

<sup>229</sup> See, for example, Complaint No 52/2008, *COHRE v Croatia* 22 June 2010; Complaint No 49/ 2008, *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v Greece* 11 December 2010; Complaint No 39/2006, *European Federation of National Organisations Working with the Homeless (FEANTSA) v France* 5 December 2008, 17 IHRR 866 (2010); Complaint No 31/2005 *Europa Roma Rights Center (ERRC) v Bulgaria* 18 October 2006; 15 HRR 895 (2008); Complaint No 27/2004, *ERRC v Italy* 7 December 2005, 14 IHRR 239 (2007); Complaint No 53/2008, *FEANTSA v Slovenia* 8 September 2009; and Complaint No 15/2003, *ERRC v Greece* 8 December 2005, 13 IHRR 895 (2006).

<sup>230</sup> See, for example, *INTERIGHTS v Greece*, *ibid.*; *ERRC v Bulgaria*, *ibid.*; *FEANTSA v Slovenia*, *ibid.*; *ERRC v Greece*, *ibid.*; and Complaint No 48/2008, *ERRC v Bulgaria* 31 March 2009. Romania, Slovakia, Hungary and the Czech Republic. Equality and Human Rights Commission, *Inequalities Experienced by Gypsy and Traveller Communities: A review*, 2009.

<sup>231</sup> S.I. No. 84/2011 – Social Housing Assessment Regulations 2011.

<sup>232</sup> Local authorities are the main providers of social housing or 'housing authorities'. In order to qualify, you must be eligible for social housing. The housing authority will assess your eligibility first and will only assess whether you need social housing after it has deemed you to be eligible. If you are accepted by the housing authority as being eligible for and in need of housing, you are then placed on its waiting list, now known as a 'record of qualified households', and the housing authority will also notify any other housing authority in whose functional area you have specified an area of choice.

<sup>233</sup> Rent Supplement is paid to people living in private rented accommodation who cannot provide for the cost of their accommodation from their own resources.

<sup>234</sup> Without the completion of a housing needs assessment by the local authority and the subsequent admission to the housing list this payment will not be issued.

## Chapter 4: Roma in Ireland – Findings and Discussion

*I live occasionally with family but I've been homeless at different times since coming to Ireland.*

(Questionnaire comment)

*Yes with my child who is very young. We were two weeks on the street, then we stayed in different family houses.*

(Questionnaire comment)

From the case files examined, it is evident that queries in relation to housing appear to affect the majority of our Roma clients and that most were refused social housing as they had been deemed not to be habitually resident. However, we found that once the client was considered habitually resident (after successful appeal) and, more importantly, following the removal of the employment permit restriction in 2012, admission to the housing list has been achievable.<sup>235</sup>

### 4.2.4 ACCESS TO HEALTHCARE

Although our legal service would not deal directly with issues around health and access to healthcare, in the course of our work with the Roma we would be acutely aware of discriminatory factors in relation to health as they overlap with other barriers, Roma experience in accessing goods and services, especially in relation to social protection.

In Ireland, Roma are an at-risk group in terms of health. They have a higher infant mortality rate, lower life expectancy and a higher rate of diseases.<sup>236</sup> A lack of access to health services compounds this problem. For example, the questionnaires conducted as part of this study revealed that most respondents had initially been refused a medical card following their application. Anyone who is ordinarily resident in Ireland can apply for a Medical Card or GP Visit Card.<sup>237</sup> Therefore you do not have to be habitually resident in the State in order to qualify. However, many of our Roma clients were initially refused their medical card entitlement on that very basis. The other primary reason for being refused a medical card according to participants in the questionnaire was lack of documentation, which is addressed above.

This was reflected in focus group discussions:

Interviewer: *Have you applied for a medical card?*

Answer: *Yes I did. From the beginning it was hard. But after some many years, even for Child Benefit,*

*we were refused a lot of times.*

(Focus group comment)

A recent presentation by the Tallaght Roma Integration Project (TRIP) also highlights difficulties for Roma in accessing healthcare due to varying interpretations of the HRC between the Department of Social Protection and the HSE.<sup>238</sup> This was identified as a barrier to accessing payments including Child Benefit for Roma who entered the State both pre and post accession of Romania. It is worth noting that there is no mention of the difficulties faced by Roma regarding the habitual residence condition in the National Irish Strategy for Roma and Travellers.

Situations such as these can often lead to crisis for families and the overall health of the community. The poverty in which families find themselves as a consequence of misapplication of the HRC leads to concerns for children by social workers.<sup>239</sup> In the recent Pavee Point report<sup>240</sup> on Roma communities and child protection, which was carried out in consultation with HSE professionals working with Roma families, they revealed that 'if it wasn't for the poverty, there wouldn't be a child protection issue at all'.<sup>241</sup>

Higher health risks for the Roma community are also reflected on an EU level. For example, life expectancy at birth for Roma people is estimated to be 10 years less than for the general population.<sup>242</sup> Additionally, a United Nations Development Programme report on five countries noted that Roma child mortality rates are 2 to 6 times higher than for those of the general population. These increased health risks have been linked to the poorer living conditions of many Roma, a lack of targeted health information and limited access to quality healthcare. In the Fundamental Rights Agency survey,<sup>243</sup> discrimination by healthcare personnel also emerged as a particular problem for the Roma.<sup>244</sup>

Roma women are a particularly at risk group in terms of health. Nasc has been contacted on several occasions by social workers assigned to Cork University Maternity Hospital regarding Roma women who were abandoned. The social workers were unclear how to provide support for these women and contacted Nasc for legal advice pertaining to any social assistance available to them. As a result of these queries, Nasc has identified Roma women as a particularly vulnerable group.

The HSE launched a National Intercultural Health Strategy in 2008 to develop strategies in terms of providing healthcare to people from diverse cultural backgrounds. The pillars of this strategy focus on: improving access to services, supporting staff in delivering inter-culturally competent services and improving data and information to ensure services are provided according to evidenced-based planning. The HSE also has a Roma Outreach Worker, whose role it is to facilitate the Roma community's access to health services.<sup>245</sup> These strategies must be effectively implemented, along with tackling the discrimination Roma are experiencing in accessing medical cards, in order for the Roma community to access better health in Ireland.

#### 4.2.5 ACCESS TO EDUCATION

The findings from the questionnaires, focus groups and semi-structured interviews conducted in this study suggest an overall satisfaction with the access to education available to Roma in Ireland. It is important to note that Roma children experience significantly less discrimination accessing education in Ireland than in its European counterparts. One man from the focus groups emphasises this:

*What's good is good. I am happy with that, education is free.*

(Focus group comment)

In a European context however, surveys suggest that in some Member States only a limited number of Roma children have completed primary school.<sup>246</sup> Roma children also tend to be over-represented in special education and segregated schools. The European Commission's Communication on Early Childhood Education and Care<sup>247</sup> reflects this, highlighting that participation rates of Roma children are significantly lower, although their needs for support are greater. Increased access to high quality non-segregated early childhood education can play a key role in overcoming the educational disadvantage faced by Roma children.

All children resident in Ireland are entitled to pre-school, primary and post-primary education. They are required to attend from ages 6-16. The Intercultural Education Strategy, published by the Department of Education in 2010, was designed to put into practice the commitment to respect for diversity enshrined in the Education Act, 1998, and promote inclusion and integration in education.<sup>248</sup>

It has been two years since the Department of Justice Minister for Education and Skills made a commitment to ensuring equality of educational opportunity 'through inclusive, transparent and fair enrolment policies and practices in our schools'.<sup>249</sup> At this time the Department of Education published a discussion document on school enrolment policies. It outlined proposals to make the school entry system fairer to all, proposals including the outlawing of the practice of giving priority to the children of past pupils or staff.

<sup>235</sup> The Government's decision of 17 July 2012 to cease restrictions on labour market access in respect of Bulgarian and Romanian nationals has brought about a change in the assessment for social housing support. Consequently they are now considered in line with all other EEA nationals.

<sup>236</sup> Pavee Point and Health Service Executive (HSE) Roma Communities in Ireland and Child Protection Considerations (2012)

<sup>237</sup> Ordinarily resident for the purposes of obtaining a medical card is stated as having been living for at least one year in the State or intending to live here for at least one year in the medical card application form.

<sup>238</sup> Deirdre Jacob, Tallaght Roma Integration Project Presentation (2013), available at: [www.iasw.ie/attachments/a634dd7f-0a37-463b-8de6-2d523406f98f.PPT](http://www.iasw.ie/attachments/a634dd7f-0a37-463b-8de6-2d523406f98f.PPT)

<sup>239</sup> Murray, C. A "Minority within a minority, Social Justice for Traveller and Roma Children," *European Journal of Education*, Vol. 47, No. 4, 2012.

<sup>240</sup> Pavee Point and Health Service Executive (HSE) Roma Communities in Ireland and Child Protection Considerations (2012).

<sup>241</sup> Pavee Point and Health Service Executive (HSE) Roma Communities in Ireland and Child Protection Considerations (2012), p.21.

<sup>242</sup> COM(2009) 567, *Solidarity in Health: Reducing Health Inequalities in the EU*. See also Fundación Secretariado Gitano, op cit. and Sepkowitz K, "Health of the World's Roma population" (2006), based on the situation in the Czech Republic, Ireland, Slovakia and Bulgaria.

<sup>243</sup> 17% indicated they had experienced discrimination in this area in the previous 12 months.

<sup>244</sup> Fundamental Rights Agency, *Housing conditions of Roma and Travellers in the European Union*, Comparative Report, 2009.

<sup>245</sup> HSE, *National Intercultural Health Strategy* (2008); available: <http://www.hse.ie/eng/services/Publications/services/SocialInclusion/InterculturalGuide/Roma/profile.htm>

<sup>246</sup> Open Society Institute, *International Comparative Data Set on Roma Education, 2008*. Data on primary education is available for 6 Member States: Bulgaria, Hungary, Latvia, Lithuania, Romania, and Slovakia. 42% is the weighted average for these Member States.

<sup>247</sup> European Commission's Communication on Early Childhood Education and Care, COM(2011) 66.

<sup>248</sup> *National Strategy*, p. 7.

<sup>249</sup> Department of Education and Skills, "Discussion Paper on a Regulatory Framework for School Enrolment" (2011), available at: [http://www.education.ie/en/Parents/Information/School-Enrolment/sp\\_enrolment\\_discussion\\_paper.pdf](http://www.education.ie/en/Parents/Information/School-Enrolment/sp_enrolment_discussion_paper.pdf) (date accessed: 11 May 2013).



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Although concerned by the delay, Nasc welcomes this commitment as it further strengthens the Constitutional provision in place relating to education.<sup>250</sup> Individual school admission policies are governed by the Education Act 1998<sup>251</sup> which outlines that at a minimum, the school admission policies cannot be such as to effectively deny a child his or her right to education as to do so would be a breach of that child's constitutional rights. Therefore Nasc also welcomes the commitment by the Education Minister Ruairi Quinn to introduce a new system which he says will ensure the way applications are decided on is more structured, fair and transparent.

It has become evident through our client work that for Roma adults, accessing further education is a more complex process. All adult Roma who are EEA citizens are entitled to further education, such as VEC and FÁS courses, in the same way as Irish citizens if they are in receipt of a social welfare payment. These schemes again are dependent upon the HRC as discussed above. We have found that Roma adults have great difficulty accessing VEC and FÁS courses on a fairly regular basis.

We have several members of the Roma community attending FETAC courses in Nasc, and we find that there is a real hunger amongst adult Roma for education and training. In our experience, they are very supporting and encouraging their children to

attend and remain in school. Education is key for breaking the cycle of poverty and exclusion for the next generation of Roma, many of whom are Irish.

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### 4.3 POLICING THE ROMA

Chapter Two identified a link between the discrimination the Roma have experienced throughout Europe over the centuries and the stereotyping of Roma as criminals. Their existence on the fringes of society and their perceived failure to conform to the norms of that society may result in a clash that leads to discrimination and further exclusion. In the contemporary context, this link has created a perception that the Roma are threats to the public order. The Roma are widely seen as a community to be policed. As stated by the ERRC Director Mr. Desideriu Gergely in an interview conducted by Nasc:

*A change in the climate of politics has clearly put on the agenda the subject of the Roma community but in terms related to a threat to public order.*

The treatment of Roma in Europe by police, health professionals, border guards and urban planners, tend to consider Roma as 'socially unadaptable' rather than members of a marginalized and vulnerable minority.<sup>252</sup> This notion of the Roma as 'socially unadaptable' has



some resonance in the Irish context. As a visible community on the margins of society, the Roma are expected to adapt and conform to Irish societal norms, whilst facing considerable barriers in accessing employment, social protection and housing, all of which are essential elements for a community to integrate and adapt to life in the host country. The fact that the Roma engage in what can be considered socially unacceptable behaviour such as begging and petty theft, both of which are driven by poverty and deprivation, bolsters this notion of the Roma as ‘unadaptable’.

The stock response from the state is often to punish and criminalise this so called ‘problem’ community, by adopting a crime control model of criminal justice. A crime control model of justice, denotes a shift in focus from individual liberties and rights, to an emphasis on increased police and prosecutorial powers to tackle crime. This model tends to impact disproportionately upon those from lower socio-economic groups, resulting in a state policy that serves to criminalise the poor and marginalised – those whom life has already punished severely. The most obvious example of this can be seen in a state’s begging or vagrancy laws. For example, Swiss courts have ruled that ‘begging is not a right’ and that cantonal laws against it are permissible in the interests of public safety and ‘tranquillity’.<sup>253</sup>

In the Irish context, our vagrancy laws show clearly where the due process and crime control models of criminal justice come into conflict. The current legislation dealing with begging is the Criminal Justice (Public Order) Act 2011. This legislation was introduced following a decision of the High Court<sup>254</sup> in *Niall Dillon v D.P.P.*, which found that Section 3 of

the Vagrancy (Ireland) Act 1847 was too vague and lacked the precision required for an activity to be criminalised. The Court also found that the Act was incompatible with the constitutional right to free expression and communication as guaranteed by Article 40.6.<sup>255</sup> The impugned legislation was replaced with the Criminal Justice (Public Order) Act 2011. Chapter 3 looks at the debates when the Bill was going through the Dáil. It was noted in that chapter that twelve references were made to the Roma and the debate was populist and at times discriminatory in nature. In the section below we will explore how the Act is being implemented in the context of the Roma.

#### 4.3.1 THE CRIMINAL JUSTICE (PUBLIC ORDER) ACT 2011

The Criminal Justice (Public Order) Act 2011<sup>256</sup> (the Act) is the legislation in place to address begging in the State. Under the Act, begging in and of itself is not an offence and is defined under Section 1(2) as follows:

*For the purposes of this Act, a person begs if – (a) other than in accordance with a licence, permit or authorisation (howsoever described) granted by or under an enactment, he or she requests or solicits money or goods from another person or other persons.*

The Act creates a number of offences; firstly, an offence is only committed if a person engaged in begging harasses, intimidates, assaults or threatens another person or blocks the passage of people or vehicles.<sup>257</sup> Secondly, it is an offence under the Act to beg in

<sup>250</sup> Education in Ireland is dealt with in Articles 42 and 44 of the Constitution. In its report, *Religion & Education: A Human Rights Perspective* (2011), the IHRC made a number of

observations in relation to the right to education under the Constitution which may be summarised as follows: Every child in the State has a right to free publicly funded education; Under the Constitution, the State is not obliged to provide education, but it must make arrangements for the provision of same; The State must respect parental choice, but it does not have to meet that choice in every aspect, and is entitled to adopt an educational scheme or policy that is rational and reasonable.

<sup>251</sup> Education Act 1998- Section 6 of the 1998 Act outlines the objectives of the Act, namely to promote equality of access and participation in education, to promote parental choice in education, and to enhance transparency in the making of decisions. Admission practices are addressed specifically in sections 9 and 15 of the 1998 Act. These sections are largely non-prescriptive in relation to the actual content of admissions policies and allow schools significant flexibility in this regard.

<sup>252</sup> Cahn, C., *Social Control and Human Rights: A Case Study of the Roma in Europe*, International Council on Human Rights Policy (ICHRP) Working Paper (2009).

<sup>253</sup> Wallace, E. 2009. Geneva Rounds up Romanian Beggars, *Bern Hits Out at Racists*.

<sup>254</sup> *Dillon v DPP* [2007] IEHC 480.

<sup>255</sup> Constitution of Ireland - Bunreacht na hÉireann 6. 1° The State guarantees liberty for the exercise of the following rights, subject to public order and morality: i. The right of the citizens to express freely their convictions and opinions. The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State. The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law. ii. The right of the citizens to assemble peaceably and without arms. Provision may be made by law to prevent or control meetings which are determined in accordance with law to be calculated to cause a breach of the peace or to be a danger or nuisance to the general public and to prevent or control meetings in the vicinity of either House of the Oireachtas. iii. The right of the citizens to form associations and unions. Laws, however, may be enacted for the regulation and control in the public interest of the exercise of the foregoing right.

<sup>256</sup> <http://www.oireachtas.ie/documents/bills28/bills/2010/0710/b7d10.pdf>

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certain locations including an entrance to a dwelling, an ATM, vending machine or night safe.<sup>258</sup> Thirdly, it is an offence to fail to comply with a direction to stop begging and desist and leave the vicinity.<sup>259</sup> The Act confers wide discretionary powers to the Gardaí to arrest without warrant any person he/she suspects upon reasonable grounds of having committed an offence.<sup>260</sup> The implementation of the Act is primarily based upon the belief and subsequent direction of the member of An Garda Síochána. Those found to be in breach of the above sections are fined up to €500, and/or imprisonment for a term of one month.<sup>261</sup>

Due to the wide discretionary powers available to the Gardaí under the Act, coupled with the lack of clear definition of key terms such as intimidation and harassment, the Act is open to misuse and the targeting of particular individuals. The decision to arrest under the Act is subject to the view or bias of an individual Gardaí.

In the recent High Court case of *D.P.P. v. Rostas & Anor*,<sup>262</sup> the court ruled that the prosecution are obliged to produce evidence to establish a *prima facie* (at first instance) case that the begging took place without legal authorisation.<sup>263</sup> In practice, this means that it is up to the arresting Garda to provide some evidence that begging took place without a licence before a case can be established.

A number of offences provided for under the Act were already in existence prior to its enactment;<sup>264</sup> this is acknowledged by the Department of Justice Regulatory Impact Analysis of the Criminal Justice Bill<sup>265</sup> (2010). This makes it difficult to find a clear objective purpose for the legislation.

As noted by the Mercy Law Centre,<sup>266</sup> the Act is based on the assumption that there is no objective need for persons to beg given the comprehensive range of income supports available. Unfortunately as our research has highlighted above, there exists among the Roma community a need to beg to survive as many have no entitlement to state supports and those that do can encounter inordinate delays in the processing of the application.

Our research indicates that a high proportion of the Roma, in particular Roma women, come into direct conflict with the Gardaí. Without seeking to confer victim status upon the Roma, Nasc would argue that the Gardaí and the wider criminal justice system need to be aware of and consider the distinct needs and experiences of the Roma in the course of their interactions with them. The findings, as outlined below, clearly articulate the need for this approach.

### FORCED BEGGING – TRAFFICKING BILL

The Minister for Justice Alan Shatter recently announced the publication of the Criminal Law (Human Trafficking) (Amendment) Bill<sup>267</sup> which will bring Ireland's trafficking legislation into line with the 2011 EU Directive<sup>268</sup> on trafficking with the criminalisation of labour exploitation.

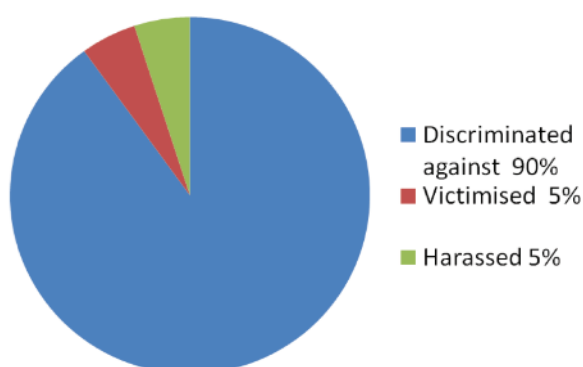
Although Nasc would welcome legislation that brings Ireland in line with other EU member states on the issue of trafficking for labour exploitation, including forced labour and forced begging, we would have some concerns about the link made to the Criminal Justice (Public Order) Act of 2011 in the use of the term 'beg'. By relying on a definition of begging that we believe unfairly targets the Roma community, legislation on forced begging could potentially have negative repercussions on this community.<sup>269</sup>

The discretionary aspects of the implementation of the Criminal Justice (Public Order) Act 2011 as detailed above, makes the defense of legitimate forms of begging difficult. Additionally, its contribution to the emerging pattern of ethnic profiling is demonstrated by the significant number of members of the Roma community who have informed Nasc that they have consistently been found to be in breach of the Act and fined, even where they believe they are begging within the provisions of the Act. Therefore the use of the definition of 'beg' stemming from this Act could be problematic and we feel requires further analysis.

### 4.3.2 GENERAL DISCRIMINATION BY THE GARDAÍ

Our research indicates that the Roma feel discriminated against, victimised and harassed in their interactions with a range of state bodies. These bodies include: Local Authorities, FÁS, Health Service Executive, Employment Agencies, and the Gardaí.

When asked if, when dealing with these organisations/bodies, they felt they had been discriminated against or harassed, the findings were as follows:



Discrimination by bodies/organisations

We then sought their views specifically on their interactions with the Gardaí. We took the decision to focus on this issue in detail as our work with the community to date indicated that the relationship between the Gardaí and the Roma is problematic.

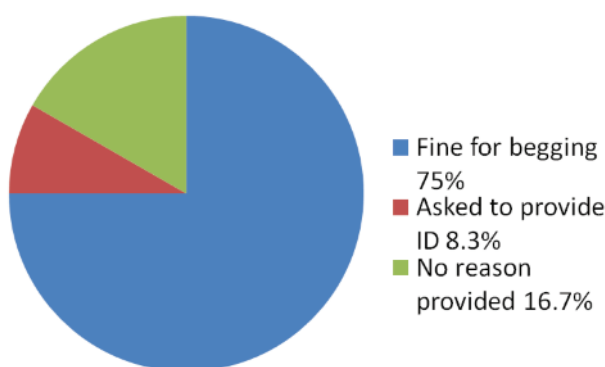
The findings in our report indicate that the majority of the Roma had come into contact with the

Gardaí. The experiences of the women differ to that of the men and both are outlined in detail below.

### Roma Women and the Gardaí

Nasc's research indicated that 91.6% of Roma women came to the attention of the Gardaí. In the course of the focus group, the Roma women stated that the majority of this interaction is in relation to begging.

The experiences of the female respondents are detailed below:



Roma women's interaction with Gardaí

It is Nasc's contention that the Roma do not chose to beg; this contention is supported by other NGOs and organisations working with the Roma. Our work with the community and the findings in our report dictate that the majority of the Roma who engage in begging do so out of necessity. They have no access to state supports and are periodically homeless (50% of the

<sup>257</sup> Section(2) Criminal Justice Public Order Act 201 provides: 2.—A person who, while begging in any place—(a) harasses, intimidates, assaults or threatens any other person or persons, or(b) obstructs the passage of persons or vehicles, is guilty of an offence and is liable, on summary conviction, to a class fine or imprisonment for a term not exceeding one month or both.

<sup>258</sup> Section 3(2)The Act.

<sup>259</sup> Section 3(2)The Act.

<sup>260</sup> Section 4(1)The Act.

<sup>261</sup> Section 2 of the Act.

<sup>262</sup> D. P. P. -v- Rostas & Anor Neutral Citation: [2012] IEHC 19.

<sup>263</sup> ibid at para 18.

<sup>264</sup> Assault is a criminal offence at common law and under Section 42 of the Offences against the Person Act 1861. In addition, the Criminal Justice (Public Order) Act 1994 contains offences outlawing disorderly conduct (Section 5), threatening, abusive or insulting behaviour (Section 6), obstruction (Section 9) and other more aggravated forms of conduct. Harassment and intimidation are forms of anti-social behaviour which may be made the subject of anti-social behaviour orders breach of which constitutes an offence under Section 117 of the Criminal Justice Act 2006. Failure to comply with the directions of a Guard to move on is an offence under Section 8 of the Criminal Justice (Public Order) Act 1994. See also Mercy Law Resource Centre, Submission re the Criminal Justice (Public Order) Bill 2010 (2010). Available at: [http://www.mercylaw.ie/\\_fileupload/Submission%20re%20the%20Criminal%20Justice%20\(Public%20Order\)%20Bill%202010.pdf](http://www.mercylaw.ie/_fileupload/Submission%20re%20the%20Criminal%20Justice%20(Public%20Order)%20Bill%202010.pdf) (date accessed: 13 May 2013).

<sup>265</sup> Available at: [http://www.justice.ie/en/JELR/Regulatory%20Impact%20Analysis%20Criminal%20Justice%20\(Public%20Order\)%20Bill%202010.pdf/Files/Regulatory%20Impact%20Analysis%20Criminal%20Justice%20\(Public%20Order\)%20Bill%202010.pdf](http://www.justice.ie/en/JELR/Regulatory%20Impact%20Analysis%20Criminal%20Justice%20(Public%20Order)%20Bill%202010.pdf/Files/Regulatory%20Impact%20Analysis%20Criminal%20Justice%20(Public%20Order)%20Bill%202010.pdf) (date accessed: 15 May 2013).

<sup>266</sup> Mercy Law Resource Centre, Submission re the Criminal Justice (Public Order) Bill 2010 (2010).

<sup>267</sup> [http://www.justice.ie/en/JELR/Criminal Law \\_Human Trafficking\\_ \\_Amendment\\_ Bill 2012 - General Scheme.pdf/Files/Criminal Law \\_Human Trafficking\\_](http://www.justice.ie/en/JELR/Criminal%20Law%20Human%20Trafficking%20Amendment%20Bill%202012%20General%20Scheme.pdf/Files/Criminal%20Law%20Human%20Trafficking%20Amendment%20Bill%202012%20General%20Scheme.pdf)

<sup>268</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

<sup>269</sup> This is not to suggest that additional trafficking legislation is by any means unwelcome; especially as an ERRC report (2011) recently showed that Roma women are at high risk of trafficking, Breaking the silence: trafficking in Romani communities (2011), <http://www.errc.org/cms/upload/file/breaking-the-silence-19-march-2011.pdf>



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women surveyed said that they had been homeless at one time). In the context of policing a vulnerable community when wide discretionary powers are available to the police, the reasons for begging must be a consideration. We will explore the interactions with the Gardaí and Roma women in the context of the criminalization of begging, as this was presented as the main issue for the female participants in the study. Our findings revealed that 75% of the women received fines for begging and 25% of the women surveyed had spent time in prison for non-payment of fines for periods ranging from one month to two weeks.

There are a number of consequences to the adaption of a strict crime control approach; firstly, offenders can become locked into a cycle of begging and further offending in order to pay off the fines, which in turn leads to ever increasing sanctions. Secondly, alternative means to make money may be resorted to which could include prostitution, theft and shop-lifting to repay fines. This approach is counter-productive as it may lead to an increase in criminal behaviour as opposed to preventing or reducing it. Roma women are a very visible minority and as the begging legislation is subject to the vagaries of the unfettered discretion of the Gardaí, the law on begging has the potential to promote ethnic profiling. In addition, imprisoning impoverished women for the non-payment of fines for begging would appear to be an unduly harsh penal sanction for what is essentially a 'crime' of poverty.

The results from the focus group also indicate that a very hostile relationship exists between the Gardaí and the Roma. Participants noted:

*The Gardaí are really bad to us. Every time they see us they stop us and say F\*\*\* off Romanian go back to your country.*

(Focus Group Participant)

*Not all of them but some are really rude to us they tell us every time they see us they stop us.*

(Focus Group Participant)

*I was fined for begging – the Gardaí were very rough.*

(Questionnaire Respondent)

*I was stopped when begging. I was sitting on a bridge with my child and my sister was with me. I was fined and my family paid the fine.*

(Questionnaire Respondent)

There was general agreement that the Gardaí were 'worse' in Ireland than in Romania and that Roma women were more likely to come to the attention of the Gardaí than Roma men. As one participant noted:

*The men don't look much like the Roma because they don't have to wear big scarves.<sup>270</sup>*

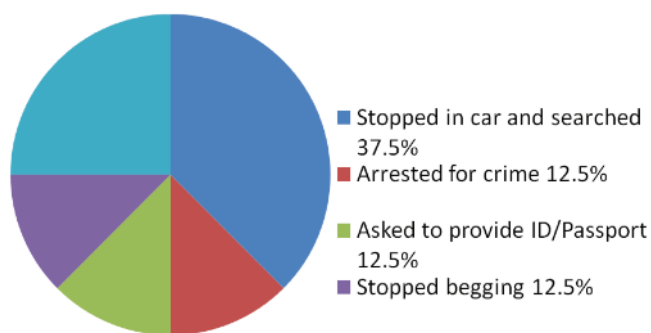
(Focus Group Participant)

The enactment and enforcement of legislation that disproportionately impacts upon a vulnerable group raises uncomfortable yet fundamental questions about social justice in modern Ireland, and the efficacy of a crime control model as the sole solution to address the wide social needs of this community.

### Roma Men and the Gardaí

The results of our questionnaire reveal that a high percentage of Roma men come to the attention of the Gardaí - 87.5%, which is still slightly lower than Roma women. The reasons however are different, with a smaller portion (12.5%) being stopped by the Gardaí for begging.

The experiences of the male respondents are detailed below:



Roma men's interaction with Gardaí

The high incidences of stop and search by the Gardaí are of grave concern. It indicates that there is a perception that the community need to be heavily policed and points to a concerted targeting of this group. A much lower percentage (12.5%) stated that were arrested for a crime. This can never be justification for the targeting of a whole community in a disproportionate manner and serves only to foster hostility and mistrust of the Gardaí amongst the Roma community. It also clearly points to the existence of racial profiling, harassment and institutional racism.

The focus groups also revealed that Roma men also have a difficult relationship with the Gardaí and feel that they were unfairly treated:

*I would say 90% of the Garda I meet, I feel the discrimination.*

(Focus group comment)

*From 2007 here, I didn't have this kind of troubles with the Garda, except in traffic. But now there's hardly a day we don't get searched when we drive.*

(Focus group comment)

*Garda are really bad; they take advantage of us that we don't know the law and they even go so far as telling us to go back to our own country.*

(Focus group comment)

*Some are really good while others are bad.*

(Focus group comment)

*80 to 90% of them discriminate.*

(Focus group comment)

*Gardaí regularly search my car and my home was raided by the Gardaí – They searched all Roma homes.*

(Interview comment)

This echoes the sentiment expressed by the Roma women as outlined above. In addition, as part of our work to promote integration and combat racism, Nasc operates a confidential third party racist reporting mechanism. Although we have not to date received a huge amount of reports from the Roma community, the reports we have received echo the findings in this research in the context of perceived Garda harassment, particularly in relation to police stops.

Throughout the course of the focus groups and the questionnaires, both the Roma men and women referred repeatedly to the fact that all of their homes were raided by the Gardaí on the same morning. There were reports that Social Protection Officers were also involved in these raids:

*Gardaí regularly search my car and my home was raided by the gardaí and social protection. They searched all Roma houses.*

(Questionnaire comment)

*Some things were confiscated but they found nothing in my home.*

(Questionnaire comment)

*I felt victimised they went into only Roma houses.*

(Questionnaire comment)

Whilst it is accepted that this was not a regular occurrence, they claimed that it happened once before. We are concerned that this appears to be a concerted targeting of this community. It is not difficult to conclude that if a raid of this nature and scale was carried out against any other community across the city that it would have been met with a huge outcry. For the Roma, once again, different norms apply. In Nasc's experience the Roma are not very rights aware and equally have no confidence in any redress system. It was open to them to lodge a complaint with the Garda ombudsman. Nasc met with members the community to explain their rights and our willingness to support a complaint, but the collective view was that it would make no difference, and would only lead to further harassment and greater problems for a community living in a small city. As far as Nasc is aware only one arrest resulted from the raid.

The findings from our research indicate that the Roma, from a policing perspective, are viewed as a clear threat to public order and are policed accordingly. The relationship between a community and its police force has a significant impact on the integration and social inclusion of that community. Garda policy in relation to our migrant community falls under the Garda Diversity Strategy and Implementation Plan, 2009-2012<sup>271</sup> through the medium of GRIDO, the Garda Racial, Intercultural and Diversity Office, as well as through local Community Policing and Ethnic Liaison Officers. The Diversity Strategy emphasises that An Garda Síochána must recognise and respect the needs, rights and dignity of all minorities resident in Ireland.

It must be acknowledged here that efforts have been made by the Cork Community Gardaí to engage with the community, and to date this has been met with some success. Unfortunately, effective community policing is insufficient to address the wider systemic issues as outlined above.

<sup>270</sup> The specific issues pertaining to Roma women are outlined in more detail later in this Chapter.

<sup>271</sup> <http://www.garda.ie/Documents/User/DiversityStrat.pdf>

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The labelling of the whole community as criminal, as was demonstrated by the stated high incidences of stop and search, the Garda raid of the houses, the attitude of the Gardaí toward the Roma, and the manner in which the begging legislation appears to be administered, does very little to cultivate a positive relationship between the Gardaí and the community. The marginalisation and exclusion of a whole community coupled with what appears to be a prevalent and embedded link made between the Roma and criminality only serves to foster and develop a deep mistrust between the community and the Gardaí. It sends out a message to the wider society that they need to be protected from this community. Unless we begin to address the wider social issues of poverty, deprivation and lack of socio-economic rights, the Roma will never be brought in from the margins.

### Ethnic Profiling

As a general comment, our findings as outlined above would point to the fact that racial or ethnic profiling appears to be practiced by the Gardaí when policing the Roma community. Ethnic profiling is defined as:

*The use by police, security, immigration or customs officials of generalisations based on race, ethnicity, religion or national origin – rather than individual behaviour or objective evidence – as the basis for suspicion in directing discretionary law enforcement actions.*<sup>272</sup>

This issue was highlighted by the European Commission on Racism and Intolerance's (ECRI)<sup>273</sup> recent report

on Ireland with regard to the wider migrant community and is of grave concern to Nasc. We would call upon the government to consider adopting legislation prohibiting any form of racial profiling, as recommended in the ECRI report. We are particularly concerned by the fact that the report highlighted that the equality legislation in Ireland does not proscribe racial profiling by the police.<sup>274</sup>

### 4.4 ROMA WOMEN

As we noted at various points throughout the findings, Roma women are a doubly marginalised group – they experience discrimination based on their gender and their ethnicity. This makes them a particularly vulnerable group of women. In addition, we find that they are very much victims of labelling and stereotyping, and this contributes to their marginalisation in Irish society.

Many Roma women not only face the challenges of discrimination in majority society but also experience gender-based discrimination internally in their own communities. This is because of strict patriarchal traditions that place them in constrained positions. A 2011 ERRC report *Breaking the silence: trafficking in Romani communities*<sup>275</sup> indicated that Roma women and children were particularly vulnerable to trafficking. It reported that women are often trafficked for purposes of sexual exploitation, and a significant number of children are victims of trafficking for various purposes including labour exploitation, domestic servitude, organ trafficking, illegal adoption

and forced begging.<sup>276</sup> This opinion is supported by the Council of Europe Parliament Assembly Report by the Committee on Equality and Non-Discrimination, which stated that:

*Roma women and girls face particular challenges, as they are discriminated against both within and outside their community and are victims of gender-based violence in a number of forms. These include domestic violence, forced marriages, rape and marital rape, economic violence and physical and verbal abuse.*<sup>277</sup>

The recommendations in the report cite Resolution 1740 (2010)<sup>278</sup> on the situation of Roma in Europe and relevant activities of the Council of Europe where the Assembly noted that the Roma were victims of outrages reflecting an increasing trend towards anti-Gypsyism of the worst kind.

In Ireland, Roma women can face what has been termed ‘intersectional discrimination’,<sup>279</sup> where a person experiences multiple forms of discrimination. For example, Roma women often experience barriers relating to employment due to gender discrimination coupled with the discrimination based on their ethnicity. Conversely, intersectional discrimination often results in the provision of less legal protection rather than more. Fredman makes the point that ‘the more a person differs from the norm, the more likely she is to experience multiple discrimination, the less likely she is to gain protection.’<sup>280</sup>

A Roma woman might be subject to particular forms of disadvantage which would not affect her male counterpart. She may fail to benefit from anti-discrimination initiatives, because of this problem of intersectionality. The particular forms of subordination and discrimination Roma women are subject to, both within their particular communities and by society in general, may be substantially different in kind from the ‘standard’ forms of discrimination with which anti-discrimination law and policy is primarily concerned. Consequently their particular claims for justice may not be addressed as they do not fit within the dominant narratives in relation to anti-discrimination.<sup>281</sup>

In these cases the different forms of discriminatory behaviour interact with each other in such a way that their effect may be in actual fact indistinguishable. Consequently it is not possible to analyse the impact of each single-ground discriminatory factor separately, as usually required under existing national and EU law in this area.<sup>282</sup> European anti-discrimination law struggles to deal with intersectional discrimination in its purest form.<sup>283</sup> This is in part due to the absence of a specific and distinct form of single-ground discrimination, which may make it impossible to claim a remedy.<sup>284</sup>

In Recital 14 of the Racial Equality Directive (RED),<sup>285</sup> the possibility of combined gender and race discrimination is acknowledged.<sup>286</sup> However the EU Equality Directives fail to make substantive provisions

<sup>272</sup> European Network against Racism, [http://cms.horus.be/files/99935/MediaArchive/publications/ENAR\\_OSJI%20factsheet%20ethnic%20profiling%20Oct09.pdf](http://cms.horus.be/files/99935/MediaArchive/publications/ENAR_OSJI%20factsheet%20ethnic%20profiling%20Oct09.pdf)

<sup>273</sup> ECRI Report on Ireland (2013), <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ireland/IRL-CbC-IV-2013-001-ENG.pdf> (date accessed: 11 May 2013).

<sup>274</sup> Ibid.

<sup>275</sup> ERRC, Breaking the silence: trafficking in Romani communities (2011), <http://www.errc.org/cms/upload/file/breaking-the-silence-19-march-2011.pdf>

<sup>276</sup> [www2.ohchr.org/english/bodies/cedaw/docs/ngos/ERRC\\_2\\_CzechRepublic\\_CEDAW47.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/ERRC_2_CzechRepublic_CEDAW47.pdf)

<sup>277</sup> <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=18917&lang=en> Committee Conclusions.

<sup>278</sup> Assembly debate on 22 June 2010 (22nd Sitting) (see Doc. 12174, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Berényi; Doc. 12207, opinion of the Committee on Migration, Refugees and Population, rapporteur: Mrs Memecan; and Doc. 12236, opinion of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Kovács). Text adopted by the Assembly on 22 June 2010 (22nd Sitting). See also Recommendation 1924 (2010), <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta10/eres1740.htm>

<sup>279</sup> Sandra Fredman Equality: A New Generation? *Ind Law J* (2001) 30(2): 145-16830

<sup>280</sup> Ibid.

<sup>281</sup> Thien Uyen Do, “2011 A Case odyssey into 10 years of anti-discrimination law,” *European Anti Discrimination Law Review* 12 July 2011.

<sup>282</sup> See Moon, “Multiple Discrimination – Problems Compounded or Solutions Found?” (2006) 3(2) *Justice Journal* 86-102, available at <http://www.justice.org.uk/images/pdfs/multiplediscrimination.pdf>

<sup>283</sup> The English case of *Bahl v Law Society*,<sup>33</sup> whereas Vice-President of the English Law Society alleged that she had faced prejudice on the grounds that she was an assertive Asian woman. The Court of Appeal held that she was obliged to attempt to establish that she was discriminated against either because of her gender or her ethnicity, but could not bring a claim based on a combination of those grounds alone.

<sup>284</sup> Mark Bell, “Combating discrimination in areas outside employment: the anticipated impact of the proposed new Directive,” in Equality Authority (ed), *Expanding equality protections in goods and services: Irish and EU perspectives*, Dublin: Equality Authority, 11-25.

<sup>285</sup> Council Directive 2000/43/EC [2000] implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L180/22.

<sup>286</sup> Recital 14 of the Racial Equality Directive provides that ‘in implementing the principle of equal treatment irrespective of racial or ethnic origin the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities and to promote equality between men and women, especially since women are often victims of multiple discrimination Thien Uyen Do, “2011 A Case odyssey into 10 years of anti-discrimination law,” *European Anti Discrimination Law Review* 12 July 2011.



## Chapter 4: Roma in Ireland – Findings and Discussion

to cover the gaps within existing anti-discrimination legislative frameworks when it comes to multiple discrimination. The situation at national level is similar; multiple discrimination is often recognised to be a problem by policymakers, but anti-discrimination frameworks rarely if ever make express provision to give a tangible legal remedy to those affected.

The extent of this issue in Ireland has been identified repeatedly in the course of Nasc's work with Roma women. This is further supported by an exploratory study conducted by the Migrant Rights Centre Ireland on ethnic profiling in Ireland, which found a clear example of ethnic profiling when, on more than one occasion, Roma women were approached by Gardaí and 'moved on' for begging in the street, whereas other people begging, who did not appear to be Roma, were not moved on.<sup>287</sup> The poverty, discrimination and risk of violence in the home and wider society all contribute to the vulnerability of Roma women. The difficulties Roma women experience in accessing employment and social protection were outlined earlier in this Chapter; clearly there are considerable barriers to Roma women's entry into the labour force. Consequently meeting the habitual residence requirement necessary to avail of social protection in the State has also been debarred to the majority of Roma women. As a result, migrant Roma women who experience domestic violence had very limited support options.<sup>288</sup> Issues such as lack of sufficient identity documentation, language barriers and distrust of service providers all act to prevent Roma women seeking support. Often begging is the only source of income for these women and their families.

In relation to accessing goods and services within the State, the findings of the questionnaires indicate that an appalling 100% of women experienced difficulties. A discussion arose in the course of the focus groups which demonstrates this:

Roma woman: *Even when we want to buy food for our children they don't allow us.*

Interviewer: *How do they stop you?*

Roma woman: *Sometimes the guards stop us, sometimes not. In Lidl we can't go in. Some of the men go, not all.*

Interviewer: *So for the men there is no problem?*

Roma woman: *No problem.*

(Focus group discussion)

Racist reports made to Nasc by members of the Roma community echo these findings; Roma are frequently turned away from businesses, shops, clubs, pubs, restaurants. Roma women seem to be particularly targeted because they are seen to be easily identifiable by their clothing. A comment from one of the questionnaire respondents further illustrates this:

*Guards stop people that aren't begging just because they're Roma women.*

(Questionnaire comment)

In the course of our work in Nasc we have found the starkest illustration of the multiple discrimination suffered by Roma women in Ireland is the implementation of the Criminal (Public Order) Act 2011, which is explored in detail above.

The prevalence of fines issued to Roma women has become apparent. Non-payment of these fines constitutes a summary offence and has resulted in Roma women, a group identified as one of the most vulnerable in Europe, serving prison sentences.

A discussion in the focus group provides an insight into the frequent experience of being fined and having to go to prison:

Roma woman 1: *She had a fine of €2000.*

Interviewer: *Two thousand euro?*

Roma woman 1: *Yes, she had no licence. It happened a year ago and she went to prison.*

Roma woman 2: *Yes and her [another answers, 'I was fined too']*

Roma woman 1: *This one was not begging, she was selling balloons.*

(Focus group discussion)

Comments from the questionnaires also illustrate this:

*Tried to pay fine but couldn't so spent 2 weeks in prison.*

(Questionnaire comment)

*We were fined. I paid but my friend couldn't.*

(Questionnaire comment)

*This person was arrested when she was begging and the court gave her €1,000 to pay and was put in prison.*

(Questionnaire comment)

The following case study (Case Study 7) illustrates a Roma woman's experience of deprivation due to delays

in social protection decision, which resulted in the necessity of begging for which she was fined and subsequently imprisoned. It is a poignant picture of an incredibly vulnerable individual suffering discrimination and intolerance at every stage of her interactions with the State, resulting in her and her children's descent into poverty and social exclusion.

### CASE STUDY 7

#### ROMA WOMAN'S EXPERIENCE

Romina, the mother of two minor children, submitted an application for Child Benefit in December 2011 and was repeatedly refused on the grounds that she did not meet the habitual residence requirement. Romina appealed this decision on her own behalf.

Romina also submitted an application for Supplementary Welfare Allowance and One Parent Family Benefit, which had also been repeatedly refused as she was deemed not to be habitually resident. Additionally, these applications were refused as she was not previously in receipt of Social Welfare. As Romina had no income or accommodation she became homeless and destitute. Her only strategy for survival was begging. Romina was fined for begging under the Criminal Justice (Public Order) Act 2011. Given her financial situation she was unable to pay the fine and was imprisoned for non-payment in December 2012.

Following a protracted appeal process that took two years and four months in total, Romina finally received her Child Benefit payment. She is still awaiting a decision on her Supplementary Welfare Allowance and her One Parent Family Benefit.

<sup>287</sup> Migrant Rights Centre Ireland (2011) *Singled Out: Exploratory study on ethnic profiling in Ireland and its impact on migrant workers and their families*.

<sup>288</sup> In Ireland, if you do not have access to social welfare payments this may prevent access to a women's refuge, beyond an emergency period.

## Chapter 5: Conclusions and Recommendations

### 5.1 CONCLUSIONS

Throughout this report, we have emphasised the importance of effective legislation and positive integration measures as essential factors in ending the discrimination and marginalisation experienced by the Roma community. The effective implementation of existing anti-discrimination legislation, to ensure equality of access for the Roma is the responsibility of legislative and statutory bodies. The Roma community are rights bearers and they must be permitted to freely exercise their rights in Ireland. Roma who have residency in Ireland but are unable to find employment should not be forced into poverty, least of all by the State. Roma who are granted full access to the labour market should also be given the practical means to actually facilitate access to this market.

In the questionnaires, members of the Roma community were asked what public bodies could do to improve the situation for the Roma community. The responses were poignant:

*If they had a better attitude it would be easier.*

(Questionnaire comment)

*There were no translators. I was ok but my father had a lot of difficulty.*

(Questionnaire comment)

*Help with translation.*

(Questionnaire comment)

*If they treat us the same there'll be no problem.*

(Questionnaire comment)

*Interpreters, help with documents.*

(Questionnaire comment)

*If reception and counter staff were less rude.*

(Questionnaire comment)

*Help us to get work. (Questionnaire comment)*

*If you work it's easier to be with other groups.*

(Questionnaire comment)

*Language help translating.*

(Questionnaire comment)

*Treat us the same and we wouldn't beg.*

(Questionnaire comment)

*Nobody would take my application because I was Roma. In the social welfare office I was asked to leave.*

(Questionnaire comment)

*If they treat us differently in offices like social welfare then people think they can treat us badly.*

(Questionnaire comment)

*Allow us to ask questions before asking us to leave.*

(Questionnaire comment)

Strategies for promoting integration must come from all facets of society, both at institutional and community levels. These include tackling racist behaviours and attitudes; building the capacities of this community to strengthen their access to education and employment; and fostering greater participation from this community in developing targeted integration strategies and initiatives and advocating for their rights. However strategies that do not involve Roma participation at every stage of development and implementation will not be effective. Roma must be included in the process of integration.

The role of NGOs is essential in this. They act as mediators between the State and vulnerable minorities such as the Roma, advocating on their behalf, making communities rights aware and highlighting areas of discrimination. One comment from the focus groups highlights this:

Interviewer: *Do you feel that working with agencies like Nasc or any other, helped, or would you have been able to do it by yourself as the start?*

Answer: *Exactly. If I had to ring myself, they don't take into consideration what I have to say. But if I ask Nasc or [Cork City] Partnership to act on my behalf, they usually respond faster.*

(Focus Group Comment)

Mechanisms must be put in place to ensure that vulnerable communities are able to avail of legal redress, as well as complaints procedures and mechanisms. Ireland has an excellent legislative framework in the form of the existing equality legislation, aspects of which are more progressive than the Racial Equality Directive and other EU anti-discrimination legislation. However in practice this framework falls far short in tackling discrimination. Where the EU Racial Equality Directive has the potential to allow NGOs and other civil society organisations to instigate an action in instances of discrimination where there is no actual victim, Ireland has limited NGO involvement to the hearing of representations or submissions from interested parties.

This curtails the potential for attaining systemic change and the diminishes our ability to mobilise the community to engage with their rights. Additionally the lack of governmental support of equality is highlighted in the failure to adequately resource these enforcement bodies, and in the proposed merging of these bodies which will effectively dilute their powers.

The challenge now facing all EU member states – including Ireland – is how to transform these formal guarantees of equality into concrete reality. It is clear that efforts to date to ensure equality for Roma throughout Europe have failed to produce any significant improvement. The way forward must come through a multi-faceted response which incorporates anti-discrimination legislation with effective integration measures and targeted funding to promote the social inclusion of this marginalised community.

Ireland positions itself as a champion of human rights; the treatment of the Roma in Ireland must be seen as a litmus test of this claim. Ireland has a legal and moral obligation to ensure that this community does not continue to suffer poverty, deprivation and social exclusion at the margins of society. The inclusion of marginalised groups leads to greater social cohesion which ultimately is of benefit to Irish society as a whole. The EU Year of the Citizen and Ireland's hosting of the EU presidency is the ideal opportunity for Ireland to show its commitment to the most vulnerable in our society.

## 5.2 RECOMMENDATIONS

### 5.2.1 OVERARCHING RECOMMENDATIONS

- The Irish Government needs to take a lead role in the development of holistic and multi-faceted approaches to tackling prejudice against the Roma community and ending discriminatory practices, including negative media and public stereotypes.
- Foster greater communication and coordination between different public bodies, authorities, organisations, and agencies in their interactions with this community to prevent the cycle of destitution and poverty.

- The Irish Government should adapt the initiatives Spain has put into place as a best practice model for an anti-discriminatory legislative and policy framework for promoting integration of Roma in Ireland.
- Conduct intensive research to compile comprehensive data on the Roma population in Ireland in order to develop targeted strategies and initiatives.
- The Irish Government should formally acknowledge the Roma as a minority in line with European standards.
- Funding for Roma groups, NGOs and community organisations to promote Roma rights should be provided.

### 5.2.2 LEGISLATIVE RECOMMENDATIONS

#### Equality Legislation

- Review and reform the Equal Status Acts to limit the discriminatory potential of the exemptions, especially the exemptions on nationality and legislative provision, and to provide for the inclusion of the prohibition of segregation, ethnic profiling and institutional racism within the Equal Status Acts.
- The existing equality bodies must be adequately funded to facilitate the protection of human rights and address all forms of discrimination.
- The scope of the *locus standi* provision in the Equal Status Acts should be expanded to grant NGOs and other interest groups standing in line with the provisions in the Racial Equality Directive. This will bolster our anti-discrimination framework and improve access to justice for all vulnerable communities.
- The Irish Government must ensure that avenues of redress to bodies such as the Equality Tribunal and the Ombudsman are accessible and open to marginalised communities such as Roma.



## Chapter 5: Conclusions and Recommendations

- The Irish Government must ensure that the provision for the positive duty not to discriminate is strengthened in the new bill that merges the Irish Human Rights Commission and the Equality Authority and that this new body is adequately resourced to protect equality.
- All staff of relevant bodies and organisations should be reminded of their obligations under the Equal Status Acts to ensure that a person's ethnicity or race does not have an impact on their treatment when accessing services and/or entitlements.

### Criminal Justice (Public Order) Act 2011

- Legislative provision should be made to proscribe ethnic profiling within the Criminal Justice (Public Order) Act 2011
- The Criminal Justice (Public Order) Act 2011 should be reformed to provide for the following:
  - I. Clarification of the 'reasonable grounds' required that permit a member of An Garda Síochána to arrest without warrant any person he or she suspects of committing an offence under the Criminal Justice (Public Order) Act 2011, to ensure that this is not functioning as a means of discriminating against particular groups.
  - II. Curbing the discretionary implementation of the Criminal Justice (Public Order) Act 2011 by An Garda Síochána.

### Prohibition on Incitement to Hatred Act

- Reform of the Prohibition of Incitement to Hatred Act to account for hate crimes and online racism.
- The Irish Government should ratify the Council of Europe's Convention on Cybercrime – to tackle online racism.

## 5.2.3 STATUTORY RECOMMENDATIONS

### Justice and Policing

- A clear mechanism should be developed to differentiate and identify the varying residency permissions and the rights that flow from them. This information should be available to assist all agencies and public bodies that interact with the Roma.
- Training on diversity, anti-discrimination and anti-racism measures should be developed and delivered to all Gardaí.
- This must include training on the implementation of the Criminal Justice (Public Order) Act 2011 to ensure it does not promote ethnic profiling.
- Adequate funding and support must be provided for Community Policing initiatives.
- A positive relationship between Roma and An Garda Síochána must be developed to promote integration and tackle discrimination.
- Avenues to lodge complaints to the Garda Ombudsman must be promoted and more accessible and open to marginalised communities such as Roma.

### Social Protection

- Specific training for Social Welfare staff on the different types of immigration status and the rights attached to each must be devised and delivered.
- Specific guidelines must be developed to prevent prejudice from impacting decision-making processes.
- Additional training on the application of the habitual residence condition and availability to work regulations in relation to the Roma community should be provided.

- Delays caused by requests for unnecessary documentation and obstructions must be reduced dramatically to end the cycle of poverty for this vulnerable community.
- Requests for documentation must take into account the unique cultural and social dynamics of the Roma community. Recognition needs to be given to the fact that many Roma may not have the typical identifying documents such as bank statements, utility bills or rental agreements if homeless.
- The Department must ensure it has strong anti-racism measures in place. This includes sanctions for racist attitudes expressed by staff.
- Protocols should be put in place to ensure that decisions made about social protection do not put Roma at risk of homelessness or destitution.
- Institute an internal monitoring and evaluation mechanism of Social Welfare staff's work with the Roma to ensure that Offices are providing an appropriate and professional service.
- Provision of translation services when necessary.

## Housing

- Local Authorities should address segregation of the Roma community and prevent the ghettoisation of the community.
- The Private Residential Tenancies Board should ensure that landlords are made aware that discrimination on the grounds of race or nationality is prohibited by the Equal Status Acts.
- Increased funding and support for local authorities and organisations should be provided to deal with the high risk of homelessness in the Roma community.

## Education

- Roma should be granted full access in a non-discriminatory manner to vocational training and education in Ireland.

- Implement the reforms to the Education Acts based on the commitments made by Minister for Education Ruari Quinn to ensure equality in enrolment.
- The provision of home school liaison officers, as per the Traveller strategy, should be made available to Roma community to ensure participation in the education system.
- Anti-discrimination and anti-racist awareness training awareness should form part of the school curriculum.
- Specific targeted vocational training and language courses should be provided for Roma women.

## Employment

- Roma should be assisted in obtaining employment, including training and education targeted to this community along the lines of Traveller training schemes.
- Targeted strategies to promote employment among Roma women should be developed.
- Tools and initiatives should be provided to promote self-employment in the Roma community.

---

## 5.2.4 POLICY RECOMMENDATIONS

### National Strategy

- Clear policy on the role of the Office for the Promotion of Migrant Integration in overseeing the integration of the Roma community should be developed and published.
- Adaptation of Traveller strategy goals across the various lines to concretely and proactively include Roma
- Roma representatives must be involved in developing a clear Roma-focused integration strategy at national and local levels and ensure proper consultation with the Roma community

## Chapter 5: Conclusions and Recommendations

in the development of the next National Roma/Traveller Integration Strategy.

- The learnings from Traveller Integration initiatives must be applied in development of Roma-specific initiatives.
- Future integration strategies must include measures to address the specific issues affecting Roma women, particular consideration should be given to measures that address the intersectional discrimination they experience
- Monitor the National Strategy with measurable goals and targets to determine its efficacy and impact on the Roma community in order that future Strategies can be tailored to meet the needs to that community.

### Anti-Racism Measures

- Develop a new National Action Plan on Racism in consultation with community groups, interested NGOs and other bodies and ethnic minorities.
- Establish a new consultative body to replace the National Consultative Committee on Racism and Intolerance (NCCRI).
- Develop clear policy on the role of the Office for the Promotion of Migrant Integration in developing anti-racism measures.

### 5.2.5 COMMUNITY RECOMMENDATIONS

- Build the capacity of Roma to become more aware of their rights and to become advocates for those rights.
- Establish and resource community integration initiatives that highlight the benefits of Roma inclusion and promote the development of a positive image of this community to combat negative stereotypes and ethnic profiling.
- Establish a formal National Roma Forum, supported and funded by the Office for the Promotion of Migration and Integration.
- Access to micro-credit should be encouraged in communities, for example in Credit Unions.
- Raise awareness about the dangers of anti-Roma attitudes in fostering hate and exclusion in communities.

---

### 5.2.6 NGO RECOMMENDATIONS

- Greater coordination of Roma-specific advocacy work carried out in the country.
- Develop strategic litigation strategies and lobby policymakers at national level to highlight the discrimination this community experiences.
- Develop targeted programmes to build the capacity of this community, foster inclusion and promote the participation of Roma at local, and national and international levels.



## Appendix 1: List of Abbreviations

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEE	Central and Eastern European states
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CoE	Council of Europe
EC	European Community
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECJ	European Court of Justice
ECRI	European Committee on Racism and Intolerance
ENAR	European Network Against Racism
ERIO	European Roma Information Office
ERRC	European Roma Rights Centre
ERTF	European Roma and Travellers Forum
EU	European Union
EU-MIDIS	European Union Minority and Discrimination Survey
FCNM	Framework Convention on the Protection of National Minorities
FRA	Fundamental Rights Agency
HCNM	High Commissioner on National Minorities
HRC	Habitual Residence Condition
ICMPD	International Centre for Migration Policy Development
NCCRI	National Consultative Committee on Racism and Intolerance
OSCE	Organisation for Security and Cooperation in Europe
OSI	Open Society Institute
PILA	Public Interest Law Alliance
RED	Racial Equality Directive
SWA	Supplementary Welfare Allowance
TFEU	Treaty on the Functioning of the European Union
UNDP	United Nations Development Programme
UN-HABITAT	United Nations Human Settlements Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund



## Appendix 2: Questionnaire

Nasc The Irish Immigrant Support Centre

Client Name \_\_\_\_\_ Nationality \_\_\_\_\_

Partner Yes/No

Number of Dependants \_\_\_\_\_ Date of Birth \_\_\_\_\_

Interpreter requested Yes /No

### **Issues**

Access to employment	<input type="checkbox"/>
Access to Social Protection, Healthcare.	<input type="checkbox"/>
Access to Education	<input type="checkbox"/>
Access to Supply of Goods and Services	<input type="checkbox"/>
Treatment by Gardai	<input type="checkbox"/>
Experience of the Court System	<input type="checkbox"/>

Other Issues \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### **Access to Employment**

What agencies have you engaged in your search for employment

\_\_\_\_\_

Have you ever engaged in self employment? Yes/No

Have you ever applied for any of the following

Casual Trading Licence	<input type="checkbox"/>
Employment Permit	<input type="checkbox"/>
Hawkers Licence	<input type="checkbox"/>

If so, please explain, and give examples

\_\_\_\_\_

Nasc The Irish Immigrant Support Centre

When dealing with these organisations do you feel you have been treated differently from those of other ethnic groups in Ireland

---

When dealing with these organisations/public bodies, have you ever felt any of the following?

Discriminated Against	Yes/No
Harassed	Yes/No
Victimised	Yes/No

#### **Access to Social Protection and Healthcare**

Have you applied for a Social Welfare payment in the State?

---

If so, has your application been successful?

---

If your application was not successful what was the reason for refusal

---

Have you applied for a medical card? Yes/No

Have you received a medical card? Yes/No

If your application was not successful what was the reason for refusal

---

When dealing with these organisations/public bodies, have you ever felt any of the following?

Discriminated Against	Yes/No
Harassed	Yes/No
Victimised	Yes/No

## Appendix 2: Questionnaire

Nasc The Irish Immigrant Support Centre

When dealing with organisations responsible for the provision of social benefits ( ie: social welfare, healthcare, social security) do you feel you are treated differently from those of other ethnic groups in Ireland. Yes/No

If so, please explain, and give examples

---

What do you think these bodies could do to make you feel treated more equally?

---

What do you think that these public bodies could do to improve relations between you and members of other ethnic groups in your community

---

### **Access to Housing**

In what type of accommodation do you currently reside

---

Have you ever been homeless

---

If so, for how long were you homeless

---

### **Access to Education/ Training**

Have you accessed education in the State?

Nasc The Irish Immigrant Support Centre

---

Have you accessed any vocational training in Ireland Yes/No

---

When dealing with these organisations/public bodies, have you ever felt any of the following?

Discriminated Against	Yes/No
Harassed	Yes/No
Victimised	Yes/No

#### **Access to Goods and Services**

Have you experienced any difficulties accessing goods and services in the State. Yes/No

If Yes, please explain and give examples

---

Are there any other experiences in your every day life that you wish to highlight that haven't been addressed in this questionnaire.

---

---

#### **Treatment by Gardai**

Have you come to the attention of the gardai while residing in the State. Yes/No

If Yes please explain and give examples

---

What was the outcome

---

When dealing with these organisations/public bodies, have you ever felt any of the following?



## Appendix 2: Questionnaire

Nasc The Irish Immigrant Support Centre

Discriminated Against

Yes/No

Harassed

Yes/No

Victimised

Yes/No

### **Treatment by the Court System**

Have you ever committed an offence that has led you to attend court.

---

If yes, what was the outcome

---

Is there any other information that you wish to provide



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